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# *House of Representatives*

The House was not in session today. Its next meeting will be held on Wednesday, April 23, 1997, at 2 p.m.

# *Senate*

TUESDAY, APRIL 22, 1997

The Senate met at 10 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:

Lord God of Truth, who calls us to absolute honesty in everything we say, we renew our commitment to truth. In a time in which people no longer expect to hear the truth, or what's worse, see the need consistently to speak it, make us straight arrows who hit the target of absolute honesty. Help us to be people on whom others always can depend for unswerving integrity. Thank You for keeping us from those little white lies that later on need big black ones to cover them up. May the reliability of our words earn us the right to give righteous leadership. Thank you for the wonderful freedom that comes from a consistency between what we promise and what we do. You are present where truth is spoken. Thank You for reigning supreme in this Senate Chamber today. Now, dear Lord, we intercede for the distressed people of Grand Forks, ND, as they battle the rising waters of the Red River. Give them strength, but, dear Lord, please bring to an end the devastation of this flood. In the name of our Lord and Saviour. Amen.

## RECOGNITION OF THE MAJORITY LEADER

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

Mr. LOTT. Thank you very much, Mr. President.

## SCHEDULE

Mr. LOTT. Mr. President, today the Senate will be in a period of morning business to accommodate a number of Senators who wish to speak on a variety of subjects. There will be no rollcall votes, however, during today's session due to the observance of Passover. I remind my colleagues that the weekly party luncheons normally held today will be held tomorrow, Wednesday.

By the unanimous consent agreed to on Thursday of last week, the Senate will begin consideration of the Chemical Weapons Convention Treaty tomorrow with, I believe, 10 hours of debate allowed. Then on Thursday there will be five motions to strike with 1 hour of debate on each of those and, presumably, votes on each one of the five, with the expectation of a final vote around 6 o'clock on Thursday.

Under the previously agreed time agreement, Senators can anticipate votes on the treaty as early as Wednesday afternoon—I want to emphasize that—as well as a variety of votes on Thursday morning and throughout Thursday. As always, we will notify Senators of any scheduled votes or changes as soon as possible, or actions we wish to take on the Executive Calendar.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, noting that nobody has been seeking to be recognized for about a half-hour, I ask unanimous consent that I may proceed for not to exceed 15 minutes as in morning business.

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

## THE CRISIS IN OUR FEDERAL JUDICIARY

Mr. LEAHY. Mr. President, I have noted on the floor of the Senate a number of times, the crisis in our Federal judiciary that Chief Justice Rehnquist has spoken of. The Chief Justice and others have spoken about the nearly 100 vacancies in our Federal judiciary at the district court level, at the court of appeals level, and at the Federal court of appeals level. So far in this Congress—we have been in session now for 4 months—we have confirmed only two Federal judges. It is a form of zero population growth, as far as the Federal judiciary is concerned. We seem to have this idea that if we do not get Federal judges we can, somehow—I am not sure what we think we are going to do.

I will tell you one of the things we have not done. In a number of jurisdictions we are reaching a crisis situation where, instead of being able to have criminal cases tried, instead of prosecutors being able to seek tough penalties, they have to plea bargain because they know they must keep up with speedy trial mandates, yet there

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

are not enough judges to have a speedy trial, so they end up having to plea bargain. We do know that in many, many jurisdictions it is clearly impossible to have a civil case heard. If you are a business person with a just claim against somebody and you want to bring a suit, bring the suit, but they can just wait you out. If you are a litigant who has been damaged by somebody, you want to bring a suit, they can just wait you out because the judges are not there to try the cases.

I think it is irresponsible for the leadership in this body to continue to block Federal judges. This is something that I have never seen in 22 years here. During times when the Democrats were in control of the Senate when there was a Republican President, we have never done it to them. During times when Republicans have been in control of the Senate, they have not done this. But this time it is being done. It shows a lack of responsibility on the part of the Senate. It shows a lack of responsibility on the part of individual Senators that they allow this to continue. It also shows a demeaning of the Senate. It violates the traditions of the Senate.

There are some who do not care for traditions in this body. Sometimes it is in things that the public does not see, like confining the reporters of debates to something that looks like a subterranean, medieval torture chamber because we want to expand the perks and privileges of some of the officers of the Senate.

I would hate to think that the Senate is willing to toss aside decades, generations of tradition for momentary perks and privileges. I hope Senators will start thinking that none of us owns the seat in the U.S. Senate. None of us owns a piece of the U.S. Senate. We are merely 1 of 100 who serve here and we serve here for all Americans, not just for our partisan interests, not just for our political party's interests, not just for our own personal aggrandizement. We serve here for the whole country. We are not serving the country well on the question of judges.

This is something where judges, both Republican and Democrat appointed, are united in saying it is not responsible the way we have maintained this. Mr. President, I will continue to speak out on this, but I hope we will wake up to the fact that the country needs to have these Federal judges. We should be ready to move forward. We have about 25 in the pipeline. Let us start having hearings and start going forward on them. Let us stop playing political games. We have a woman, one of the most qualified members of the California bar, who has found her appointment blocked. Contrary to the normal tradition of hearing nominees for the circuit court first, she was made to wait behind everybody else here recently. As did not escape notice, she was also the only woman nominee and was treated like a second-class citizen on the hearing schedule. She has now been asked by a Member of the Senate, basically, to tell how she voted on over 100 items in California.

Are we stooping so low as a body that we are asking people how they voted? If they are up for confirmation, how they cast a secret ballot? Would you, Mr. President, want to have somebody go back for the last 20 years and ask how you voted every time you went to the voting booth in Kansas? I certainly would not want anybody to be able to ask that. I am very proud of all the votes I cast, but it is my business. It is not anybody else's business. One of the great hallmarks of this democracy is the secret ballot, and we should not start asking people that, when actually it appears the real reason is just to keep the stall in.

We have followed, in the past, the so-called Thurmond rule of stalling a President's appointments to the judiciary in about the last few months of their term in office. I have never seen the stall start in the first few hours of a President's 4-year term.

## EARTH DAY 1997: THERE IS NO STATUS QUO IN PROTECTING THE ENVIRONMENT

Mr. LEAHY. On another issue, Mr. President, since the first Earth Day in 1970, Americans have gathered to celebrate the steps we have taken to clean up our environment and to call attention to what still needs to be done. The early Earth Day events helped create the modern environmental movement. They led directly to enactment of the first major environmental legislation, the Clean Air Act. I remember with pride serving here with Senator Gaylord Nelson of Wisconsin, knowing what he had done to help spark that movement.

But I ask Senators and the administration to look back at the debate that took place when we drafted this remarkable piece of legislation. At the time of that first Earth Day, the laws to limit air pollution were disjointed, they were limited in scope. But since passage of the Clean Air Act, we have made considerable strides in reducing some pollutants. The level of lead pollution we and our children breathe today is one-tenth what it was a decade ago—one-tenth. We have healthier children as a result. In fact, just using that figure itself is a tribute to the success of the original Clean Air Act.

One thing we do know is Americans do not want to stop the progress we made and say, look what we did back then, 10 years ago; it is what we do today to keep moving forward in cleaning up our environment. I have heard some of the debate here in the Congress now, on the Clean Air Act, that it is not to strengthen it, not to make it better based on what we learned, but rather to weaken it. It is almost like saying we took care of those children, but tomorrow's children we are unwilling to help.

We also learned the ecosystem is not static and that environmental progress should not be either. There is no status quo and never should be a status quo when it comes to a healthy environment. New pollution sources appear, and none of us can predict today what the new pollution sources might be a decade from now. We know populations grow and they shift and pollutants accumulate. So, if you are not always moving toward a safer and cleaner environment, then you are slipping backwards.

The EPA conducted a 5-year review of existing standards and compared these with new scientific research about the tiny particulates and ozone that we breathe. When EPA issued new goals to lower the level of these particulates coming into our lungs and the ozone levels, the backlash was remarkable. Opponents instantly attacked the goals rather than sitting down to work with the Congress and administration to achieve these goals in a reasonable and cost-effective timeframe. Instead of saying, ''What do we do to make air and water safer for our children?'' it was, rather, ''We cannot possibly do this.'' These are the same people who would do anything to save a child, but not to save the Nation's children.

We ought to listen to the voices of more than 130 million Americans in 170 major cities who continue to breathe unhealthy air, including the city we are in today. When the Clean Air Act was drafted, we were unwilling to accept the argument that the present cost of environment regulation should define the future of our environment. Our late colleague, Senator Edmund Muskie of Maine said, ''The first responsibility of Congress is not the making of technological or economic judgments. Our responsibility is to establish what the public interest requires to protect the health of persons.''

So, on this Earth Day I ask Senators to go back to the original premise of the Clean Air Act and ask ourselves what do we do to carry forward the torch of environmental progress, not only for ourselves but for the next generations of Americans? I hope we might look at the biggest loophole in the Clean Air Act, allowing the dirtiest powerplants to continue to operate with vastly inadequate pollution controls. We ought to go back and close this loophole now, in this session of Congress.

One of the reasons it is so urgent is because of the deregulation of the electric utility industry. We have the benefits of competition in the utility industry. Some say it is going to be as much as $50 billion. Surely, with this we ought to be able to offset the environmental costs of utility deregulation and have some ability to have cleaner air.

We ought to look at some of the coal-fired production plants that were grandfathered under the Clean Air Act. One study says an annual increase of emissions of 349,000 tons of nitrogen oxide, a component of ozone pollution, comes from them.

Let us look at what happens here. We have plants that have been grandfathered in. That means they are allowed to spew whatever they want. These plants are out here. You see the pictures of them. But where do the pollutants go from these 25 grandfathered plants? They move, of course, east. Many of the plants are in the Midwest or toward the West, but the pollutants move east.

If we are going to talk about what we do with the Clean Air Act, let us think of our children. My children are going to live most of their lives in the next century. But if we allow this to go on with no changes, those who live in this part of our country are going to be severely damaged and those children who are going to live most of their lives in the next century are going to feel the results of it.

I have talked about the high environmental standards we have in Vermont. Each State and community should take responsibility for controlling pollution within their borders. We have done this in Vermont, implementing some of the toughest environmental laws in the Nation. But, even though we have imposed high environmental standards on ourselves, we Vermonters are faced with an uphill battle when the pollution we are striving to control silently creeps into our State each night with the wind. We Vermonters are deeply concerned about what is being transported by air currents.

We Vermonters are deeply concerned about what comes with the wind at night when we are sleeping from other parts of this country. Acid rain taught us that our tough environmental standards were not enough to protect us. We saw some of our healthiest forests die off from pollution borne from outside our region. This is an experience from which everybody can learn. Increased power generation at these 25 dirtiest plants is going to affect air quality across the country. We learned from the acid rain debate that emissions from these plants could be transported more than 500 miles.

Let us look here. Here are the 25 top polluters. This is where the pollution is going. If you look at this, you can see from the 25 top polluters, our part of the country is being hit especially hard. My own State of Vermont, with the toughest environmental laws you are going to find anywhere, cannot protect ourselves by our own laws because these pollutants come across by every wind that comes over Vermont from the west, carrying those pollutants.

There is no fence, there is no law that we Vermonters can set up to protect us, but we in the Congress can protect all the people in this region.

I will also say, Mr. President, if we do not look at these grandfathered plans, it is not only the Northeast that is going to be affected, all parts of the country are going to see their air quality diminished.

In the case of acid rain, some areas are more vulnerable to damage than others because of their geology. The rocky soils of Canada and much of the Northeast means that we have less ability to buffer the acids, so our lakes will die sooner. But in the case of ozone, we are dealing with children, not lakes or forests. As I said, my children will live most of their lives in the next century, and I think about that all the time. I also think children are the same, whether they are Canadians, Vermonters, or Ohioans. Children in Ohio, Missouri, West Virginia, and other States are just as vulnerable as those in Canada and Vermont.

I called on the administration a year ago to develop a mitigation program to address increased air pollution associated with utility restructuring. To date, nothing has been proposed. I do not think we can wait any longer. This train is leaving the station and, unfortunately, it is a polluting train.

More than 10 States are already developing restructuring legislation. Two States are implementing open competition. With more than $50 billion in expected benefits from competition, we should be able to afford the costs of ensuring clean air for our children. A number of proposals have been addressed in the House, but none addresses this problem. The administration has not proposed a solution to it. I hope that proposal will come. I will see what provisions it makes.

Earth Day reminds us that we share the air, the water and our planet. There can be no greater legacy that we leave behind for our children and our grandchildren than a society that is secure in its commitment to a healthy and environmentally sound future.

On this Earth Day, I want all of us in Congress to stop thinking only in regional terms of the Clean Air Act and the potential benefits and costs from utility restructuring. We all share in the responsibility to leave behind for the next generations a healthy environment. The only way we are going to be successful is to look at the quality of our air, water, and ecosystems in wider terms. We have to address the loopholes that allow these dirty plants to churn out tons of pollutants for the last 20 years. We cannot afford them a free ride into the next century.

Let me point out once more, we are not in this alone. The plants are here, but the pollutants go across our country. I say this today because the President is going to North Dakota, actually a place where two of these plants are. He will go representing our whole country and grant aid to the people who have been badly hurt. Any one of us, from whatever State we come from, when we look at the pictures on television and read the news accounts of what those people in North Dakota have gone through, our hearts have to ache for them.

When a town is hit with both flood and fire, it is almost like a Biblical reference to devastation. We will, as a great nation, as we always do in matters of major disasters, come together and we will help. Vermonters will help the people in North Dakota, as will Kansans and Californians and everybody else. But it is one thing when you see a disaster that happens all at once. Unfortunately, there is a disaster in air pollution that happens drip by drip, day by day, and if we allow these pollutants to continue to drift across our Nation, those of us who are in the East and Northeast also face a disaster, a disaster not of our making but a disaster of our Nation's making, a disaster that may not have a great effect on me, as I stand here in my fifties, but it will on the children of Vermont and it will on their children's children.

This country can be justifiably proud of the steps it has taken in environmental quality. When I look at the newly democratic nations of Eastern Europe and I see how they struggle with health costs and development costs based on their own ignoring of the environment for the last several generations, I think how fortunate we are that we have been way ahead of that in this country, but also know that we have a long, long way to go.

Let us look at this, not for those in my generation, necessarily, but those in my children's generation. Let us look for those who are going to live most of their lives in the next century. That is something this Congress can do. Democrats and Republicans alike should join together and that is a legacy we can leave.

Mr. President, I yield the floor.

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

## MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 5 minutes each.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. I thank the Chair.

(The remarks of Mr. BUMPERS pertaining to the introduction of S. 624 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BUMPERS. Mr. President, I yield the floor and 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. ROBERTS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## THE CHILD CARE EXPANSION ACT

Mr. ROBERTS. Mr. President, I rise today to inform my colleagues of legislation that I introduced on April 10 called the Child Care Expansion Act.

This legislation—the first legislation I have had the privilege of introducing in this body—does address one of the greatest challenges that faces families today, and that is finding dependable and affordable child care.

The demand for quality child care is rising. We have changes in family structure, more working mothers, and significant changes in social policy, which all have helped—all have helped—drive this increase. In fact, only 2 years ago 60 percent of children under the age of 5 were cared for by someone other than a parent while their mother or father was working.

We have had numerous studies that indicate the availability of child care has failed to keep up with this demand. Three out of four parents responding to a national poll indicate that there is an insufficient supply of child care, Mr. President, especially for infants.

Child care keeps America working.

In 1994, three out of five women with children under the age of 6 were in the work force. A lack of dependable child care causes these workers to lose time and to be less productive. Child care benefits provided by employers help to recruit and retain quality employees. It pays off with lower costs in regard to the businesses that have a good child-care program. And child-care providers are also small business owners who contribute to the economy while keeping our children safe.

Child care provides access to high-quality learning environments for children in their critical learning years.

Just last week—I think it was last Wednesday—in the Wall Street Journal there was an article entitled ''Good, Early Care Has a Huge Impact on Kids, Studies Say.'' And that article pointed out the monumental importance of quality child care in the first 3 years of the infant's life. And according to the National Institute of Child Health and Human Development, a study cited in the article, high-quality child care provided by nurturing, stimulating care givers improves the cognitive learning and language skills. These are skills a child depends on for the rest of his or her life.

So child care is central to the implementation of successful welfare reform.

I might add, that the concept of this child-care bill, as far as I was concerned, became very evident as we went through welfare reform legislation in the past session of the Congress when I had the privilege of being the chairman of the House Agriculture Committee and we were approaching food stamp reform.

It became obvious to me, if we were going to provide self-reliance, independence, and the tools with which about 2,000 people in Kansas needed to get off the welfare rolls and become self-reliant—these people had been on welfare for over 5 years—they did two things, job training, that is obvious, and the second thing was child care.

Stringent new work requirements will move more welfare parents into the work force and create an even greater demand for quality child care. I think this legislation simply addresses these issues through a responsible four-pronged approach. There are no new entitlements, no new mandates on businesses. This legislation fills a pressing need without creating more bureaucracy or more government.

Mr. President, I ask unanimous consent that the text of S. 548 be printed in the CONGRESSIONAL RECORD.

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

S. 548

*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 ''Child Care Expansion Act''.

### TITLE I—GENERAL EXPANSION OF ACTIVITIES

**SEC. 101. SMALL BUSINESS CHILD CARE GRANT PROGRAM.**

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (hereafter referred to in this section as the ''Secretary'') shall establish a program to award grants to States to assist States in providing funds to encourage the establishment and operation of employer operated child care programs.

(b) APPLICATION.—To be eligible to receive a grant under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including an assurance that the State will provide the funds required under subsection (e).

(c) AMOUNT OF GRANT.—The Secretary shall determine the amount of a grant to a State under this section based on the population of the State as compared to the population of all States.

(d) USE OF FUNDS.—

(1) IN GENERAL.—A State shall use amounts provided under a grant awarded under this section to provide assistance to small businesses located in the State to enable such small businesses to establish and operate child care programs. Such assistance may include—

(A) technical assistance in the establishment of a child care program;

(B) assistance for the start-up costs related to a child care programs;

(C) assistance for the training of child care providers;

(D) scholarships for low-income wage earners;

(E) the provision of services to care for sick children or to provide care to school aged children;

(F) the entering into of contracts with local resource and referral or local health departments;

(G) assistance for any other activity determined appropriate by the State; or

(H) care for children with disabilities.

(2) APPLICATION.—To be eligible to receive assistance from a State under this section, a small business shall prepare and submit to the State an application at such time, in such manner, and containing such information as the State may require.

(3) PREFERENCE.—

(A) IN GENERAL.—In providing assistance under this section, a State shall give priority to applicants that desire to form consortium to provide child care in geographic areas within the State where such care is not generally available or accessible.

(B) CONSORTIUM.—For purposes of subparagraph (A), a consortium shall be made up of 2 or more entities which may include businesses, nonprofit agencies or organizations, local governments, or other appropriate entities.

(4) LIMITATION.—With respect to grant funds received under this section, a State may not provide in excess of $50,000 in assistance from such funds to any single applicant. A State may not provide assistance under a grant to more than 10 entities.

(e) MATCHING REQUIREMENT.—To be eligible to receive a grant under this section a State shall provide assurances to the Secretary that, with respect to the costs to be incurred by an entity receiving assistance in carrying out activities under this section, such entity will make available (directly or through donations from public or private entities) non-Federal contributions to such costs in an amount equal to—

(1) for the first fiscal year in which the entity receives such assistance, not less than 25 percent of such costs ($1 for each $3 of assistance provided to the entity under the grant);

(2) for the second fiscal year in which an entity receives such assistance, not less than 33⅓ percent of such costs ($1 for each $2 of assistance provided to the entity under the grant); and

(3) for the third fiscal year in which an entity receives such assistance, not less than 50 percent of such costs ($1 for each $1 of assistance provided to the entity under the grant).

(f) REQUIREMENTS OF PROVIDERS.—To be eligible to receive assistance under a grant awarded under this section a child care provider shall comply with all applicable State and local licensing and regulatory requirements and all applicable health and safety standards in effect in the State.

(g) ADMINISTRATION.—

(1) STATE RESPONSIBILITY.—A State shall have responsibility for administering the grant awarded under this section and for monitoring entities that receive assistance under such grant.

(2) AUDITS.—A State shall require that each entity receiving assistance under a grant awarded under this section conduct of an annual audit with respect to the activities of the entity. Such audits shall be submitted to the State.

(3) MISUSE OF FUNDS.—

(A) REPAYMENT.—If the State determines, through an audit or otherwise, that an entity receiving assistance under a grant awarded under this section has misused such assistance, the State shall notify the Secretary of such misuses. The Secretary, upon such a notification, may seek from such an entity the repayment of an amount equal to the amount of any misused assistance plus interest.

(B) APPEALS PROCESS.—The Secretary shall by regulation provide for an appeals process with respect to repayments under this paragraph.

(h) REPORTING REQUIREMENT.—

(1) STUDY.—Not later than 2 years after the date on which the Secretary first provides grants under this section, the Secretary shall conduct a study to determine—

(A) the capacity of entities to meet the child care needs of communities within a State;

(B) the kinds of partnerships that are being formed with respect to child care at the local level; and

(C) who is using the programs funded under this section and the income levels of such individuals.

(2) REPORT.—Not later than 28 months after the date of enactment of this Act, the Secretary shall prepare and submit to the appropriate committees of Congress, a report concerning the effectiveness of the grant programs under this section.

(i) DEFINITION.—As used in this section, the term ''small business'' means an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $25,000,000 for each of the fiscal years 1998 through 2000.

(k) TERMINATION OF PROGRAM.—The program established under subsection (a) shall terminate on September 30, 2001.

**SEC. 102. PROJECTS FOR CHILD CARE BY OLDER INDIVIDUALS.**

(a) COMMUNITY SERVICE EMPLOYMENT PROGRAM.—Section 502 of the Older Americans Act of 1965 (42 U.S.C. 3056) is amended by adding at the end the following:

''(f) In carrying out this title, the Secretary, and any entity entering into an agreement under this title, shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of eligible individuals (including eligible individuals described in subsection (e), as appropriate), in projects to provide child care under this title. Such child care projects shall, to the extent practicable, be carried out in communities with child care shortages, as determined by the appropriate State agency designated under section 658D(a) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858b(a)).''.

(b) DOMESTIC VOLUNTEER SERVICE ACT.—Title IV of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5043 et seq.) is amended by adding at the end the following:

**''SEC. 427. PARTICIPATION IN PROJECT TO PROVIDE CHILD CARE.**

''(a) IN GENERAL.—In carrying out this Act, the Director, and any recipient of a grant or contract under this Act, shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of individuals 55 and older, in projects to provide child care under this Act. Such child care projects shall, to the extent practicable, be carried out in communities with child care shortages, as determined by the appropriate State agency designated under section 658D(a) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858b(a)).

''(b) FUNDING OF PROJECTS.—The Director may, using amounts available for experimental projects under section 502(e), provide for the development of special projects under subsection (a).''.

## TITLE II—TAX INCENTIVES FOR DEPENDENT CARE

**SEC. 201. EXPANSION OF CHILD AND DEPENDENT CARE CREDIT.**

(a) INCREASE IN CREDIT PERCENTAGE FOR LOW AND MIDDLE INCOME WORKERS.—Section 21(a)(2) of the Internal Revenue Code of 1986 (relating to credit for expenses for household and dependent care services necessary for gainful employment) is amended to read as follows:

''(2) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (1), the term 'applicable percentage' means 30 percent reduced (but not below 20 percent) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income exceeds $20,000.''

(b) INCREASE IN MAXIMUM AMOUNT CREDITABLE.—Section 21(c) of the Internal Revenue Code of 1986 (relating to dollar limit on amount creditable) is amended—

(1) by striking ''$2,400'' in paragraph (1) and inserting ''$3,600'', and

(2) by striking ''$4,800'' in paragraph (2) and inserting ''$5,400''.

(c) PHASE-OUT OF CREDIT FOR HIGHER INCOME TAXPAYERS.—

(1) IN GENERAL.—Section 21(c) of the Internal Revenue Code of 1986 (relating to dollar limit on amount creditable) is amended by adding at the end the following new paragraph:

''(2) PHASEOUT OF CREDIT.—

''(A) IN GENERAL.—The amount of the credit allowed under subsection (a) shall be reduced (but not below zero) by the amount determined under subparagraph (B).

''(B) AMOUNT OF REDUCTION.—The amount determined under this paragraph equals the amount which bears the same ratio to the credit (determined without regard to this subsection) as—

''(i) the excess of—

''(I) the taxpayer's adjusted gross income for such taxable year, over

''(II) the threshold amount, bears to

''(ii) $10,000.

Any amount determined under this subparagraph which is not a multiple of $10 shall be rounded to the next lowest $10.

''(C) THRESHOLD AMOUNT.—For purposes of this paragraph, the term 'threshold amount' means—

''(i) $90,000 in the case of a joint return,

''(ii) $65,000 in the case of an individual who is not married, and

''(iii) $45,000 in the case of a married individual filing a separate return.

For purposes of this subparagraph, marital status shall be determined under section 7703.

''(D) ADJUSTED GROSS INCOME.—For purposes of this paragraph, adjusted gross income of any taxpayer shall be increased by any amount excluded from gross income under section 911, 931, or 933.''

(2) CONFORMING AMENDMENTS.—Section 21(c) of such Code is amended—

(A) by striking ''(c) DOLLAR LIMIT ON AMOUNT CREDITABLE.—The'' and inserting:

''(c) LIMITATIONS.—

''(1) DOLLAR LIMIT.—The'',

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and

(C) by striking ''paragraph (1) or (2)'' in the last sentence and inserting ''subparagraph (A) or (B)''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1997.

**SEC. 202. EXPANSION OF HOME OFFICE DEDUCTION TO INCLUDE USE OF OFFICE FOR DEPENDENT CARE.**

(a) IN GENERAL.—Section 280A(c)(1) of the Internal Revenue Code of 1986 (relating to certain business use) is amended by adding at the end the following: ''A portion of a dwelling unit and the exclusive use of such portion otherwise described in this paragraph shall not fail to be so described if such portion is also used by the taxpayer during such exclusive use to care for a dependent of the taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section applies to taxable years beginning after December 31, 1997.

Mr. ROBERTS. Mr. President, first, the Child Care Expansion Act includes funding for a short-term, flexible grant program to encourage small businesses to work together to provide day care services for employees. This program is a demonstration project that will sunset at the end of 3 years. In the meantime, small businesses will be eligible for grants up to $50,000 for startup costs, training, scholarships or other related activities. Businesses will be required to match Federal funds to encourage self-sustaining facilities well into the future.

The idea behind this 3-year grant is for the small communities and small businesses in that community to get together to provide the child care facility. The $50,000 grant over 3 years will provide startup money for our smaller communities, for the major businesses in that community to come together and provide a facility that otherwise would not be achieved.

Second, this legislation includes an expansion of the child and dependent care tax credit, targeting the credit to working parents who need it the most, not only the people who are trying to be self-reliant in regard to welfare reform but the low- and middle-income family. It will increase from $720 for one child, up to $1,080, and from the current $1,140 for two or more children to $1,620 for families with more than one dependent. In addition, the credit is phased out for higher income wage earners, which means that the deficit exposure or the expenditure side is very, very limited.

This legislation also addresses the needs of parents who choose to work from the home. In this case, the Internal Revenue Service rules are expanded to allow taxpayers who need to use the family room or some other room for home-based business while caring for dependents. The current IRS rules are much too strict and simply do not make sense for people who want to work at home but have to take care of the youngsters as well.

Finally, this legislation encourages our Nation's most experienced care givers, our older Americans, who are already participating in federally supported work programs, to provide child care services in communities where it is feasible to do so. Obviously, there is a bonding that goes on, Mr. President, in regard to grandkids and also grandparents. This bill certainly encourages that bonding.

This legislation includes no new entitlements or mandates on the business community. It fills a pressing need without creating more bureaucracy or Government. Child care is an issue that impacts each and every one of us. While parents continue to struggle to meet the constant demand of work and family, it seems to me we must continue to do our part to expand the child care options and protect our Nation's most valuable resource—our children. I urge my colleagues to join me in support of America's kids and cosponsor the Child Care Expansion Act.

I yield the floor.

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

Ms. MIKULSKI. Mr. President, I ask unanimous consent I be permitted to speak for such time as is necessary for the nomination of Alexis Herman.

The PRESIDING OFFICER. Is this part of the hour that is under the Democrat leader's control?

Ms. MIKULSKI. Yes.

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

## ALEXIS HERMAN TO BE SECRETARY OF LABOR

Ms. MIKULSKI. Mr. President, once again I am deeply disturbed that Alexis Herman's confirmation to be Secretary of Labor has been held up. Miss Herman is being subjected to a level of scrutiny that is not deserving of her nor this institution. Miss Herman is being held hostage for political reasons.

What is the real reason for the delay? Well, my colleagues on the other side of the aisle say it is because of an Executive order that would encourage Federal agencies to consider the use of something called ''project labor agreements'' on any construction contract sent out for bid. How ironic that it is my colleagues that would hold up the nomination of the next Secretary of Labor because of an Executive order that asks contractors and subcontractors who bid on a Federal project to consider paying union wages, provide union-scale benefits, and use union hiring halls for labor—projects that are financed with taxpayers dollars.

This order does not require the contractor to sign a collective bargaining agreement. It just makes sure that we help our workers maintain a decent wage and living standard. My Republican colleagues would hold up the nomination of the Secretary of Labor, whose responsibility it is to enforce our Nation's labor laws, because we want to ensure that contractors working on Federal projects abide by Federal laws.

I want the nomination of Alexis Herman and the debate about her to focus on her qualifications and her competency to lead the Department of Labor. This should not be a debate on President Clinton's Executive order. I call upon the leadership of the other side of the aisle to let this nomination go forward, let there be debate on the Senate floor about Miss Herman's competency. Is she a coalition builder? Can she provide leadership? And does she provide a framework for the future? That is what the debate should be all about.

My constituents are deeply concerned that Miss Herman, who brings so many credentials and competency, has been waiting month after month, subjected to character assassination, leaks in the press that distort her record, and now, just when she thought she was going to come to the Senate floor, not have that opportunity because some people are cranky about an Executive order issued by President Clinton. Be cranky with President Clinton. Do not be cranky with Alexis Herman or hold up her nomination.

We cannot have this held up because of crankpots. I know Alexis Herman and I have known her for 20 years, when she worked in the Carter administration and I was a Congresswoman. Alexis Herman comes to us having graduated from a Catholic college in New Orleans, Xavier University. She was a social worker, working at Catholic Charities in foster care. Then she wanted to make sure she prevented family breakups, and she began working in job training and placement. In 1974, she headed up a black woman's employment program that then, because of its innovation and her management skill, went to nine other cities.

Miss Herman brings to us a background where, at age 27, she was running a 10-city program to help minority women break into the work force. Is that not a Secretary of Labor we want to move people from welfare to work? At 29, she was the youngest person ever named to head the Women's Bureau of the Department of Labor. Following that first Government service, she then went on to run her own business and help manage the 1992 Democratic convention. She is a coalition builder. Throughout her career, she has worked with parties on all sides to find good solutions. If you go back and talk with the people who have worked for her over the years, advocacy groups believe she will speak up for those who are left out and left behind.

The community that provides the jobs, the business community, feels that she is a coalition builder and helps them solve issues from regulatory reform to how to do outreach in the minority communities.

She will bring to the Labor Department a lifelong commitment to making sure that we create an opportunity ladder in this century. She has said publicly and to me privately that she wants to accept the challenge of moving people from welfare to work in a new era of time limit on welfare. She wants enhanced health and pension security for working people. She wants to ensure a safe and equal opportunity workplace, and she wants to work with the President in this on extending the lifelong education and training opportunities for our citizens.

Mr. President, we need a Secretary of Labor. We need someone who is a leader, who is effective, and who has a vision for the future. I really encourage that the nomination of Alexis Herman be brought up after we finish our discussion on the chemical weapons treaty.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want just to commend the Senator from Maryland for an excellent presentation and one which I hope our friends and colleagues on the other side of the aisle would hear and heed. I see my good friend from Nevada on the floor, who will address the Senate in a few moments as well about the labor nominee.

I want to just underscore two different items, Mr. President. First, the Labor and Human Resources Committee had the opportunity to go through the hearings. These were extensive background hearings on the qualifications of Ms. Herman. I will have an opportunity, when the Senate finally comes to consider the nomination, to review the record on her background and experience, but Senator MIKULSKI has done so this afternoon in a very, very thorough way. This is really an extraordinary individual.

In spite of many allegations and charges which have been responded to, we are in a situation where the one Cabinet office which is there to hold the spokesperson for working families is vacant—vacant—and the nomination is being held hostage because of a difference with the President of the United States signing an Executive Order regarding project labor agreements, or what they call PLA's. Those are arrangements and agreements that can be done voluntarily within States, that more often than not result in the saving of taxpayers' money and the reduction of accidents on the construction site. PLA's also allow for the relationships between workers and management to be worked out in a very constructive and positive way to make sure we have ontime results and achieve high quality outcomes.

PLA's have been done under Republican Governors and Democratic Governors, in New York, New Jersey, and Nevada, among others. Now the President of the United States wishes to exercise his power to issue an Executive order. That is differed with by Members. But they have the right to go into court and challenge that at a later time.

The point that Senator MIKULSKI, Senator REID, others, and I will make is that if our Republican friends have a difference with the President on the issue of the PLA's, why hold up Alexis Herman, who is the spokesperson for working families in this country, from being able to assume the responsibilities of that particular position?

It is a very important position. We have several pieces of legislation that are on the calendar which relate to the conditions of working families in this country, including the so-called TEAM Act, the so-called comptime bill, and others, which we will have an opportunity to debate at some time. These are pieces of legislation that will have a direct impact on working conditions and wages of working families. Still, we do not have a Secretary of Labor in place, who will speak for workers, and that is because there is a small group of Senators who are effectively holding her hostage.

We understand today is the Passover holiday, which is a period of celebration and a very special time of contemplation and thought and prayer by many Americans, and therefore we are not doing the Senate's business, and we do not ask the Senate to consider the

nomination today. We understand tomorrow we are considering the chemical weapons treaty. That is extremely important.

Mr. President, this issue was allegedly agreed to be considered on the floor of the U.S. Senate last week. But Members on the other side of the aise reneged on that agreement, so that we were unable to come to completion on this nomination. Now, Mr. President, we are calling on the leadership on the other side to give us an opportunity to have Senate consideration of this nominee and to stop this attempt to play hostage with the President's nominee. She is someone who was reported out favorably by all the members of the committee.

It is time to end these kinds of games. The American people want us to find ways of working together, not to be blocking the consideration of a nominee who has the support of Republicans and Democrats alike.

Mr. President, I hope at the time that we are back into full session, that we will be able to set a time in the next very few days, on the completion, perhaps, of the chemical weapons convention, or perhaps even during the consideration of that there can be time found for a short discussion of the merits of this nominee. She is an outstanding nominee. She will perform her work well. It is wrong to hold up the President's nominee. The President, after all, won the election. When you win the election, you have the time-honored privilege of selecting your own advisers. There is one standard that is used for the President's advisers who come and go at the time the President is elected. There is a different set of criteria when we talk about those who have more extended terms, such as the Federal Reserve Board and some of the other agencies; those continue at the time of a particular administration and can lapse on to another administration. We have even a higher standard when we are talking about lifetime appointments, like Federal district judges and circuit court judges, and the highest standard for the Supreme Court. That is something we all understand.

But we are at the point now where the President, who won the election, has indicated that he wants Alexis Herman as his adviser on labor for the country's working families. It is wrong to continue to hold her hostage, and I hope we move ahead with consideration of her nomination.

Mr. President, the Republican leadership is holding the nomination of Alexis Herman hostage to an unrelated policy dispute. Ms. Herman was reported out of the Labor Committee unanimously 2 weeks ago. Republicans and Democrats alike voted in her favor.

The Republican leadership had scheduled a floor vote on her confirmation last week, but in an abrupt about-face they reneged on that commitment. The reason was the leadership's disagreement with a proposed Executive order under consideration within the administration.

That order would direct Federal agencies to consider—not mandate—the use of so-called project labor agreements on Federal construction projects.

Such agreements have been used on large-scale construction projects, in the public and private sectors, for decades. Examples of Federal projects built under PLA's include the Grand Coulee Dam in the 1930's; atomic energy plants in the 1940's; Cape Kennedy in the 1960's; and today, on the Boston Harbor cleanup. Such agreements are also being used in the present decommissioning and decontamination of nuclear facilities at Oak Ridge, TN; Savannah River, SC; Fernald, OH; Hanford, WA; Idaho National Engineering Labs, ID; and Lawrence Livermore, CA, among others.

In the private sector, too, PLA's have been used on many projects across the Nation, including the construction of Disney World in Florida, the Toyota plant in Georgetown, KY, the Trans-Alaska Pipeline System in Alaska, and the Saturn auto plan in Tennessee.

State governments use PLA's as well. Governor Pataki of New York issued an Executive order strikingly similar to the Clinton proposal in January 1997. The Nevada and New Jersey Governors recently issued similar orders. State projects constructed under PLA's include the Boston Harbor cleanup; modifications to the Tappan Zee Bridge in New York; the Southern Nevada Water System improvements project outside Las Vegas; and many others.

What PLA's do is require contractors to comply with the terms of labor agreements for the duration of the project. The advantages of such PLA's are many. Projects are more often completed on time, because a skilled labor supply is always available. There are fewer cost overruns, because workplace disputes are resolved through grievance-arbitration procedures, instead of by strikes or lockouts, which cost valuable work time for employers and employees alike. Projects built under PLA's have lower accident rates, because contractors can hire highly skilled and trained employees. Productivity increases as well, because of the higher skill level of workers.

Opponents of PLA's claim that such agreement unfairly deny contracts and jobs to nonunion firms and individuals. This is simply not true.

Nonunion contractors can and do bid on jobs where PLA's are in effect. For example, in the Boston Harbor project, fully 40 percent of the subcontractors—over 100 firms—are nonunion. Similarly, on the Idaho National Engineering Labs PLA with the Department of Energy, 30 percent of the subcontractors were nonunion.

Similarly, nonunion workers can and do work on sites where PLAs are in place. Unions are required by law to refer nonmembers to jobs on the same basis as union members. The NLRB vigorously enforces this provision of the labor laws, and unions know how to and do comply. Furthermore, in the 21 so-called ''right-to-work'' States, no worker can ever be required to give financial support to a union. In the other 29 States, if the particular contract provides it, workers can be required to pay a fee to the union while workers are employed on the job site. However, no employee can ever be forced to join the union, or to pay for union activities that are not related to collective bargaining.

PLA's thus are beneficial to project owners and workers alike. Further, it's clear that the President has the authority to issue an Executive order dealing with Federal procurement practices. President Bush did just that, when, in October 1992, he issued an Executive order forbidding Federal agencies to require PLA's on Federal construction projects. Republican attacks on President Clinton's power to issue an order directing the consideration of such agreements thus are disingenuous at best.

It's particularly unconscionable to hold up Alexis Herman's nomination on this basis. The country's working families deserve a representative, and the Republicans know it. It's time for the political extortion to stop, and for the Republicans to give up their hostage. Free Alexis Herman, and free her now.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. REID. Parliamentary inquiry, Mr. President.

Mr. GREGG. Without yielding the floor, I will yield.

Mr. REID. I understand that. I ask the Parliamentarian this. I thought from 12 until 1 o'clock was under the control of the Democratic leader.

The PRESIDING OFFICER. That is correct.

Mr. GREGG. Mr. President, I believe we are in morning business, is that correct?

The PRESIDING OFFICER. The period is for morning business until the hour of 2 o'clock, with the hour from 12 to 1 reserved for the Democratic leader and the hour from 1 to 2 reserved for the Senator from Georgia.

Mr. GREGG. Mr. President, I ask unanimous consent that I be allowed to proceed for 5 minutes as in morning business and to the extent that it affects the time of the Democratic leader, that that time be added to his time at the end of the hour, as originally scheduled.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New Hampshire.

## THE BUDGET NEGOTIATIONS

Mr. GREGG. Mr. President, I want to raise a couple of points here as we move through the budget negotiations. There are ongoing negotiations with the White House relative to trying to

reach a budget agreement. But those negotiations deal with a budget that will run through the year 2002. My concern is that, as we look at a budget in that short timeframe, action which we take to address a budget that would reach balance by 2002 would have impact beyond that period, obviously, because we will put in place decisions that are not going to end at the time that budget concludes in 2002, but it will affect spending beyond that time.

In two major accounts, the President's budget, as proposed, is basically a budget that has a low initial cost but has a dramatic, explosive cost in the outyears when you get past the year 2002. Both in the Medicare account and the Medicaid account, the President's budget, as sent up here, has significant increases in spending, but those increases in spending that are for the 5-year timeframe running through 2002 are really minuscule compared to the spending that will occur in the period after 2002. I believe this needs to be highlighted because, if it is not, I am afraid we will adopt initiatives in the President's budget that come out of it as part of this process of building our own budget and reaching a bipartisan budget.

I am concerned that we will adopt initiatives that will cost us dramatic amounts of money outside the budget window and, once again, aggravate the real problem that confronts the country. We would be passing on to our children a country with huge debts of obligation that our children will never be able to pay.

Let me highlight this in specifics. Under the President's proposal for Medicare, there is $33 billion in new spending during the budget window, through the year 2002. When you go beyond the year 2002 to the period of the next 4 years—this is a 4-year period, and it would run past that, obviously—there will be an explosion in the cost of those new programs. Those new programs, which cost $33 billion in the next 4 years, in the 4 years after that will cost $93 billion in new spending. That represents a 182-percent increase over the 5-year period. That is in the Medicare accounts.

Some of these new programs involve the following—and I agree they are probably programs which we all feel would be nice. But the question is: Can we afford them? Can we afford to pass them on to our children? Can we afford to pass $93 billion in new spending on to our children, which is outside the budget window? Some of the new programs include: A new initiative in the area of cancer screening, for $2.5 billion; a direct payment to hospitals, outside of AAPCC, $26 billion; changing the way the Medicare accounts for the part B, 20-percent charge, which accounts for $42 billion; and a whole list of other new initiatives, all of which add up to $93 billion in spending that is outside the budget window, and is new spending for new programs and which will have to be paid by the taxpayers of this country, and, if not, borrowed from our children. In either event, it will aggravate the balance in the Medicare trust fund and continue to drive the Medicare trust fund toward insolvency.

The second area the President has taken the same course of action on is in the area of Medicaid. In the Medicaid accounts, he has proposed $16 billion of new spending during the budget period between 1998 and the year 2002. But that $16 billion in new programmatic spending that occurs in the first 5 years explodes in the next 4 years to $34 billion, for a 113-percent increase. That is a 113-percent increase over the initial spending period—another explosive expansion of an entitlement program through the process of adding new benefits. In this area, we are talking about new benefits for disabled, illegal immigrants, and new benefits for children of illegal immigrants. And so you have this dramatic increase in spending. When you combine these two proposals—the President's proposal in Medicare and the proposal in Medicaid—the new spending accounts aggravate and compound the problem even more dramatically.

You see here that in the next 5 years, which is the budget period the President sent us on this, there is $49 billion in new spending in Medicare and Medicaid accounts. As you move into the outyears, that $49 billion translates into $127 billion in new spending, or a 159-percent increase because of new programmatic activity. Now, what we are talking about here—and this needs to be stressed—is new programmatic activity. We are not talking about maintaining the Medicare trust fund or Medicaid trust funds; we are talking about adding to that program.

Mr. President, we are talking about increased spending as a result of brandnew programs. So as we move down this road of trying to reach agreement on this budget, I think we have to be very sensitive that we not add a lot of new programs that may look affordable over the next 4 or 5 years, but which, in the outyears, becomes totally unaffordable and further aggravates what is already a very serious situation, because we know the Medicare trust fund is going bankrupt in 2000 and this will only aggravate that. All of these costs, if passed on to our children, may end up making their capacity to have a prosperous and productive country much less. This must be focused on as we go down the road to reaching a budget agreement.

I yield back such time as I may have left. I appreciate the Senator from Nevada allowing me to speak at this point, during the time of the Democratic leader.

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

## PRESIDENTIAL NOMINATIONS

Mr. REID. Mr. President, since I have been here in the Senate, we have been under a majority controlled by the Republicans and the Democrats. When I first came here, the Democrats had the majority, and now the Republicans have the majority.

During the times that the Democrats had the majority, there were some very controversial nominees that came forward, but they always came forward and there was a vote. My concern is that we are now entering into a new era, where the majority is using nominees of the President—and there is no question about their capabilities and their credentials to hold the job, and there is nothing relating to their moral qualifications. They are simply holding up the President's appointees because they don't want them to be selected, or they have some other issue and they are trying to hold the nominee hostage.

As an example, Alexis Herman has been nominated to be the Secretary of Labor. We were initially told we are not going to get her out of committee until there is comptime legislation marked up in the Labor Committee. That hurdle has gone over. The legislation is marked up. Now there is another hurdle this woman must find herself facing. Now we are told that there is an issue that deals with an opposed Executive order that would permit Federal agencies to consider requiring contractors on certain large Federal construction projects to comply with labor contracts for the duration of the project. Governor Miller of Nevada issues a similar order and a project labor agreement is now in use on a very large construction project outside of Las Vegas to bring water into Las Vegas.

Mr. President, I respectfully submit that holding Alexis Herman's nomination hostage to this is wrong. To hold her nomination hostage over an Executive order is wrong. She is qualified morally and educationally and is experienced. Therefore, she should be working for the taxpayers of this country in the job she was selected to do by the President. What is happening is not right.

We can get into the merits of the issue of the majority holding Alexis Herman hostage, but should that really be the case? If we looked at it closely, we would find that in the State of Nevada, as an example, of the seven contracts awarded, three went to nonunion contractors. I assume that is what the majority is concerned about. They have this problem with unions. Well, in Nevada, even though the Governor entered this order, three of the contracts went to nonunion contractors, and four went to traditional union contractors. Of the 36 contractors who bid on the seven contracts, 16 were nonunion, 20 were union.

The point I am making, Mr. President, is that this issue, this proposed Executive order, is just that—an issue. We should debate it. It is wrong and there is legislation to hold hearings or try to get the Executive order overturned, but we should not hold up this woman's nomination.

Are we going to continue without a Secretary of Labor until the majority leadership gets their way on every labor issue? I hope not. I don't think that hostage holding is a proper way to pass good legislation. It is not the way to have the President's nominees chosen. The President has a right to select who he wants to work in these very sensitive Cabinet positions. He has chosen a woman that is certainly qualified.

Mr. President, this woman is a graduate, as is my colleague, the junior Senator from Maryland, from Xavier University in New Orleans, LA. In 1977, she was the youngest director ever of the Woman's Bureau at the Department of Labor. She is certainly entitled to this job by virtue of her qualifications.

We are willing to debate these issues and work for compromises if, in fact, that is necessary. But the majority is saying that it is their way or no way. This tactic is becoming a way of business under this majority. Also, I don't believe there has ever been judicial nominations put on hold by a Congress as we have seen with this one. One must wonder about the pattern of the recent majority attacks—Alexis Herman, Senator LANDRIEU, Congresswoman SANCHEZ, and judicial nominee Margaret Morrow. For example, take Margaret Morrow; she has been found very qualified by the American Bar Association.

She was first nominated almost a year ago, and we still have not had the opportunity to vote on this woman. This is wrong. The rules of the Senate allow leadership to delay a nomination if there are questions about the nominee's qualifications. But there are no questions about this nominee's qualifications.

There is no reason that we don't have a vote on Alexis Herman. And we should have it this week. I think that it is wrong that we go forward with legislation—the majority feels important, and the minority goes along with that—but I think we are going to have to arrive at a point where we have to take a look at how the majority is handling what takes place on this Senate floor. Maybe what we should do is nothing until these people who are qualified, like Alexis Herman and like Margaret Morrow, until we have votes on them.

If they want to vote against Alexis Herman, then the majority should vote against Alexis Herman. But to hold this woman hostage—it is now approaching the 1st of May, and this woman has not been able to go to work as Secretary of Labor. That is wrong. I think the American public deserve more, and I hope that majority leadership will allow her nomination to go forward along with some of other nominees that are being held up for reasons unknown to most of us.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I ask unanimous consent to speak for 10 minutes, and I also ask unanimous consent that the time for the Senator from Georgia be extended by 10 minutes.

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

## ORGAN DONATION STATUS REPORT

Mr. DEWINE. Mr. President, I rise today on the occasion of National Organ and Tissue Donor Awareness Week. I rise to challenge all of us to take actions that will eliminate the chronic shortage of organs available for transplant in the United States.

Mr. President, this Nation faces a severe organ shortage. I have talked about this issue several times on the Senate floor. Last year at this time when I talked about it, at least eight people in America every day were dying while waiting for organ transplants. One year later, tragically, the figures are even worse. Today, 10 people now die every day while waiting for organs.

Mr. President, these numbers are certainly very distressing. They are devastating because the technology to save these men, women, and children is available. It is there. If you ask our expert on this issue, and the Senate's expert, Dr. FRIST from Tennessee, he will tell us that these people can be saved. These 10 people who die every day could have been saved. The technology is there. Medical science has advanced that far. But they die because there are simply not enough available organs. That is a tragedy, Mr. President,

In January 1996, there were almost 44,000 patients in this country waiting for an organ transplant. One year later, the figure is up to 51,000 individuals who are today waiting—up 7,000 from just a year ago.

The need for transplantable organs has increased in all categories. These aren't just statistics, not just numbers, not just longer and longer lists. These are people. These are children, friends, and families that love them, and that pray every day that there will be a chance for that loved one to live—that there will be an organ that is available for that child, that parent, that husband, or that mother.

I think that we have to ask ourselves what we can do about this. What can we do about this as individuals and as elected officials?

As private citizens, when we go to get our driver's license for the first time, or when we go to get it renewed, we are asked sometimes very quickly, ''Do you want to donate your organs in case of an accident, in the case of your death?'' We all need to say yes when that question is asked. We can also, and should, encourage our relatives and friends to do the same thing. As Americans, we need to talk about this issue. As families we need to talk about this issue before tragedy strikes.

This is not a subject that anyone of us likes to discuss. But it is very important that we do so because our willingness to discuss it now, our willingness as a people to be open and to organize a donation is really a matter of life and death.

My wife, Fran, and I faced this issue when our daughter, Becky, was killed almost 4 years ago. This was not something that we had thought about really. It was not something that we had talked about as a family. When we were asked the question whether we would do this or not, my wife, Fran, turned to me, and said, ''You know that is what Becky would have wanted us to do.'' So we did it.

I think, Mr. President, that most people would want their loved ones to do the same thing. Too often the survivors—people who are faced with life's most horrible tragedy—just do not want to do it. They do not know that the loved one would have wanted them to do it.

So I think by talking about this we will increase the number of organs that are available, and we will, in fact, save lives.

I think too often that the No. 1 obstacle to life-saving organ donation is simply that lack of awareness. People simply aren't aware of the huge difference—the life-saving difference that they can make in someone else's life. They don't think about it. They don't talk about it. And that is natural. But that is why the decision to donate the organs of a loved one sometimes is a very difficult decision. But I think when people talk about it that it will be made much easier.

As elected officials, we in this Chamber have another responsibility. I believe that we must take this message to the American people. Educational efforts have, of course, already begun.

Thanks to the leadership of our colleague, Senator DORGAN, information about organ donations is being enclosed with Federal income tax refunds that are going out this year. It is estimated that 70 million individuals will receive these refunds. So information contained in those envelopes is going out.

Further, today I sent a letter to Postmaster General Runyon asking him to approve a ''Gift of Life'' postage stamp as soon as possible. Mr. President, I have been talking to the Postmaster General's office for more than a year now about this issue because I am firmly convinced that this stamp will remind people of the vital importance of organ donation. It will save lives. It will bring about more awareness. Mr. President, anything that we can do to encourage families to discuss this issue will, in fact, better prepare them to make this life-saving decision.

Further, Mr. President, as you and other Members of the Chamber may know, Senator KENNEDY and Representative MOAKLEY held a field hearing in Massachusetts on this very issue. I will hold a similar field hearing in Ohio this fall, and I encourage all of my colleagues to do the same in their

home States, to bring this issue closer to home.

Recently, there has been a lot of publicity about organ donation—publicity specifically about controversial protocols that have been considered to enhance the viability of transplanted organs. I support an informed public dialog on this, or any other medical issue. As this debate continues, however, Mr. President, we have to make sure that we keep our eye on the ball, that we stay focused, and not lose sight of the fact that organ donations save many thousands of lives each year in this country, and that thousands of other Americans are still waiting for this precious gift of life.

Mr. President, together we can build a national consensus to increase the rate of organ donations. Seriously ill Americans who are on these waiting lists should not have to wait so long for a second chance. They should have a second chance. And I look forward to working with all of my colleagues in the Senate and with people across this country to achieve this goal in the months ahead.

I thank the Chair. I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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 Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, I ask unanimous consent I may proceed in morning business for 20 minutes.

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

## BUDGET REALITIES

Mr. HOLLINGS. Mr. President, on this past Sunday, the Outlook section of the Washington Post published articles regarding Uncle Sam's red ink. The unfortunate part is that these stories highlight is that debt is nothing new for the United States. While it is making us poor, one article claims that is has made us prosperous.

I rise today to make the point that our debt is not only making us very poor, it is making us totally inadequate at the governmental level in Washington, DC. All our moneys are being expended for interest costs on the debt rather than active Government.

Specifically, I want to talk about the here and now rather than the next millennium. Dick Morris detailed in his book, Mr. President, that he had counseled President Clinton, running for reelection last year, that the budget deficit was a boring subject. He claimed that nobody was really interested in it and that the President should instead focus on school uniforms and child curfews, family values and everything else.

Mr. President, people are interested in the crushing burden of our federal debt, and to show specifically what concerns them, I have a chart that I would refer to. It is in enlarged fashion. I ask unanimous consent that we have printed in the RECORD at this particular point this one budget document ''Hollings' Budget Realities.''

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

HOLLINGS' BUDGET REALITIES

[In billions of dollars]

| President and year | U.S. budget (Outlays) | Borrowed trust funds | Unified deficit with trust funds | Actual deficit without trust funds | National debt | Annual increases in spending for interest |
|---|---|---|---|---|---|---|
| Truman: | | | | | | |
| 1945 | 92.7 | 5.4 | −47.6 | ..... | 260.1 | ..... |
| 1946 | 55.2 | −5.0 | −15.9 | −10.9 | 271.0 | ..... |
| 1947 | 34.5 | −9.9 | −4.0 | +13.9 | 257.1 | ..... |
| 1948 | 29.8 | 6.7 | 11.8 | +5.1 | 252.0 | ..... |
| 1949 | 38.8 | 1.2 | 0.6 | −0.6 | 252.6 | ..... |
| 1950 | 42.6 | 1.2 | −3.1 | −4.3 | 256.9 | ..... |
| 1951 | 45.5 | 4.5 | 6.1 | +1.6 | 255.3 | ..... |
| 1952 | 67.7 | 2.3 | −1.5 | −3.8 | 259.1 | ..... |
| 1953 | 76.1 | 0.4 | −6.5 | −6.9 | 266.0 | ..... |
| Eisenhower: | | | | | | |
| 1954 | 70.9 | 3.6 | −1.2 | −4.8 | 270.8 | ..... |
| 1955 | 68.4 | 0.6 | −3.0 | −3.6 | 274.4 | ..... |
| 1956 | 70.6 | 2.2 | 3.9 | +1.7 | 272.7 | ..... |
| 1957 | 76.6 | 3.0 | 3.4 | +0.4 | 272.3 | ..... |
| 1958 | 82.4 | 4.6 | −2.8 | −7.4 | 279.7 | ..... |
| 1959 | 92.1 | −5.0 | −12.8 | −7.8 | 287.5 | ..... |
| 1960 | 92.2 | 3.3 | 0.3 | −3.0 | 290.5 | ..... |
| 1961 | 97.7 | −1.2 | −3.3 | −2.1 | 292.6 | ..... |
| Kennedy: | | | | | | |
| 1962 | 106.8 | 3.2 | −7.1 | −10.3 | 302.9 | 9.1 |
| 1963 | 111.3 | 2.6 | −4.8 | −7.4 | 310.3 | 9.9 |
| Johnson: | | | | | | |
| 1964 | 118.5 | −0.1 | −5.9 | −5.8 | 316.1 | 10.7 |
| 1965 | 118.2 | 4.8 | −1.4 | −6.2 | 322.3 | 11.3 |
| 1966 | 134.5 | 2.5 | −3.7 | −6.2 | 328.5 | 12.0 |
| 1967 | 157.5 | 3.3 | −8.6 | −11.9 | 340.4 | 13.4 |
| 1968 | 178.1 | 3.1 | −25.2 | −28.3 | 368.7 | 14.6 |
| 1969 | 183.6 | 0.3 | 3.2 | +2.9 | 365.8 | 16.6 |
| Nixon: | | | | | | |
| 1970 | 195.6 | 12.3 | −2.8 | −15.1 | 380.9 | 19.3 |
| 1971 | 210.2 | 4.3 | −23.0 | −27.3 | 408.2 | 21.0 |
| 1972 | 230.7 | 4.3 | −23.4 | −27.7 | 435.9 | 21.8 |
| 1973 | 245.7 | 15.5 | −14.9 | −30.4 | 466.3 | 24.2 |
| 1974 | 269.4 | 11.5 | −6.1 | −17.6 | 483.9 | 29.3 |
| Ford: | | | | | | |
| 1975 | 332.3 | 4.8 | −53.2 | −58.0 | 541.9 | 32.7 |
| 1976 | 371.8 | 13.4 | −73.7 | −87.1 | 629.0 | 37.1 |
| Carter: | | | | | | |
| 1977 | 409.2 | 23.7 | −53.7 | −77.4 | 706.4 | 41.9 |
| 1978 | 458.7 | 11.0 | −59.2 | −70.2 | 776.6 | 48.7 |
| 1979 | 503.5 | 12.2 | −40.7 | −52.9 | 829.5 | 59.9 |
| 1980 | 590.9 | 5.8 | −73.8 | −79.6 | 909.1 | 74.8 |
| Reagan: | | | | | | |
| 1981 | 678.2 | 6.7 | −79.0 | −85.7 | 994.8 | 95.5 |
| 1982 | 745.8 | 14.5 | −128.0 | −142.5 | 1,137.3 | 117.2 |
| 1983 | 808.4 | 26.6 | −207.8 | −234.4 | 1,371.7 | 128.7 |
| 1984 | 851.8 | 7.6 | −185.4 | −193.0 | 1,564.7 | 153.9 |
| 1985 | 946.4 | 40.5 | −212.3 | −252.8 | 1,817.5 | 178.9 |
| 1986 | 990.3 | 81.9 | −221.2 | −303.1 | 2,120.6 | 190.3 |
| 1987 | 1,003.9 | 75.7 | −149.8 | −225.5 | 2,346.1 | 195.3 |
| 1988 | 1,064.1 | 100.0 | −155.2 | −255.2 | 2,601.3 | 214.1 |
| Bush: | | | | | | |
| 1989 | 1,143.2 | 114.2 | −152.5 | −266.7 | 2,868.3 | 240.9 |
| 1990 | 1,252.7 | 117.4 | −221.2 | −338.6 | 3,206.6 | 264.7 |
| 1991 | 1,323.8 | 122.5 | −269.4 | −391.9 | 3,598.5 | 285.5 |
| 1992 | 1,380.9 | 113.2 | −290.4 | −403.6 | 4,002.1 | 292.3 |
| Clinton: | | | | | | |
| 1993 | 1,408.2 | 94.3 | −255.0 | −349.3 | 4,351.4 | 292.5 |
| 1994 | 1,460.6 | 89.2 | −203.1 | −292.3 | 4,643.7 | 296.3 |

HOLLINGS' BUDGET REALITIES—Continued

[In billions of dollars]

| President and year | U.S. budget (Outlays) | Borrowed trust funds | Unified deficit with trust funds | Actual deficit without trust funds | National debt | Annual increases in spending for interest |
|---|---|---|---|---|---|---|
| 1995 | 1,514.6 | 113.4 | −163.9 | −277.3 | 4,921.0 | 332.4 |
| 1996 | 1,560.0 | 154.0 | −107.0 | −261.0 | 5,182.0 | 344.0 |
| 1997 | 1,632.0 | 130.0 | −124.0 | −254.0 | 5,436.0 | 360.0 |

*Historical Tables, *Budget of the US Government FY 1988;* Beginning in 1962 CBO's *1997 Economic and Budget Outlook*—April 15, 1997.

Mr. HOLLINGS. Mr. President, on the matter of the budget realities, I have listed here beside the different Presidents from 1945 right on through President Clinton's first term including estimates for 1997—the different years of the U.S. budget, the actual budget.

Incidentally, these are Congressional Budget Office figures. These are not tricky figures. They are the ones that we all rely upon.

Then I have listed the borrowed trust funds. That is all the trust funds that are borrowed—not just Social Security but the military retirees trust funds, the civil service retirees trust funds—there is still a surplus in the Medicare account—Medicare trust fund, the Federal finance bank, the moneys we have been using from the airport and airways improvement fund, the highway trust fund. You can go right on down the different trust funds that are borrowed.

And then the unified deficit which is the real culprit here in this particular budget fraud. I refer directly to the fraud that occurs when we cannot get the truth out. That is the purpose of my rising again today, to somehow, somewhere, sometime talk the truth because it is not an accurate figure when you say unified. They say, well, that is the net amount in and out. It is not net amount in and out. It is the amount you borrow and you have to replace.

The distinguished Presiding Officer, being a certified public accountant, knows exactly what I am speaking about. If you were trying to use that unified deficit on your return, the borrowed moneys on April 15, they would cart you off to jail. You are not allowed to do that. But we do that in Washington, and then the media, the market, the Government and everyone else continue to cite the unified deficit as a sort of net figure as to what the real deficit is.

On the contrary, the real or actual deficit is listed in the next column with the national debt going up and the annual increase in the amount of spending in order to take care of the interest costs.

So I will be glad to show this particular chart in an enlarged manner. What we have here, Mr. President, is again the Presidents. You have the years. You have the United States budget, the actual budget, the borrowed trust funds, the unified deficit with trust funds. Then the actual deficit without trust funds. That is without the borrowings, what the actual deficit is.

Those are the terms upon which we must speak. If we are going to continue to talk of a unified net kind of deficit, which is not net, the fraud will continue. There is not any question in my mind that taxes are too high. But taxes are too high because of the interest cost on the national debt.

All you need do is go to look at our actual interest costs, let us say, before President Reagan came in, just a few short years ago. The interest costs in 1980, going straight across, are $74.8 billion. Well, that is $74.8 or $75 billion. You now in 1997 have listed $360 billion. We have increased spending $285 billion for nothing. You are not getting a road paved. You are not getting a library built. You are not getting research over at the National Cancer Institute. You are not providing for a stronger defense. You are not engaging more in foreign assistance or anything else of that kind. You are getting absolutely nothing for the past profligacy and waste.

Bottom line. The crowd that came to town in 1981, against taxes and against waste, has taxes on automatic pilot, waste on automatic pilot of $1 billion a day.

Now, let me say that one more time. At $360 billion—this figure, of course, is the January figure from the Congressional Budget Office, and it does not take into account the recent increase in interest rates by Alan Greenspan and the Federal Reserve. So that is bound to be at least 365.

So we have interest payments, that is, annual increases in spending on interest that total $1 billion a day. And it has to be paid just like taxes. It is not like increases in other spending which we could forego, but it has to be paid. So that is why I categorically say the crowd that said they were going to come to town in the early 1980's and do away with taxes have put taxes on an automatic pilot of $1 billion a day.

The crowd that came in town in 1981 and said they were going to be against waste, fraud and abuse—and I was appointed on the Grace Commission, got an award for it and recognition. It was a wonderful instrumentality that went through the Government and tried to cut out all the waste. But we have really increased the waste because we get absolutely nothing for it.

Now, we increased spending since 1980 by $285 billion. If we had not done that, we would have $285 billion here for us to sit around in the Senate Chamber and spend or give back to the American people. It would be a wonderful thing. We could get all the highways. We wouldn't have any ISTEA bill. We could take care of all the demonstration projects you could possibly imagine. We could go ahead with star wars immediately. We could have all these things that they want for education, student loans and everything else. But instead, we are spending the money and not getting anything for it.

That is the cancer that we have in the fiscal affairs of the U.S. Government that is totally obscured by news articles like those that claim to show how debt has made us prosperous, like all we have to do is borrow again and that debt has always been with us.

Well, Mr. President, it has not been with us all the time for the simple reason you can see that when President Reagan came to town—we have it here—the national debt was $994.8 billion. When President Reagan came to town, after 204 years of history, after 38 Presidents, Republican and Democrat, after the cost of all the wars, the Revolutionary, the War of 1812, the Civil War, the Mexican War, the Spanish-American War, World War I, World War II, Korea, Vietnam, the cost of all the wars never gave a national debt of $1 trillion. It was less than $1 trillion after 204 years of history. But in 16 years without a war, because the cost of the war in Desert Storm was paid for by the Saudis and others, so in 16 years without the cost of a war, we have gone from less than $1 trillion to almost $5.5 trillion. Up, up, and away with the interest costs, interest spending, interest taxes going up, up and away and added to the debt to the tune of $1 billion a day and we never want to seem to recognize that.

Right to the point, Mr. President. If you take all the deficits from President Truman, the actual deficits and average them out right on down to President Reagan, 25 years, if you took all those deficits, the average would be about $20 billion a year.

Now, in contrast, take the deficits for the last 16 years without the cost of a war, without the so-called guns and butter, as they say; but rather, with spending cuts of President Reagan for 8 years, spending cuts of President Bush for 4 years, spending cuts of President Clinton, because he brought the deficit down—his 1993 plan included $500 billion in deficit reduction. Even with all the cuts, we have been giving an average deficit each year to the American people of $277 billion more in Government than we are willing to pay for. Let us not just talk abstractly about a deficit. We are actually giving away $277 billion more in Government than we are actually willing to pay for.

Let us go to just last year and the campaign, when both Senator Dole and President Clinton used $107 billion, the unified deficit figure, like it was net. That was not the case at all. In order to get to a $107 billion deficit, they had to borrow from all the pension funds. Why not borrow another $107 billion and call it balanced? The actual deficit was $261 billion. You could not get that cited or printed in the press. We gave it to them time and time again. We will give it to them again this morning. I defy you to find it in the morning paper or cited in the evening news on TV. They do not want to say what the actual deficit is. They want to use this obscure figure of unified, trying to act like we ought to be encouraged. That is why they are getting together on a budget deal. They will get together on a deal that will obscure truth in budgeting.

This fraud has to stop somehow, somewhere, because it is not a bridge to the next millennium. We are going over a cliff by the year 2000. Our domestic budget is $266 billion. Our defense budget is $267 billion. Those two budgets together are slightly over $500 billion. But you will soon have interest costs exceeding the combined cost of both the domestic and defense budgets. We are not building a bridge, we are digging a hole.

The first order of business, they say, when you are in a hole and you are trying to get out, is stop digging. We continue to dig, and we do it in a dignified fashion around here and praise each other. The President and the Congress have gotten together on a budget agreement and all of that kind of stuff. But watch for the gimmicks in it.

The biggest gimmick that is never talked about is the fact people consistently obscure the actual size of the deficit. To get it down to $254 billion, we still have to find $110 billion, that is without any cuts, just continuing what we call current policy. I sat at the budget table today to try to get to a budget now of $1.632 trillion. That is current policy. That is domestic of $266 billion, defense of $267 billion, entitlements of $859 billion. That is $1.382 trillion. Just put in the minimal figure $360 billion, that is $1.742 trillion. To bring it down, then, to the $1.632 trillion, I have to find $110 billion. I have to cut entitlements, domestic, defense combined $110 billion.

That is my job, conscientiously going to the budget table to sit as a member of the Budget Committee, where I have been since we instituted the budget process in 1974. But, instead of discussing the cuts and how are we going to get on top of this downward spiral of interest costs or interest taxes being increased $1 billion a day, instead of that, we are getting letters now to do away with the inheritance tax. We are getting letters now to do away with the capital gains tax. We are getting letters now from Steve Forbes and that other crowd: Let's just get a flat tax and do away with the IRS, the Internal Revenue System, and everything else of that kind.

Mr. President, we ought to understand once and for all that we are engaged in a fraud that continues to be obscured, due to the fourth estate. The fourth estate has taken it on as a religion, almost, of reciting the unified deficit as if it were the actual deficit. The truth of the matter is, the actual deficit is substantially more. It has averaged $277 billion last year, the year before, and the last 16 years. We have been giving out some $277 billion in Government that we are not willing to pay for.

We had that Reaganomics. Yes, there is even talk about that—cut taxes and we will get growth, we will grow out of deficits. No mayor in his right mind of a city tries that. No Governor in her right mind has tried that. There was an exception up in New Jersey. Governor Whitman up there said, ''Whoa, tax cuts work.'' But look at the papers last week. She is now doing two things. She is borrowing, raiding the pension funds, just like we are doing in Washington. She has learned from Washington. And she is calling for a bond issue to cover her financial situation. It does not work.

There is no free lunch. Long since, we should have understood it. If I have to come every day and point this out, I will because these facts and figures are not disputable. They are not political. They are not Democratic figures or Republican figures. These are Congressional Budget Office figures. That is the actual debt that has gone to exceed $5 trillion.

I see from the Presiding Officer that my time is just about up. Let me just say one word. I thank the distinguished Chair and the distinguished Senator from Georgia for indulging me just one second more.

What we have is a fraud on the American public. We have to expose this fraud. We have to speak to truth in budgeting. We have to come up with an actual plan that will eliminate this deficit financing by raiding the trust funds in America.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

## LABOR LAW CHANGES BY EXECUTIVE ORDER

Mr. COVERDELL. Mr. President, as many of us in the Congress and in the country began to realize last week, the President and the administration are endeavoring to change 60 years of labor law by edict or decree. I spoke on the floor and reminded the administration we do not govern by decree in America. We have three branches. A major and fundamental change in labor law must be legislated. The President can sign or veto it, but he cannot write law. That is not a function of the Presidency.

I will probably visit some of these documents in a bit, but published reports show that labor leaders and the administration wrote the law that would essentially squeeze out all nonunion subcontractors and employees from doing work on Federal contracts. It is a lot more complicated than that, but that is the bottom line. So this law was written somewhere in the offices of these labor leaders. It is the fundamental construction of what the administration purports will be an Executive order, bypassing the legislative branch and writing law in a very narrow confine.

You know, our forefathers were very careful in the construction of this Government to assure proper airing, thorough venting, debate on all sides. It is not easy to pass laws in America. It is not meant to be easy. The very thing for which this system was constructed was to prevent the very thing we are seeing from the administration.

I would like to begin our discussion on this by sharing with the Senate several letters that I have received from folks back home with regard to this.

Here is a letter dated March 13, 1997, from Large & Gilbert, certified public accountants. They are located in Macon, GA. It says:

DEAR PRESIDENT CLINTON: I am writing this letter to express my outrage regarding comments made by Vice President Gore in a speech to the AFL-CIO in Los Angeles on February 18, 1997. Vice President Gore announced the Administration's plans to change the nation's federal procurement policy through an Executive Order that would encourage union-only project labor agreements.

An Executive Order encouraging union-only PLAs would immediately implement an anti-competitive, protectionist, and discriminatory policy that goes against the basic principles of free market, open competition, and equal opportunity upon which the country was founded.

Greater use of union-only PLAs will threaten job opportunities for the vast majority of America's workers. Union-only agreements discourage bidding by open shop, or merit shop, contractors and limit employment opportunities for workers who do not wish to be represented by a union. Union workers are less than 15 percent of America's work force. This kind of union-favoring tactic discriminates against the majority of American workers who choose not to join a union.

PLAs add significantly to the cost of construction projects, because union labor costs are generally 10 to 20 percent higher than merit shop. Competitive bidding on public projects is in the best interest of all taxpayers because it ensures contracts are awarded based on who will do the best work at the best price, regardless of labor affiliation.

And I might add that Georgia is one of about half the States that is a right-to-work State.

At a time of strict budgetary constraints, PLAs are certainly a step in the wrong direction.

Vice President Gore stated, ''If you want to do business with the federal government, you'd better. . .respect civil, [no one would take offense with that] human [no one would be offended by that] and [here is the kicker] union rights.''

In other words, if you want to do business with the Federal Government, the Vice President said, you better be in a union, you better point your direction toward a union or union membership or a union contract.

Unions do not have the basic right to preferential treatment.

That is what this gentlemen said. The union does not have the basic right to preferential treatment. They have equal access, but they do not have preferential access.

Every American has the right to make a living and have equal access to federal work, regardless of organizational membership.

How right he is.

No one's tax dollars should be spent to support discriminatory federal policies [or Federal policies that select who among the bidders would have the most opportunity to get the work].

He goes on to say:

Americans should at a minimum be guaranteed federal policies that support equal opportunity and free enterprises at the most basic level. Every American deserves the opportunity to compete, win and execute work based on merit—not because of race, gender, union affiliation, or any other discriminatory factor. It is not the role of the federal government to put our taxpayer dollars toward guaranteeing work for the unions or to help them increase their market share and membership.

Vice President Gore's blanket statement promising a presidential veto of any legislation the unions find objectionable, without any consideration of improvements to workplace opportunities, is an outrage. Americans would be better served by an Administration that supports efforts to improve fair, flexible and equal workplace opportunities that will help make companies and workers more competitive.

America has always been a leader for the rest of the world in the areas of a free market and equal opportunity, and this has always been a point of pride for our country. Please take the contents of this letter into account before making any Executive Order that would jeopardize the American peoples belief in our country, and the principles upon which it stands.

That is Thomas K. Savage of Large & Gilbert, an accounting firm in Macon, GA.

Some of these letters are very interesting and deserve a standing in the RECORD.

This is a letter from W.S. Nielsen Co., Inc. Skylight Systems, Alpharetta, GA, writing to the President. He says:

DEAR MR. PRESIDENT: Our small family owned business has grown over the last sixteen years to where it directly supports over 15 families.

That is not a big company. It is awful big to the 15 families, I might point out, though.

We have worked hard to train all our staff to be the best and safest in our field. Ours is a dangerous business. Our staff has earned an excellent reputation with our customers, many of whom work on federal and state construction projects.

Your signing an executive order to use union-only project labor agreements is not fair to the families associated with our company. You are depriving them of work that their tax dollars are paying for and depriving fellow taxpayers of highly skilled craftsmen.

Our employees believe that Americans should be guaranteed federal policy that support equal opportunity and free enterprise. They have earned the right to compete on a level field for any work they are qualified for. A union-only agreement has been earned in all the cheap ways to the detriment of all involved.

All of us strongly urge you to cease your plans to issue the proposed executive order.

Mr. President, we have been joined by the chairman of the Labor Committee, Senator JEFFORDS of Vermont. I would like to yield up to 10 minutes to the Senator for comment on this matter.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise to raise my concerns also as expressed by the Senator from Georgia. I rise to express my continuing and growing concerns regarding the efforts of President Clinton and his administration to bypass Congress and impose the ultimate in top-down union organizing—union organizing by the President of the United States—on Federal construction projects. I am speaking, of course, of the widely circulated draft of a proposed Executive order that would result in most, if not all, federally funded construction being performed under a union project labor agreement.

A project labor agreement would deter a major portion of the contractor universe—open shop or nonunion contractors—from bidding on construction work paid for by American taxpayers. Because the project labor agreement adopted pursuant to the proposed Executive order would require a contractor to enter into an agreement with a labor union as a condition of bidding on the Federal project, most open shop contractors, unwilling to impose a union on themselves and their employees, simply would not submit a bid. Thus, the union-only project labor agreement not only eliminates open competition for Federal contracts, an anticompetitive effect that would result in increased costs of Federal construction to the taxpayers, but also discourages open shop contractors from bidding on work that they are paying for with their own tax dollars.

In addition to its anticompetitive impact, the proposed Executive order also would deprive nonunion workers of jobs in Federal construction, again jobs paid for out of those workers' wallets. Union agreements invariably require job seekers to obtain work through a union hiring hall. Hiring hall referral traditions favor longstanding union members. Others, such as the nonunion workers of the open shop contractor, would find themselves at the end of the referral line. This Executive order would penalize the overwhelming majority—majority—of construction workers in this country, who have not chosen to be union members.

The proposed Executive order clearly is an effort by the administration to set national labor policy, a job that is delegated to the Congress by the Constitution—by the Constitution—of the United States and not to the President. The wisdom of this delegation of policymaking to the legislative process by the drafters of the Constitution is proven in the matter before us. The proposed Executive order raises many more questions than it answers, questions, I note, that, if subjected to the debate and factfinding of the legislative process, could be resolved.

For example, what is the effect of the Employee Retirement Income Security Act, the ERISA, on a project labor agreement's provision that would require an open shop contractor to participate in a union pension plan? The contractor likely covers its employees in another plan, and the contractor's employees probably would receive no benefits from the union pension plan because they would not be vested before the completion of the federally funded project.

Another example of a question best addressed by congressional review is whether the anticompetitive and overly restrictive provisions of the proposed order violate the spirit, if not the letter, of the Federal Acquisition Reform Act of 1996, just recently passed.

The proposed Executive order, however, raises even more fundamental questions regarding the continued vitality of our national labor policy that provides for Federal Government neutrality in matters of labor-management relations, a longstanding policy. This neutrality has been at the core of the national policy since the passage of the Wagner Act back in 1935. The administration, without the benefit of studied review and debate inherent in the legislative process, would reverse this policy and ignore the over 60 years—over 60 years—of its fine tuning by Congress and the courts. The administration's approach, that of lawmaking by Executive fiat, would answer these, and other questions posed by the Executive order, by litigation, not legislation.

I expressed my strong support for S. 606, a bill introduced by Senator HUTCHINSON, that would prevent the exclusion of nonunion contractors from federally funded construction. I note that I am a cosponsor of this bill and look forward to its deliberation in the manner established by the Constitution.

I urge my colleagues to take note of what is going on. This is a gross example of the abuse of the authority of the President through the Executive order. He tried this before. The courts knocked it down with respect to striker replacement. Here they come again with another proposal.

This is extremely important for contractors, for the Nation, and for the taxpayer. I yield the floor.

Mr. COVERDELL. Mr. President, I thank Senator JEFFORDS for his comments and extensive work in this

arena. I want to compliment him on the statement he made last week, a very thorough description and outline of this circumstance. I think the Senator has done the debate a great service. The letter of you and your colleagues on the Labor and Human Resources Committee that was sent to the President was a noteworthy contribution to the debate.

I will read one more letter for the RECORD, Peachtree Interior Builders, another letter dated March 27, to the President:

The purpose of this letter is to voice my opposition to your proposed Executive order to require Federal agencies to use union-only project labor agreements on Federal construction projects. This order would eliminate the possibility of thousands of contractors like myself from bidding on Federal projects. As a contractor and a taxpayer I would expect a level playing field on government contracts so everyone would have the opportunity to compete, win, and execute work based on merit. The 50 families that derive all or part of their livelihood from this company should be given the opportunity to compete on any government project, regardless of their union affiliation, race, gender, or any other discriminatory factor.

Mr. President, I think it is somewhat useful to try to put this debate in context. I go back to Tuesday, February 18, of this year, when the Office of the Vice President issued a press release. It says: ''For immediate release, Tuesday, February 18, 1997.''

Vice President Gore Sends Message to Businesses.

''Record of Labor Relations and Employment Practice Counts in Contracting.

''In remarks to the AFL-CIO Executive Council, Vice President Gore today pledged that the Federal Government will change its rules''—now that is a key sentence—''will change its rules on Federal contracting to take into account businesses' record of labor relations on employment practices and policies.''

So, the Vice President, speaking to the AFL-CIO Council says, ''The Federal Government is going to change its rules.'' What he did not say was the President is going to change the rules arbitrarily, by decree, by edict, by fiat, as the Senator from Vermont said. To change the labor rules, which have been a condition of law for the last 60 years, requires a legislative act and not a decree.

He goes on to say, ''How you treat your employees and how you treat unions counts with us. If you want to do business with the Federal Government you'd better maintain a safe workplace,''—everyone would agree with that—''respect civil, human''—everybody agrees with that,—''and union rights.''

Well, that is not the law. You are not obligated to join a union in the United States.

''The Vice President said the old rules,'' what he means is the old law ''allowed Federal contractors to get reimbursed for the costs of trying to persuade employees not to join unions and fighting unfair labor practices allegations. 'But today we are going to start changing the rules because they're just plain wrong.' ''

They may be, they may not be. But the way you change the law is in the legislative branch. You do not do it because of your own opinion.

Shortly thereafter, on March 10, about 4 weeks later, lo and behold, John Sweeney, president of the AFL-CIO, issues a press statement that says ''Sweeney Blasts Avondale''—that is a shipbuilding company.

In the four years since Avondale Shipyard workers won a union election, management has waged a . . . campaign of firings, discriminatory layoffs and legal challenges.

In other words, they have been in a battle.

Today, AFL-CIO President John Sweeney met with the workers at the New Orleans shipyard and calls on Avondale management to end its attack. He will remind Avondale, which receives Federal funds, that two weeks ago Vice President Gore said companies doing business with the government must respect . . . union rights.

So the Vice President makes his statement. They have said they will change the rules. I am here to tell you, ''You better pay attention to me'' is what John Sweeney is saying.

We have been joined by the senior Senator from Texas who wants to speak on this matter. I yield up to 10 minutes to the Senator from Texas.

Mr. GRAMM. Mr. President, let me first congratulate our distinguished colleague from Georgia for his leadership on this issue. I came over today to speak on this subject because I think this is a very serious matter. It behooves us, and it is in the interests of the American people on issues like this, to speak before the President acts, rather than to wait for the action to occur and then complain about it.

I want to be very emphatic today on this issue because I think this is a fundamentally important issue. First of all, the Constitution is very clear in article 1 that Congress shall have the power to make law. Now, granted, within the parameters prescribed by law, the President has the ability, through Executive power, to implement those laws, and has from time to time used Executive orders to implement the laws passed by Congress and enacted by the President's signature.

Many of you will recall that 2 years ago the President attempted to put into operation by Executive order a provision that had already been rejected by Congress. Though it is a very important issue, the principle is what I want to deal with today.

Basically, Congress had refused to pass a law that said that if workers refuse to work, the employer could not hire other workers to take their place. I never viewed that issue as a labor-management issue. I always viewed it as a freedom issue, as I believe most Americans do. Simply stated, I have a right, if I do not want to work for you, to quit. If I want to stop supplying my labor, or in concert with others, stop supplying my labor, I have a right to strike. But you have rights, too. One of those rights is hiring somebody else who is willing to work.

After an extended debate, the Congress refused to enact a law denying employers the right to hire other people when their current workers refuse to work and a strike drags on and on. The President, by Executive order, tried to do what Congress had refused to do, by mandating that companies not be permitted to replace striking workers. The courts properly stepped in and said that the President had overstepped his bounds and had no authority to make such law by Executive order. In fact, Congress had already refused on exactly that same subject to take legislative action.

If we can believe what the Vice President has said in a speech before the AFL-CIO, it appears that the President is about to do the same thing again. Now, he is going to try to do it a little bit differently. He is going to allow the individual Federal departments and agencies to take action if they choose. The net result is that through Executive order, the President is going to be violating the constitutional powers of Congress. This Executive order has been alluded to before, but what it boils down to is this: If the President goes ahead with his Executive order, he is going to be saying that in order to bid on a contract, a company is going to have to hire union workers.

Now, 89.1 percent of all private workers in America are not members of unions. So what this Executive order would do is say to almost 90 percent of American workers in the private sector of the economy, ''You can't work on a Federal Government contract. You are precluded because you are not part of a privileged group empowered by the President to have rights beyond anybody else's rights. That is, you are not a member of a labor union.''

Now, Mr. President, if the President's Executive order and new regulations went forward we would mandate union representation of all workers on all Government projects. We would mandate that all workers on all Government construction projects be hired out of union halls. We would require that all workers on Government construction projects pay union dues. We would eliminate competition. Mr. President, 89.1 percent of all American workers would be precluded from working on contracts funded by their tax dollars. Finally, we would impose on contractors doing work for the Federal Government union rules, including restrictive rules that limit the ability of workers to carry out their functions officially. So the first thing the President's order would do is say to 89 percent of all workers in America, ''You can't do work for the Federal Government on contracts.''

Second, if the current contractors switched and required mandatory union membership by their workers, the President's proposed Executive

order, in one swoop, would increase the number of people who are members of unions by at least 13 million members. Let me repeat that: If the President's Executive order is put into place and it stands, and if existing contractors, rather than lose their livelihoods and businesses, employers would be forced to say OK, we will pay tribute and force our workers to join unions whether they want to join and pay dues for services they do not want or not. That one action alone would mandate at least 13 million people to pay tribute and earnings to organizations they have chosen not to join.

That does not sound like America to me. I have a right to join a union. I have always supported that right. But I also have a right not to join a union. And I ought to have a right not to join a union and still do contract work for the Federal Government, which is run in small part by my taxes.

As my final point, if the President puts this Executive order and new regulations into effect, and we are then forced to pay union scale on every construction project undertaken on behalf of the taxpayers, it will add 17 to 21 percent to the cost of Federal projects, according to the General Accounting Office, which is the accounting arm of the Congress and the Federal Government. The President's Executive order and new regulations would add $42 billion of additional expenses on the backs of the American taxpayers.

So what the President proposes to do by Executive order, in summary, is deem 89.8 percent of Americans ineligible to work on Government contracts. And at least 13 million Americans, if they choose to work on Government contracts, would be forced into involuntary union membership. Finally, the taxpayer would be forced to pay union wage levels higher than the level typically paid in the private sector and often above the level paid to many people who are paying the taxes that fund the project.

Now, I wanted to make two points today, and then I will yield the floor. First, this is a terrible Executive order. This seems to be little more than political payoff. Those are strong words to say on the floor of the U.S. Senate, but it is hard to find any other justification or any other rationalization for barring almost 90 percent of American workers from working on contracts for their Government, mandating that at least 13 million people join a union they do no want to join, and paying an additional $42 billion per year in new labor costs. If that does not give the appearance of a political payoff, I would like to know what does. It is hard to think of any other explanation.

Second, and probably the most important point that I want to make, is that sometimes things occur between branches of Government that create ill feeling and hinder the ability to engage in bipartisanship. They make it more difficult for us to do our job. If the President follows through with his Executive order, it will seriously jeopardize bipartisanship cooperation in this Congress. There is no way we could let this stand and little possibility that we could act as if nothing had changed when our very powers prescribed in article I of the Constitution are being usurped by the President. It difficult to imagine us acting as though we simply disagree with each other and then go on working together hand-in-hand doing whatever we might be doing. There is little chance of that happening.

Our message today is a warning to the President: Mr. President, don't do this. This is wrong for America. If you do this, it is going to be very difficult for us to work together.

I yield the floor.

Mr. COVERDELL. Mr. President, I thank the Senator from Texas, Mr. President. I am going to yield to the Senator from North Carolina for up to 10 minutes. I thank him personally for his extended work and contributions in the formulation of the Right to Work Act, which has now been introduced. He has a long, long record in this arena. I welcome him to the floor.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. Mr. President, I am here today to join the Senator from Georgia in letting the American people know what a costly and dangerous paragraph the President of this country has proposed on behalf of the labor unions, its bosses. What I am referring to is the President's Executive order, first announced to great applause by Vice President GORE before a recent gathering of union bosses. It would force all contractors doing business with the Federal Government to be unionized. To be specific, Clinton has issued an Executive order in draft form—he hasn't issued the order—which would require that anybody that sells goods to the Federal Government become a party to a labor agreement—in plain language, become a unionized closed-shop company. These agreements are nothing more than a clever device proposed and written by the union bosses that all contractors would have to be unionized if you do business with the Federal Government.

Now, this is a union-only mandate for anyone who sells to the Federal Government. But that isn't as far as it goes—not by a long way. These agreements would force the contractor to have a union, but, in turn, it would force anybody he buys from to have a union. Anybody that sold him a pencil would have to be a union contractor, if it were going to be used in Government business. So 13 million people, as Senator GRAMM said, would be forced to join unions. But I think it would run a lot more than that because this thing goes to the ultimate end of who would have to join the union. Big fleas have little fleas upon their backs to bite them, and little fleas have lesser fleas. So this would go down to the ultimate end of who would have to join a union to comply with this proposed order.

Now, Sweeney, president of the AFL-CIO, said, ''In any given year, Federal contracts total as much as $200 billion, and Federal contractors employ one-fifth of the Nation's work force.'' And with great glee, he says, ''If properly implemented . . .''—referring to President Clinton's order—''. . . it would affect hundreds of billions of dollars every year.'' What he could have said and didn't say, but was thinking, is: Think of the money that it will bring into the unions and how much more money we will have to play with.

What we are talking about is the President, by the stroke of a pen, changing the laws of this country. Government contracts have always been awarded on the basis of the low bidder and the company that was capable of doing the job. Unions have never held a special claim to Government contracts. But, under this, everybody else would be excluded and the unions would be totally in charge.

What we are saying is that all of the $200 billion the Federal Government spends would go to 20 percent of the work force, or probably a much smaller percentage than that; probably closer to 10 percent of the work force in this country is unionized. And to the other 85 to 90 percent, we would say: Tough luck, you simply don't qualify. You pay the taxes and keep working, but any Government contracts will go to union members only.

Now, the General Accounting Office has said that union labor will run the price of a contract up 20 percent or more. I think they, very simply, underestimated the amount. That is certainly a low figure, that 20 percent of the cost will be added to every Federal contract because of this requirement.

I am troubled by the fact that no committee of Congress has had the opportunity to review proposed language. There have been no hearings. None of the millions and millions—13 million-plus—of American workers who are going to be affected by this mandate have had an opportunity—or their representatives—to be heard on it. The President has shown no interest in the American people or in what they think. He is simply putting a proposal up as a payback to the unions. It is just simply that. He has not submitted it to Congress, and from what it would appear, he doesn't plan to. If he wants to do it, this is the place he needs to do it—bring it before the Congress and then see what happens to it. It would pass through the normal checks and balances between the Congress and the administration. The Congress is bypassed and this would impose unions on businesses across the country, without the American people or the Congress having anything to say about it.

As the Senator from Georgia has so eloquently stated, in America, we didn't elect a President to rule by decree. My State of North Carolina is a right-to-work State. I am sure that nonunion employees in North Carolina would be forced to become unionized

because of what the President has done. They would have to join a union. I understand that the checks and balances may be inconvenient to the President. He would rather do it by decree. But that system has served us well—the system of checks and balances—for over 200 years. The proposed Executive order is a payback to the labor union bosses, who spent hundreds of millions of dollars on behalf of the President in last year's election, and who do not want to subject their plans for American workers and employers to congressional scrutiny. They know it would lose in the Congress.

I am opposed to compulsory unionism. No worker should be forced to join a union, and no employer should be forced by the Federal Government to be unionized as a condition of doing business with the Federal Government—particularly, not by an Executive decree that has never seen the light of day in the Congress of the United States, or given the Members of the Congress an opportunity to oppose it or to speak on it.

Mr. President, I yield the floor.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I yield myself 10 minutes from the time controlled by the Senator from Georgia.

The PRESIDING OFFICER. The Senator is recognized.

Mr. COATS. Mr. President, I appreciate the efforts of the Senator from Georgia in bringing to light an important issue that this Congress clearly needs to examine and examine quickly.

Two basic problems exist with the President's attempt to unilaterally overturn a 50-year-old law. The first is that it usurps the very function of the legislative branch, and appears to be a payoff, a payoff to a special interest group—big labor.

The President, knowing that he can't secure the support of a majority of the Congress, simply decides to bypass the Congress. I think it is a pure usurpation of the role of the legislative branch. Second, it will cost the taxpayers hundreds of millions of dollars, if not billions, in additional expenses. To mandate that each agency seeking to contract with the Government needs to get big labor's seal of approval before making a contract award clearly is going to add substantial cost to Federal construction and to Federal contracting.

If the Clinton administration wants to change the laws governing the awards of Federal contracts, it ought to have the courage to send the legislative changes to this Congress for consideration. If then it can make the case to the American people that the changes are justified, so be it. But it is simply unacceptable for the President to cut a deal with a special interest group that has been supportive of him politically, with such a deal having tremendous ramifications for the American economy and, arguably, circumventing the law. We simply cannot allow this kind of power grab to go unchecked.

INHERITANCE TAX

Mr. President, I also want to bring to the attention of the Senate an item that I found this morning in the Washington Post. I got up thinking it was going to be a good morning, poured myself a cup of coffee, got out the Post and the Washington Times, and was thumbing through and happened to come across a headline that certainly grabbed my attention. The Post article, written by Clay Chandler says, ''Treasury Official Slams Estate Tax Rollback Effort. Changes Sought as Part of Budget Pact.'' Deputy Treasury Secretary Larry Summers, senior member of the Clinton administration, and someone whom the Post says is clearly becoming one of the key players in the President's economic agenda, and certainly in the budget discussions, has indicated that the efforts to roll back the inheritance tax as part of this year's budget agreement is ''motivated by selfishness.'' He goes on to say, ''When it comes to the estate tax, there is no case other than selfishness'' for providing relief to families from this death tax. Further, he asserts that the evidence put forth in support of repealing the burdensome tax ''is about as bad as it gets.''

Mr. President, I would like to review for the Senate the evidence that currently exists about the effect of this so-called inheritance or death tax and let the Members of the Senate and the public decide whether or not this is ''as bad as it gets'' or is ''selfishness'' on the part of the American people.

Currently the death tax would take as much as 55 to 60 percent of a small business owner's assets at death. Whether you are a farmer who has worked for years to build an estate, a small businessman, or an individual who has worked successfully and achieved some success and self-reliance and prudence in terms of how you use your money, or are someone who has planned for the future, upon death the family will find itself in a very unseemly situation, one that requires, immediately after the funeral, that the family move right on down to the IRS office to try to figure out how to deal with the extraordinarily difficult problem; that is, the Federal inheritance tax, or the so-called death tax.

It is particularly difficult for those who have run a farm, those who have run a small business, those individuals who have paid a great price, and at great sacrifice, to accumulate some degree of wealth, to pass it on to the family. Clearly, the situation that exists today is that in many cases the farm or the business has to be sold instead of passed on through the family from generation after generation just to garner the funds necessary to pay the estate tax. When you are paying a 55 percent to 60 percent rate, it usually forces the sale of a particular business.

The White House Conference on Small Business indicated that 70 percent of all family businesses do not survive through the second generation, and 87 percent do not make it to a third generation. The reason for this is pretty simple. The primary cause of the demise of family farms and businesses after the death of a founder and the founder's spouse is the death tax.

When a tax can take more than half of the current valuation of the assets—many of these assets are invested in machinery, in buildings, in land, and in farm equipment, and the tax is more than half of that total valuation—very few families have the liquid assets available to pay the immediate tax and, therefore, have to liquidate the farm, have to sell off acreage, sell the entire farm, sell off the business, or sell ownership in the business, and it can't be passed on to the family.

Recently the U.S. Department of Agriculture estimated that between the years 1992 and 2002, more than 500,000 farmers will retire and that 95 percent of these farms are sole proprietorships, or family partnerships, and that every one of these estates, unless they are under a very low threshold, are subject to death taxes.

On average, 75 percent of the farms in America today consist of nonliquid assets, such as I mentioned—real estate and farm equipment—making payment of the death tax extraordinarily difficult to achieve without liquidating capital.

For small business owners, 33 percent report that they expect all or part of their businesses will be liquidated when death taxes come due.

Among a survey of black-owner enterprises, nearly one-third say their heirs will have to sell the business to pay the death tax, and more than 80 percent report that they do not have sufficient assets to pay the death tax.

If that wasn't bad enough, look at the average cost of just paying those taxes. The average family business spends nearly $20,000 in legal fees, $12,000 in accounting fees, and $11,000 for other advisers in order to do the paperwork and the processing to compute the tax and to sell the necessary assets to pay the death tax.

Mr. President, the point here is not how many examples we can give of ''bad and selfish'' evidence that Mr. Summers cited. I don't think any of this could be categorized as ''bad and selfish'' evidence. That doesn't serve the point to castigate Mr. Summers. The bottom line is that the Congress owes it to all Americans, and particularly the American farmer and the American small business men and women and their families, to get relief from the current estate tax, which is a perverse tax that goes against the very things that we want Americans to strive for. We want Americans to be self-reliant. We want them to save and to invest. We want them to build up their businesses and their farms. We want them to be prudent. We want

them to be self-reliant. And we want them to have the ability to pass that farm on to the next generation and the next generation.

I have a very close friend who runs a farm in western Kansas. It is a typical farm that you find in the West with thousands and thousands of acres because of the sparse amount of rainfall—raising hogs and cattle, a great investment in equipment and land, barely making it from year to year, depending on the weather. Some years are better than others. When this individual dies—and their farm has been in the family now for two generations—his son's dream has been to continue the farm within the family. Yet, my friend is faced with what farmers and business men and women all across this country are faced with: The reality that, upon the death of he and his spouse, most of the farm will have to be sold or liquidated in order to pay the taxes. It is a double form of taxation because the earnings from that farm have been taxed on a year-to-year basis.

So it is a governmental grab.

Is it selfish to want hard-working Americans to be able to keep the assets they have accumulated through their ability or good fortune, hard work and dedication? Is it selfish to say that they can't pass that on to their family but they are better off giving it to the Government so that Government can make better use of that money than the family to continue the business or continue the farm?

I think we have all heard the horror stories about how $1 comes into Washington, comes into the Government, and suddenly disappears. We can't trace where it goes. Of the money which goes into fighting poverty, 65 percent never makes it to the people who are the recipients, who are at or below the poverty line. It gets eaten up in bureaucracy. It gets eaten up in other special designations.

So, Mr. President, the American dream is not to die and pass everything you have worked so hard—Mr. President, I ask unanimous consent for 3 additional minutes.

Mr. COVERDELL. Mr. President, I yield 3 additional minutes to the Senator from Indiana.

Mr. COATS. Mr. President, I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator is recognized for 3 additional minutes.

Mr. COATS. Mr. President, the American dream has been to be prudent, to save, to try to make life better for your children and your grandchildren than it has been for you. The current inheritance tax system takes away that American dream—the dream that one generation can build upon the success of another to build a better life for themselves and their children.

The current tax sends a message that the Government will take away what you have earned and not allow you to pass it on. That is a disincentive to work hard. It is a disincentive to be successful, a disincentive to pursue the American dream because when you die the fruits of your labors will be taken away from you and away from your family and given to the Government. This is selfish?

Mr. Summers, who speaks for the President and the Vice President, says this ''is about as bad as it gets;'' that it is about as selfish as it gets; that it is selfish to want to retain the fruits of your labors; that it is unselfish to give it to the Government, which in many instances wastes the money that you have worked so hard for.

The President campaigned on repeal of the exemption for the estate tax, and Senator Dole when he was running for President on his proposal to lower the estate tax. Now that we are debating this in the budget, Mr. Summers comes along and says it is a selfish thing to want to do. I don't think it selfish, Mr. President, to allow the American taxpayers to keep the fruits of their hard-earned labors and not to have it taxed away to the point where they have to sell their farms, to sell their businesses, or to sell their assets just to pay the tax to the Government.

Mr. President, I am a proud a cosponsor of legislation—in fact, four pieces of legislation—that call for repeal or at least reduction in the amount of estate tax to counter the efforts that are currently underway to eliminate even the exemption. I am pleased, and I hope that the Congress will hold firm on this issue as we go through our budget negotiations.

I would like to, in closing, invite Mr. Summers to visit some mom and pop businesses in Indiana that are hard hit by this devastating tax. I would like them to visit some farms of some friends of mine who want to pass it on to their children and grandchildren but have to liquidate the farm in order to pay the estate tax. Come out to Indiana and tell the family that is forced to sell the farm or the business that has been in the family for more than 100 years that they are being selfish for wanting to keep that farm in the family and not to turn that money over to the Government.

Mr. President, the Federal Tax Code is the only part of this debate that can truly be labeled selfish. The Government has no right to take unjustly the fruits of its citizens' labors.

I hope the President and the Vice President will quickly disavow the statement made today, or reported today in the Washington Post, by Mr. Summers when he calls it selfish on the part of the American people to try to retain the business of a farm that they have worked so hard to acquire.

Mr. President, I yield the floor. I thank the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, I yield the remainder of my time to the Senator from Oklahoma, the assistant majority leader.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I want to compliment my colleague from Georgia for his managing this past hour. I hope that my colleagues have had a chance to listen very clearly.

I would also like to compliment my colleague from Indiana on his very forceful statement denouncing the statement that was in the paper today, reported to be made by Mr. Summers, Deputy Assistant Secretary of the Treasury, when he said that those who want to cut inheritance taxes are wanting to do so for greedy individuals. I just totally disagree. I am one of those individuals who wants to reduce the inheritance tax, and I don't think I am trying to do it for greedy individuals. I think the tax is unfair. It is too high.

The Senator from Indiana mentioned the fact that farmers and ranchers worked hard in their lifetime to build up a ranch, farm, or estate, and find that Uncle Sam is taking 39 percent, maybe 45 percent, or 55 percent of that estate. I think it is too high. It is higher even than the income tax.

If you have a taxable estate of $1 million and you are at the 39 percent tax bracket, that is too much. Why should the Government be entitled to take 39 percent of a farm or ranch that has a value of $1.6 million—there is a $600,000 exemption and a $1 million estate—why should Uncle Sam be entitled to take 40 percent, or, if you have a taxable estate of $3 million, maybe two or three restaurants or businesses that you put together and the taxable estate is $3 million, why should Uncle Sam be entitled to take over half?

Mr. Summers may think you are being greedy because you don't want to lose half of what you have built and worked all your life to accumulate, and you want to pass it on to your children. He thinks maybe you are trying to be greedy because you want to keep it in the family. Mr. Summers is wrong.

I concur with my colleague from Indiana. I hope that the administration will denounce, renounce, or disassociate themselves from his remarks because trying to reduce the inheritance tax is not being greedy.

I tell my colleagues that this is one Senator who is going to be very energetic in trying to make sure, when that tax bill comes up this year, that we are going to have estate tax relief.

I hope we will cut estate taxes for everybody. I hope we will increase the exemption because I do not think the Federal Government should be entitled to take part of the property that people have worked their lifetime to pass on to their children. I do not think Uncle Sam should be entitled to take 40 or 50 or 55 percent.

Mr. President, I am not sure what time remains of Senator COVERDELL's time, but I ask unanimous consent to speak as if in morning business for 10 minutes.

The PRESIDING OFFICER (Mr. COATS). Is there objection? The Chair

hears none, and it is so ordered. The Senator from Oklahoma is recognized to speak as if in morning business for 10 minutes.

## LEGISLATING BY EXECUTIVE ORDER

Mr. NICKLES. I would like to follow up on some of the statements that have been made by our colleagues concerning the executive branch's current willingness to legislate by Executive order. I have talked to the White House two or three times now. I have let it be known that I want to use whatever tools are available to get their attention and make sure they quit attempting to legislate by Executive order.

Some of our colleagues may not be aware of what we are talking about, but we have had two or three disputes—maybe we should have had more—with the administration over the last few years about executive actions that clearly should be implemented through legislation by Congress, the body elected by the people for legislative purposes. This administration, the Clinton administration, has tried to bypass Congress and legislate by Executive order. I think they have done so knowing full well in many cases they could not get their desired objective through Congress so they just decided to do it by fiat.

I am here to say all of us, Democrats and Republicans, should reject that approach. We should uphold this institution, the legislative branch, the branch of the people, and say this is why our forefathers had separation of powers. The Constitution is very clear. If you read the Constitution, it states in article I, ''All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of the Senate and the House of Representatives.'' ''All legislative powers.'' It does not say some. It does not say that if the administration cannot accomplish its objectives through the Congress it can go ahead and pass them by Executive order.

In the 10th amendment it says all other powers are reserved to the States and to the people. So the executive branch has the power to enforce the law but not to write it. That is the responsibility of the legislative branch. And then if people do not like the laws we pass, they can vote for someone else. They have a chance to do that through the election process.

There are a couple of cases where the administration has overstepped its bounds, and I think where Congress has spoken up, or should have spoken up. One example was a case where the administration tried to give organized labor a gift and issued an Executive order to prohibit hiring replacement workers during a strike. They tried to get Congress to pass a bill that would do that in 1993 and 1994—and actually passed legislation through the House but could not get it passed through the Senate. So after the 1994 elections, the administration tried to change the law by Executive order in March 1995. That was contested in the courts.

I might make note that in the November elections of 1994, Republicans took control of the Senate and it was obvious that this legislation could not pass Congress. So President Clinton, in my opinion, overstepped his bounds and issued an Executive order in 1995 barring management from hiring replacement workers during a strike—a perfectly legal practice under the National Labor Relations Act. He issued this order knowing that Congress had twice rejected legislation that would have done the same thing. The courts didn't let him get away with it.

On February 2, 1996, the U.S. court of appeals threw out President Clinton's Executive order ruling that the President's action was clearly unlawful and was preempted by the National Labor Relations Act. Clearly, the court's message was a reminder that the President does not have a blank check to adopt policies in direct conflict with Federal laws established by Congress.

The President does not have legislative authority. I think that is what we are finding in a couple of his other Executive actions. Another example deals with the Grand Staircase-Escalante National Monument where the President in September 1996 unilaterally took a 2 million acre coal-rich block of land in Utah and made it a national monument. He did it without talking to Congress. He did it without consulting the Utah delegation. He did it without consulting the people who live and work in that area. He did it without consulting the Governor of Utah. He basically said we are going to take that 2 million acres and declare it a national monument.

Maybe I would support such a thing, but again we have a committee, the Energy And Natural Resources Committee, that considers such bills. We should have had a hearing on that legislation. There has never been a hearing. There has never been a chance for the Utah delegation to speak out on that legislation. Is it good or not? I am not sure how I would vote. Maybe I would vote with the President.

My point is he usurped congressional responsibility and basically said we are going to declare this a national monument by Federal fiat.

I might mention that when he did this—it was in September 1996, during a campaign—he had a press conference around the Grand Canyon in Arizona. He did not do it at a press conference in Utah because his decision was quite unpopular.

My point is not whether his decision is popular or not. He did it clearly for political purposes. But he did not allow the people to speak. The President is not king. He cannot do that. And maybe this will be contested. Probably we did not speak out enough on it.

Another example where I seriously think he has exceeded his Executive authority and I think legislation is required, is the President's Executive action requiring that if you are under age 27, if you buy cigarettes, you are required to show an ID wherever you are buying them. And if retailers are found selling to minors or anybody under the age of 27, they face civil penalties of $250 or more and could be subject to other sanctions. Retailers reported to have sold cigarettes or smokeless tobacco to someone under 27, without checking their photo ID, risk compliance checks being conducted in the future.

Maybe we should do that. I will tell my colleagues, I do not want kids smoking. I have four kids. I absolutely do not want them to smoke. This is hazardous to their health. I have a mother who has emphysema, lung cancer, which is very serious. I absolutely do not want anybody to smoke. But if the President wants to have ID checks for anybody under age 27, or age 40 for that matter, he can introduce it in Congress and maybe we can pass it. I think that is a proper prerogative of the States. But at least it should go through the legislative route. He did not do that.

He has advocated other Executive rules dealing with advertising. I supported banning smoking on airplanes. I may support banning various types of advertising. But we should go through the legislative process. We should have hearings. We should let elected people make a decision. I think the President's Executive action goes so far as to ban outdoor billboards or baseball caps that say Marlboro, and so on. I think the President's actions and the FDA's rules have exceeded the constitutional authority of the executive branch. I think that is wrong.

Finally, Mr. President, let me bring up the latest proposed Executive order, and I say proposed because it has been announced by the President that he is going to issue an Executive order that deals with Federal construction projects which will in practice screen out nonunion businesses from participating in Federal construction projects or force their employees to join a union, the so-called project labor agreements.

Mr. President, this is an egregious power grab by organized labor. If they want to try to do this they should do it through the legislative branch. They should see if they have the votes. We have $239 billion of Federal construction spending available between now and 2002, and to come up with an Executive order and say you need not apply unless you have a union is totally wrong. Totally wrong. More than 80 percent of the workers that are doing Federal work on construction projects now, according to this proposal, need not apply; or if you are going to apply you need to join a union. What about free competition? What about competitive bidding? What about the taxpayers?

For the administration to try to make this kind of behind-the-scenes

deal with organized labor—and we have reports that organized labor was writing this regulation, that they were involved in formulating this regulation—to come up with this type of a power grab I think is absolutely wrong. If they want to do it, they should do it through the legislative branch. Have somebody who supports this legislation introduce it. Let us debate it. Let us find out where the votes are. Let us go the legislative route. Let us go the constitutional route.

And so I have contacted the White House and tried to let them know that I am very sincere about trying to protect the constitutional prerogatives of Congress. This is the legislative body and I am very sincere about making sure that the White House does not become the legislative body by Executive action.

And so, Mr. President, I have told the White House we are willing to use what actions we have at our disposal to try to get their attention. We have the confirmation process. We also have the appropriations process. We have the judicial process. We have other tools available to try to convince the administration they cannot legislate by Executive order. That's very much my intention.

I just noticed an article in the Thursday, April 17th Roll Call where Mr. Reed Hunt, the Federal Communications Commission Chairman, is talking about drafting a notice of proposed rulemaking to examine the idea of free broadcast time for Federal candidates and predicted that free time for candidates could be implemented in time for the 1998 elections.

Mr. President, we have campaign reform before this body, and there is certainly legitimate debate and we have talked about having free time for political candidates. Some people call it food stamps for politicians. That is a legitimate legislative item we should discuss. But the FCC Chairman does not have the authority to say by fiat, by direction from the administration, that we are going to give candidates free time and mandate that or dictate it or bribe the broadcasting authorities to enforce it.

That is a serious mistake. If we are going to say politicians are entitled to free time, let us have that as part of a bill. Let us debate it. But Mr. Hunt cannot do it.

We as a legislative body, Democrats and Republicans, need to reassert our legislative authority, our legislative responsibility, and we need to object. If we find the administration, the executive branch, trying to legislate, we need to object. At a different time I will speak about the need to object when the Supreme Court or courts are legislating as well, because we find that branch of Government is involved in the legislative process. Right now they are considering two cases legalizing assisted suicide. The Supreme Court does not have the authority to legalize anything. That is the responsibility of this body. That is called legislation. And that is a subject for a speech at another time. I am strongly opposed to the executive branch legislating as well as the judicial branch legislating. Both are wrong. This is the legislative branch. I as one Senator, whether I agree with the direction of the Executive order or the judicial decision, I am going to speak out loudly and strongly and use tools available to make sure the Congress remains the legislative branch of Government.

Mr. President, I yield the floor and I thank my colleague from Connecticut for his patience.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are, with Senators allowed to speak for up to 5 minutes.

Mr. DODD. I ask unanimous consent that I may be able to proceed for 10 minutes as in morning business, and I may need a couple minutes beyond that, but I will try to move through the material fairly quickly.

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

Mr. DODD. I thank the Chair.

## ALEXIS HERMAN NOMINATION

Mr. DODD. Mr. President, first of all, let me address if I can—and there are a couple matters I want to speak on—the issue of Alexis Herman. I have listened here to my colleagues address their concern about the Executive order regarding project labor agreements. My hope is that we would not be holding Alexis Herman hostage over a particular matter that Members have some concern about. And I respect that. I note my good friend and colleague from Oklahoma is still on the floor. It was back in I think 1991 when President Bush issued an Executive order to prohibit project labor agreements. I do not recall a similar outcry that this was acting without legislative authority.

I do not disagree, I say to my colleague, by the way, with his concern where executive branches, regardless of party, try to exceed their authority here. But nonetheless, I hope that despite the legitimacy or illegitimacy, whatever one's point of view is, on project labor agreements, Alexis Herman's nomination can go forward. She was proposed in December. The election was in November. This is almost May. We are missing a Secretary of Labor. And whether it is organized labor, unions, management, it is important there be someone at that table to represent the interests of management and labor. And the Secretary of Labor needs to be there.

My colleague from Pennsylvania, Senator SPECTER, I think addressed this issue appropriately back, as the Presiding Officer will recall, when there was some question of whether or not the nomination was going to move through the committee which the Presiding Officer and I sit on together, the Labor and Human Resources Committee. There, the Senator from Pennsylvania noted we ought to vote on these people up or down, but we ought to at least vote.

The committee voted unanimously to send Alexis Herman's name to the full Senate for consideration. As I said a moment ago, now it is getting to be late April. I am told her nomination will not be considered until something is worked out on these project labor agreements. I think that is regrettable. Again, I will discuss in a moment the project labor agreement issue. Six months after an election, to be missing yet a meaningful and important member of the President's Cabinet, I think is an unfortunate use of our power here, to deny the Senate even a vote on this nomination. So I hope we would have that nomination come sooner rather than later, so we could have that individual sitting at the Cabinet table.

## PROJECT LABOR AGREEMENTS

Mr. DODD. Mr. President, let me briefly address these project labor agreements. Again, this is maybe confusing to some people because it sounds rather esoteric: Project labor agreement. There is nothing new about project labor agreements. They go back to the 1930's. They have been a very effective means by which governing bodies, States, cities and the Federal Government, where there have been major public works projects, have been able to bring people together to try to work out arrangements, in terms of wages, benefits, hours and so forth, in return for which there would be no work stoppages, strikes and the like.

I note Governor Pataki of New York has very effectively used project labor agreements on projects in the State of New York. Christine Todd Whitman, the Governor of New Jersey, has used project labor agreements on major public works projects in the State of New Jersey. There are numerous projects around the country, Federal projects—the Boston Harbor is the one I am most familiar with in New England—where there is a project labor agreement there.

I might point out it was noted by our colleague from Texas that these project labor agreements result in tremendous cost overruns. It is estimated right now, and the project is not complete—the estimated cost of the Boston Harbor project was $6.1 or $6.3 billion. It is estimated now, in no small measure because of the project labor agreement, that project may be completed for about $3.4 billion, substantially under the original estimates. So there is nothing inherent in this that says it is going to increase costs. In fact, it has worked very, very well.

The suggestion was also that nonunion businesses would be prohibited from bidding. Nothing could be further

from the truth. That would be against the law. In fact, I think, as someone pointed out, in one of the Boston projects—102 of the 257 subcontractors were nonunion firms; 102 of the 257. So the notion that nonunion firms would be prohibited from being a part of these projects is unfounded.

As I noted earlier, in October of 1992, President Bush issued an Executive order which prohibited Federal agencies and Federal contractors from entering into these project labor agreements. So the outrage that is being expressed because an Executive order has been issued to reinstate them—as I said, I would be sympathetic if the outrage had been focused equally vociferously when President Bush banned these project labor agreements—as we now hear with this President's decision to issue or allow these project labor agreements to be used on Federal projects.

So, again on the Alexis Herman issue I hope she will go forward.

On these project labor agreements, I think it is important we utilize what has been a very effective tool for being able to complete very, very important public works projects. As I said earlier, these are not just used by the executive branch at the national level, they have been used by Governors all across the country.

## L'AMBIANCE PLAZA

Mr. DODD. Mr. President, tomorrow, the 23d of April, will mark the 10th anniversary of a major tragedy in the State of Connecticut. It was April 23, 1987, that 28 workers in Bridgeport, CT, lost their lives at a place called L'Ambiance Plaza, a construction site. My colleague from Indiana may recall that it was the largest industrial accident we had ever had in the State of Connecticut. It occurred during the construction of an apartment building using a technique called lift-slab construction. You would actually construct the floors and then, by hydraulic lift, lift the floors up. Within a matter of seconds, these floors collapsed and took the lives of 28 of my constituents from Connecticut.

It was a dreadful day, one that people still talk about in our State. In fact, early next week there will be a memorial service, with the families and others who are still feeling the pain of the loss of their loved ones.

We ended up banning, in the State of Connecticut, lift-slab construction. There were Federal regulations put out on that construction as well. As a result of that accident, in fact, my colleague from Connecticut, Congressman CHRISTOPHER SHAYS, who represents that congressional district, he and I introduced legislation to create some new requirements to monitor health and safety on construction sites. That legislation would have created an office of construction safety. It would have created a 15-member advisory committee on construction safety.

I should back up and point out that of all trades, the construction trades suffer the most injuries and death. Even with a lot of improvements, it is highly dangerous work. So, even with the improvements that have been made in occupational safety and health, construction work, just by its nature, as one would well imagine, is very dangerous. What we were looking for was to create some specific emphasis and focus on the construction trades. So that bill required those two points and further required increased civil and criminal penalties when there were knowing violations of occupational safety and health standards, and it would require employers to develop specific procedures to ensure health and safety on building sites. The bill was never approved. We offered it and had hearings on it, but it was never approved.

If you, Mr. President, and my colleagues had seen L'Ambiance Plaza, the devastation there, I think most would have come to the same conclusion that I did, that we need to do a better job in monitoring these construction sites. I pointed out, it was the single largest construction tragedy in the State of Connecticut. The problem is that lift-slab construction had caused hundreds of injuries around the country, yet in most instances, on the specific site, the injury, although it was bad, had not resulted in a death, so reporting was not required.

So there was no warning ahead of time about the dangers of this type of construction. As a result of our efforts, you would have been required to report those incidents when they happened so the collective information would be gathered and better decisions could be made about this kind of construction.

So, next week we will again gather to commemorate the lives of the 28 men whose lives were lost on that date 10 years ago. Like all of my colleagues, I hope never to have to attend another such ceremony. My hope is still that we will do a better job in improving the enforcement and the penalties involved, because that seems to be the only way we get the kind of compliance that is necessary.

## BRAIN DEVELOPMENT IN EARLY CHILDHOOD

Mr. DODD. Mr. President, I rise to talk about a subject about which I know the Presiding Officer has a great deal of interest, and that is the attention that has most recently been focused on the breakthroughs in our understanding of the human brain and in the early development of children. In fact, Newsweek just released a special edition: ''From Birth to Three. What you need to know, how speech begins, a baby's brain, genes, emotions, what is normal, what is not.'' I commend Newsweek for dedicating a special issue to this subject matter. I think it is extremely worthwhile.

Time magazine earlier did an issue on education, which I think was extremely helpful to millions and millions of Americans. I encourage everyone in this country to read this edition, particularly young families. It is very valuable information for people to have. We are gathering new information, almost on a daily basis, about the remarkable events that occur in the earliest days of a child's development, about how important it is that we do everything we can to maximize parental understanding and to provide whatever support we can so these earliest days turn out to be productive days in the development of a child's life.

As we all know, last week the President and the First Lady hosted an important White House conference on this very topic, bringing together leading voices from around the country to discuss the early development of children and how we could better support that development. Scientists have now presented us with hard evidence of what many parents have long held true—have known, I think instinctively—that children whose lives are stimulated from birth by words, by affection, and by playful interactions with their parents and other devoted caregivers are far more likely to develop to their full intellectual and emotional potential than those who are not.

All that we already knew about giving children a good start in life still holds true. Genetics, nutrition, whether a mother drinks or smokes—all these factors still play a role in a child's development. Now we also know that the environment that we provide to children, starting at the moment of birth and into their earliest years, has an astonishing impact on their potential to learn and to grow.

I do not pretend to understand all of the scientific studies. In fact, just the language of it, the jargon of it, can be dazzling for those of us who are lay people in this area. But I am trying to gain a basic grasp of the facts. Scientists have now discovered, for instance, that the brain of a baby is wired to learn. Starting at the very first days, each time a parent holds, rocks, or talks to her child, connections are formed between the neurons of the child's brain. These connections, the building blocks of a child's cognitive and emotional development, grow exponentially in the earliest years.

Just consider this. By the time a child is 3 years old, that child's brain has formed 1,000 trillion synapses, or connections between brain cells. Just to give some idea of the magnitude of this, this evening if you have a starry night and you look up at the stars, you should know that 1,000 trillion synapses is more than all the stars in the Milky Way. So, as you gaze at the heavens tonight and you look at the Milky Way with all its stars, know that just in 36 months of a child's life there are more synapses and more connections formed than all those stars. That will give you some idea of what is occurring in these earliest days of a child's life.

Scientists have found that these connections in a child's brain only survive if they are reinforced, a sort of ''use-it-or-lose-it'' phenomenon. As an example, and I am very familiar with the one I am about to give you, studies have found that children who develop cataracts at an early age lose their ability to see, even after those cataracts are removed because the brain pathways for sight were not allowed to develop during the critical period for achieving sight. Why do I know about this? My oldest sister, Carolyn, a teacher in Connecticut, was born with cataracts many years ago. She is blind today. Had we known, had we had the information we have today, my parents might have been able to do something differently. She has been a wonderful teacher and an independent individual, but I was struck when I read of this particular fact by what we know now that we did not know then.

So this particular discovery came racing home to me in relation to my oldest sister—what a difference the current advances of knowledge and information might have made in her life. Although she has been tremendously successful with her physical handicap, it struck me life might have been a little different for her had the information we know now about the development of the brain been available then.

Other information shows that a baby who is not read to—the simple act of reading, even before a child can understand the words—that child may later struggle with language skills. Similarly, a child who does not get the chance to play may later have difficulty interacting with peers.

As the Carnegie Corporation's seminal publication, ''Starting Points'' so succinctly states:

> How individuals function from preschool years all the way through adolescence and even adulthood hinges, to a significant extent, on the experiences children have in their first three years.

What does this exciting research mean to us as policymakers? I think it means that what we thought of as ''early interventions'' to help children learn may not have been early enough. It means that programs for school-age children and even for preschool children miss a window of opportunity, the extraordinary potential for learning that exists in a child's brain before the age of 3.

It means we need to start even earlier, at the first day of a child's life with guaranteed parental leave, for instance, which the Chair was so instrumental in helping us pass a few years ago. Providing even those few months for parents who have to work to be with their children is a lot better than they used to have. As the Chair knows, I would like to lower the threshold from 50 employees to 25, so we can include 13 million additional people in the country who today cannot take advantage of family leave. I am still going to try to persuade him to support this. I hope we will lower the threshold so more families can take advantage, even for 12 weeks, of the opportunity to stimulate a child's early development.

In short, I think it means for us as policymakers that we need to think carefully and critically about what we are doing for children in their earliest years. I believe we in the Senate have an extraordinary opportunity to help families, to ensure that our Nation's children are able to grasp and reach the highest rungs of their potential.

I have also joined with several of my colleagues to introduce the Working Family Child Care Act of 1997. Given these scientific findings, quality child care can no longer be considered a luxury. This bill will provide $500 million to meet supply shortages, including the acute shortage of high-quality infant care. Let's talk about the families who have no choice—not the families who have the choice of working or not. I have my own feelings about that issue—but, let's talk about the families who have no choice, they have to work. Or let's talk about the parent who is raising children on her own. The best thing is a caring parent, but if for whatever reason that caring parent cannot be with that child all the time, then we have to make sure that in child-care settings there are quality caregivers so these infants, in the earliest days, get the next best thing to a mom and dad.

I am hopeful, as a result of this new information, we can develop broad-based, bipartisan support for quality child care. We have done a lot on the availability of child care, but the quality of the care has to be good as well. If a parent cannot be there with that child, then the child care provider has to know what they are doing. Hopefully, we will get support on this issue.

Our chairman, Senator JEFFORDS of Vermont, is taking a leadership role in this area, and I commend him for it. I am soon going to introduce a bill that will put us on a path to fully funding Head Start. Again, this has been a controversial matter. We have authorized full funding, but we have never come up with the money. We know Head Start works and makes a difference in the lives of children. Hopefully, we can get broad-based support. It is expensive, I know it. But, we have to come up with a means to do it.

We have to look at our priorities in light of this new information. Whether it is 5 years, 7 years, or 8 years, we need to say that at the end of that time, we will fully fund Head Start. I am willing to talk with anyone about the fastest possible way to do this.

Recently, our colleague from Utah, Senator HATCH, with Senator KENNEDY of Massachusetts, introduced legislation to insure our children and to thereby ensure that untreated injuries or illnesses do not impede a child's development in the most critical years. I commend them for their work.

Mr. President, there are a lot of good things going on that our colleagues are working on. I urge, in light of some of these studies—I mentioned a moment ago this Newsweek article which I think will be very helpful—that we try to pull together here to figure out how we can support these families, these children, recognizing the economic pressures, all the things that make it more difficult today than in earlier days to raise families the way the Presiding Officer and I may have been raised. That is not possible for many people today. So we need to try to come up with support structures that will allow families to at least approximate that world that existed for many of us—not for ala—in a time when one parent worked and another stayed home and raised the family.

I know the Presiding Officer cares about this very much. I have had the privilege of working with him on these issues. I look forward to being involved with him on this one as well. There are a lot of good things we can do to assist families. With this new information coming to us, not only is it desirous, but I think we have no other choice but to act and to see to it that these children get the best start they possibly can.

Mr. President, I appreciate my colleague's indulgence in allowing me a little more time than I otherwise would have taken.

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

The PRESIDING OFFICER (Mr. KEMPTHORNE). Without objection, it is so ordered. The Senator from West Virginia is recognized.

Mr. BYRD. I thank the Chair. Mr. President, what is the question before the Senate?

The PRESIDING OFFICER. We are currently in morning business. Senators are allowed to speak for up to 5 minutes each.

Mr. BYRD. Mr. President, I ask unanimous consent that I may be permitted to speak for not to exceed 15 minutes.

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

Mr. BYRD. It will more than likely be 10 minutes, or thereabout.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the introduction of S. 630 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

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

## THE 27TH ANNIVERSARY OF EARTH DAY

Mr. CHAFEE. Mr. President, today we celebrate the 27th anniversary of the first Earth Day. In the spirit of that celebration, it behooves us to remember how the first Earth Day came about, and what brought it about. I know the distinguished occupant of the Chair participates in Earth Day activities and is deeply interested and involved in environmental matters. Perhaps he also will be interested in a little history of what happened.

In the 1960's, a series of events occurred that shocked the Nation into an awareness of the need to protect the environment. Rachel Carson wrote her famous book, ''Silent Spring,'' in 1962. The country was appalled by her revelations of the destruction caused to our environment by widespread pesticide use—DDT and others, for example. Then, in 1969, another extraordinary event occurred—the Cuyahoga River in Cleveland caught fire. When a river catches fire, it certainly is an eye catcher. Why did it catch fire? It was so polluted with oils and other substances that it suddenly burst into flames. That is, somebody threw a match into the river and it caught fire. Extraordinary.

So in the early 1960's, a Democratic President, President Lyndon Johnson, laid the foundation for the major environmental laws that came later. He signed antipollution and open space legislation into law, including the creation of the Redwood National Park, the Wilderness Act, and the Land and Water Conservation Fund. I might say, Mr. President, it was moneys from that Land and Water Conservation Fund that enabled me, as Governor of our State of Rhode Island, to purchase land for open space, wetlands, and parks. The improvements we made continue to give pleasure to thousands of Rhode Islanders in the past and will do so for literally millions of individuals in the future. That is a wonderful law, the Land and Water Conservation Fund.

When Senator Gaylord Nelson of Wisconsin proposed the idea of Earth Day in 1970, even he didn't know how it would galvanize Americans into action, how it would catch the imagination of Americans. The first Earth Day was a phenomenal success, a reflection of America's strong conviction for cleaning up the environment. I can remember some of the activities that took place on Earth Day where I was—cleaning up the riverbeds where there were old tires and dishwashers and refrigerators and many other things thrown over the bank and down into the stream. We took time to clean our nearby streams, as countless others did. Ours was one small activity in one small section of the country, but it made a difference.

The years that immediately followed the first Earth Day were a vibrant period for environmental legislation. The key players in that legislation, Mr. President, were on the very committee on which you serve so ably, the Environment and Public Works Committee. We remember that Democrats like Jennings Randolph from West Virginia and Ed Muskie from Maine worked closely with several Republicans, including Howard Baker from Tennessee and Bob Stafford from Vermont. Indeed, their success was the result of a nonpartisan, bipartisan cooperation. Magnificent progress was made.

It is hard to think that, before 1970, none of the laws or institutions that I am going to rattle off existed; but then they passed in 1970, 1971, and 1972. Indeed, under President Richard Nixon, the Environmental Protection Agency was created. We never had an Environmental Protection Agency. The President's Council on Environmental Quality was born; the National Environmental Policy Act, or NEPA, the guiding law upon which so many of our acts depend; the Clean Air Act; the Clean Water Act; the Endangered Species Act. I wasn't here at the time, but the Endangered Species Act passed on the floor of the Senate 92 to 0. That is the way the Senate felt about environmental laws.

Then another Republican President, Ronald Reagan, had the United States take the lead internationally in environmental matters, and we signed the Montreal Protocol in 1987, to eliminate the production of chlorofluorocarbons, the gaseous culprit responsible for the destruction of the ozone layer. It was under still another Republican President, George Bush, that the 1990 Clean Air Amendments were passed. In addition, President Bush personally went to the Earth Summit at Rio de Janeiro and signed the International Treaty on Global Climate. So we have seen Republicans and Democrats in the White House exhibit strong leadership. This was a bipartisan effort.

This bipartisanship has brought about tremendous, tangible change. Let us review the bidding to see what has taken place in the past 27 years. Have these acts done a good job—the Clean Water Act, the Clean Air Act, and the Endangered Species Act? It is a remarkable story.

Before the EPA, before all of the laws now on the books, there was lead in our air and sewage in our rivers. I can remember at the time when I was Secretary of the Navy, we took a trip on the *Sequoia,* the Presidential yacht, down the Potomac River here in Washington. I invited my British counterpart, the equivalent of our Navy Secretary, to join us. It was a lovely July evening, calm and quiet, not a ripple on the water. As we started down the river, the propeller churned up the water and it was like going for a ride down the sewer. The smells were so overpowering from the polluted river water that we all had to retreat inboard to have our dinner. That is not the way it is now, though. In those days, two-thirds of the rivers, lakes, and streams of the United States were considered nonfishable and nonswimmable. Now the reverse is true. Two-thirds of the rivers and lakes and streams in America are considered fishable and swimmable. Every year that percentage rises.

What have we done on auto emissions? Well, from 1970 to 1994, the number of vehicle miles traveled in the United States increased by 111 percent, more than a doubling of VMT. Yet, in that same period, the combined emissions of the 6 principal air pollutants dropped by 24 percent. In other words, we had dramatic emissions reductions while vehicle miles traveled shot up. Lead in the air—which everybody knows has a terrible effect on the mental development of children, particularly in congested inner cities—was reduced by 98 percent—a 98-percent reduction of lead in the air.

How did that come about? Because we mandated the use of unleaded gasoline in the mid-1970s. What an achievement.

The Montreal Protocol, as I mentioned before, has been a tremendous success. Let's look at this chart. The Montreal Protocol was signed in 1985. Since then, because of the restrictions on the production of chlorofluorocarbons—it is now projected that the ozone layer will gradually recover, and return to pre-ozone-hole levels by the year 2050. What are chlorofluorocarbons? They are cooling agents found in refrigerators and air conditioners in our homes, offices and automobiles. Because of the leadership shown by President Reagan and later President Bush, we have made great progress. This red line shows what would have happened without the controls of the Montreal Protocol.

Instead, we have been able not only to stabilize chlorine loadings, but actually reduce them. That line will go down and down. All of this has tremendous effects on what comes through this protective shield, the upper atmosphere.

Now, what about the Endangered Species Act? That is something the Presiding Officer has worked so hard on. The endangered species are—perhaps—the proverbial ''canaries in the coal mine''; that is, when a canary keels over, it shows there is dangerous gas. It gives you a hint that something is wrong.

The best way to judge how successful we have been in preserving the habitat is to look at how the plant and animal species are doing. If the plant and animal life around us is in trouble, that means trouble for us in the future.

The Endangered Species Act is geared toward preserving the habitat. How do you save the animals? You preserve the habitat and thus bring them back from the brink of extinction. Since its enactment in 1973, by a vote of 92 to 0 in this Chamber—not a single Senator in 1973 voted against that law—the populations of whooping

cranes, brown pelicans, and the peregrine falcon have come back from near extinction.

The bald eagle has increased from a low of 400 nesting pairs in 1963 to just over 4,700 pairs in 1995. Think of it. In the Continental United States, the lower 48 States, as they say, there were only 400 nesting pairs of bald eagles in 1963. Thirty-two years later—in 1995—there are now 4,700 nesting pairs. Remarkable.

The grizzly bear has been saved from extinction and brought back from the endangered list to the threatened list. The California gray whale and American alligator have recovered to the point where they have been removed from the endangered list.

Of the 960 species currently listed on the endangered species list, more than 40 percent are stable and gaining ground. And for many others the rate of decline has been reduced.

The recovery of the striped bass is another success story. The striped bass is a magnificent fighting fish, one that has been valued up and down the Atlantic coast for centuries.

It is interesting to hear what the original settlers said, and what Capt. John Smith said in 1614, over 350 years ago. This is what he said about the striped bass. ''I myself, at the turning of the tide, have seen such multitudes pass out of a pond that it seemed to me that one might go over their backs dryshod.'' There were so many it seemed you could walk across on their backs.

So it was with great alarm that we learned of the precipitous decline of the striped bass in the late 1970's. And, by 1983, commercial harvest had dropped by 77 percent as compared to the previous year. By 1983, the sports harvest of striped bass had declined by 85 percent from 4 years earlier. So we inaugurated an Emergency Striped Bass Study by the Fish and Wildlife Service and the National Marine Fisheries Service. I am proud to say that this legislation came out of the Environment and Public Works Committee.

And fewer than 20 years later, through the cooperative efforts of State fish and wildlife agencies and the Federal agencies, most Atlantic striped bass stocks have recovered to healthy pre-1979 levels. This dramatic turnaround is proof that, if we act quickly to reduce the threats and preserve habitat, we can recover imperiled species.

Wetlands loss has slowed dramatically. When it comes to wetlands conservation, perhaps no program has been as successful as the North American Waterfowl Management Plan—signed 11 years ago, in 1986, by the United States and Canada, and later, Mexico. Under this plan, the North American Waterfowl Management Plan, partnerships are established bringing together Federal and local governments, and nonprofit groups such as Ducks Unlimited, and private donors, as well as landowners—to work on the conservation of wetlands, and there are Federal dollars to match private contributions.

To date, well over 4 million acres have been protected, restored, or enhanced—some of it through easement, and some of it through purchases by the United States and Canada. And 20 million additional acres are protected in Mexico.

Has it done any good? Listen to this: In 1996, there was the largest migration of waterfowl in the previous 40 years—89.5 million ducks, which is 7 million more than 2 years before, and 18 million more than the year before that migrated south for the winter; 90 million ducks, the largest migration in the past 41 years. That came about because of the North American Waterfowl Plan, which I mentioned before.

So it seems that the way that the plan operates, involving partnership between the States, the Federal Government, and private entities, it represents the wave of the future, which all of us ought to think about as we ponder how fast we can save these wetlands and wildlife habitat areas.

We are not done. We should not rest on our laurels. Some of the trickiest and most difficult environmental problems lie ahead, and we have to address these with purpose and ingenuity. We took on the formidable environmental challenges of the past and were successful. Now we look to the future. We shouldn't just rest on our laurels, as I said. We have to remember that these efforts can never succeed without strong and sincere bipartisan cooperation—Republicans and Democrats working together; Congress and the administration, likewise.

In conclusion, I just want to quote probably the greatest environmental President of them all, Teddy Roosevelt. This is what he said 86 years ago. ''Of all the questions which can come before this Nation, short of the actual preservation of its existence in a great war, there is none which compares in importance with the central task of leaving this land even a better land for our descendants than it is for us.''

Those are pretty good words for us to remember as we celebrate Earth Day in 1997—words to be considered while thinking of the future and preserving the environment for our children and grandchildren and those who come after us.

## ''HUMMON'' TALMADGE HIGHWAY BEING DEDICATED TOMORROW IN HAMPTON, GA

Mr. HELMS. Mr. President, tomorrow, down in Hampton, GA, a highway will be dedicated to one of our former colleagues, the distinguished former Senator Herman Talmadge. It would be fun to be there tomorrow and see Herman's reaction when the honor is announced at a luncheon in the ballroom of the Atlanta Motor Speedway.

Fewer than one-fourth (23) of today's Members of the Senate were here when Senator Talmadge was. Because of that, I have decided to include in the RECORD an extensive interview with former Senator Talmadge published by The Macon, GA, Telegraph. That newspaper's Randall Savage conducted the interview.

Mr. Savage asked good questions and Herman Talmadge gave great answers. His assessment of many things about America reflect the fact that Herman Talmadge still has the good judgment that he possessed while in the Senate.

Mr. President, accordingly, I ask unanimous consent that the February 11, 1997, interview, headed ''Hummon'' be printed in the RECORD.

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

[From the Macon Telegraph, Feb. 11, 1997]

''HUMMON''

(By Randall Savage)

HAMPTON.—Former U.S. Sen. Herman E. Talmadge is 83 now.

He doesn't dip, smoke or chew anymore, although he's not above nibbling on a cigar now and then. A year ago, doctors removed a cancerous tumor from his throat, and he underwent 25 radiation treatments.

''They can't find any trace of it now,'' he said.

But Talmadge no longer runs two miles every day, as he did for more than 20 years. He gave that up five years ago, opting for brisk daily walks instead. Arthritis, however, had ended even those. The condition hinders his mobility, and he walks with a cane.

''I got to be an old man at 82. I was a young man until then,'' Talmadge said.

Nevertheless, Talmadge, one of Georgia's most powerful politicians, is as politically astute today as he was when he left the Senate 17 years ago. And he's still delighted to share his views on politics and the world:

*Question.* You held political office for more than 30 years as a Democrat. What do you think of the Democratic Party?

Answer. I think well of some of them and poorly of others. I think they helped the Republican Party gain power by continuing to push their liberal policies when the country was becoming more conservative.

*Question.* Do you still consider your self a Democrat?

Answer. I guess you could classify me as an independent. I vote for the man or woman. For a number of years, Democrats—the national Democrats in particular—have become more and more liberal in their thinking and actions.

*Question.* How so?

Answer. Excessive taxes. Excessive spending. Excessive regulations, Excessive government.

*Question.* And you think the Democratic Party is involved too heavily in that?

Answer. Yes. The Republican takeover (of Congress) slowed down the Democrats. They'd been reacting to popular thinking instead of pursuing sound policies. They lean whichever way the wind is blowing.

*Questions.* What do you think of House Speaker Newt Gingrich?

Answer. I think you have to give Newt Gingrich credit with leading the Republican revolution that resulted in the Republicans taking over both houses of Congress. But I don't know what I think of him. I listen to him talk and I find myself agreeing with a lot of what he's saying. But he irritates me. When he gets through speaking, I'm irritated over what he said. I don't know why.

*Question.* The Republican takeover of Congress—what do you think of that?

Answer. Well, it remains to be seen. They slowed the expenditures of government. They made the Democrats pause and look and listen. In fact, the only reason (President) Clinton got elected the last time is because he foreclosed (GOP presidential hopeful Bob) Dole on all his issues. He took his issues away from him.

*Question*. You mean he adopted Sen. Dole's platform and turned it into his own? When we talked last week, you mentioned that you think Bill Clinton is the cleverest president since Franklin Roosevelt. Why do you say that?

Answer. He can turn it around on a dime, and nobody ever notices. I give that fellow (former presidential consultant Dick) Morris credit for that. President Clinton was talking about gays in the military and divisive things like that, and (Morris) takes over his campaign and turns it around 180 degrees. He took Dole's issues away from him, and he got elected on Dole's issues.

*Question*. What do you think of President Clinton's performance so far?

Answer. I'd give him a plus on some things, like turning away from his liberal policies and adopting basic conservative policies and getting elected.

*Question*. What are some minuses?

Answer. Shifting around and not having any strong opinions on anything.

*Questions*. What do you think of U.S. Sen. Paul Coverdell, the man who holds the seat you held so long?

Answer. I don't know Coverdell well. I've had two or three conversations with him. But I've been impressed with him. I check his voting record every week in the Sunday paper. I like the way he votes. Thus far, I think his voting record has been good. I agree with him more than 90 percent of the time. I think he's doing all right.

*Question*. What concerns you most about government in 1997?

Answer. Too much taxes. Too much regulation. Too much expenditure. Basically, the government does for people what they cannot do for themselves.

*Question*. What about society? What do you think of society in general?

Answer. It reminds me of the latter days of the Roman Empire. We have gotten away from faith and values, the things that made this country great. It's a sad commentary. Crime is rampant, and children are being born out of wedlock and looking to their government for support. There's declining morality and a lack of discipline all over the country.

*Question*. What should be done to turn things around?

Answer. We should have substitute fathers and mothers for these (parentless and single-parent) people. They could teach them values while they're young. The substitutes would be role models for them. They would have role models besides prostitutes and drug peddlers.

*Question*. How would you hook up youngsters with the substitutes?

Answer. It would take an organized effort on the part of all churches in the country, all of the governments in the country, all of the civic clubs in the country. It would be the most mammoth undertaking we've had in a long time. But it could save the country. It would take a long time. But a good start would be to save 50 children in Henry County (where Talmadge lives).

*Question*. You've had a few bouts with the news media. What do you think of the media?

Answer. They've adopted a new policy since World War II when I first started out in politics. They used to want to know why, who, where, what, when and how. Those were fundamental virtues of journalism. The journalism teachers instilled those fundamental virtues in their students. Now, they're prosecutors of anybody holding public office. A politician has to prove his innocence every day. (Media) treats everyone as if they're crooks.

*Question*. How is the world different today from what it was before you retired?

Answer. The collapse of communism has made it a different world. Freedom is beginning to be brought to all countries throughout the world, almost all of them. During my days in the Senate, we wondered what was going to prevail, communism or freedom.

*Question*. What are you most proud of?

Answer. My accomplishments as governor of the state of Georgia. I think Georgia made its greatest progress when I was governor. It became truly the Empire State of the South. It's been making progress since that time in building schools, protecting natural resources, building roads and bridges—you name it. We paved 10,000 miles of roads. We gave teachers a raise in salary of over 100 percent. We built new buildings. We built health centers and hospitals throughout the state. When I took office, the only hospitals we had in Georgia were a few in the larger cities. If a person had an accident in rural Georgia, they had to go to Macon or Savannah or Jacksonville, Fla., to get treatment. Now they're all over.

*Question*. If you were running for office today, what would your platform be?

Answer. It would be what I've always run on—economical government, service to the constituency and hard work.

*Question*. What advice would you give to anyone who'd listen?

Answer. Work hard and stay out of trouble. Save your money and make prudent investments. Take an Egyptian or Indian who comes to this country. They don't speak the English language, and they work for minimum wage. But they save half their money. In a few years, they're wealthy. They save their money and make prudent investments.

Once an avid hunter, Talmadge no longer pursues that sport because of his arthritic knees, but he spends many hours fishing in one of the five lakes near his home in Hampton. After he finished the interview, he sat down to rest in his leather recliner sitting between a portrait of himself on the rear wall and a portrait of his famous father, Gene Talmadge, over the mantel.

''Come see me in two or three months,'' Talmadge smiled and said. ''When the weather warms up, we'll go fishing.''

## THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, April 21, 1997, the Federal debt stood at $5,352,733,602,413.77. (Five trillion, three hundred fifty-two billion, seven hundred thirty-three million, six hundred two thousand, four hundred thirteen dollars and seventy-seven cents.)

Five years ago, April 21, 1992, the Federal debt stood at $3,885,690,000,000. (Three trillion, eight hundred eighty-five billion, six hundred ninety million.)

Ten years ago, April 21, 1987, the Federal debt stood at $2,271,325,000,000. (Two trillion, two hundred seventy-one billion, three hundred twenty-five million.)

Fifteen years ago, April 21, 1982, the Federal debt stood at $1,066,640,000,000. (One trillion, sixty-six billion, six hundred forty million.)

Twenty-five years ago, April 21, 1972, the Federal debt stood at $427,853,000,000 (Four hundred twenty-seven billion, eight hundred fifty-three million), which reflects a debt increase of nearly $5 trillion—$4,924,880,602,413.77 (four trillion, nine hundred twenty-four billion, eight hundred eighty million, six hundred two thousand, four hundred thirteen dollars and seventy-seven cents), during the past 25 years.

## SUPPLEMENT TO COMMITTEE ON RULES AND ADMINISTRATION RULES OF PROCEDURE

Mr. WARNER. Mr. President, on April 17, 1997, the Senate Committee on Rules and Administration adopted rules of procedure as a supplement to the Committee Rules of Procedure for the purpose of the committee's investigation of the election for U.S. Senator in the State of Louisiana in 1996.

I ask unanimous consent that the rules of procedure be printed in the RECORD.

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

COMMITTEE ON RULES AND ADMINISTRATION
COMMITTEE MOTION

(As passed by the Committee, April 17, 1997)

Whereas, the United States Constitution, Article I, Section 5 provides that the Senate is ''the Judge of the Elections, Returns, and Qualifications of its own Members * * *'';

Whereas, the United States Supreme Court has reviewed this Constitutional provision on several occasions and has held: ''[The Senate] is the judge of elections, returns and qualifications of its members. * * * It is fully empowered, and may determine such matters without the aid of the House of Representatives or the Executive or Judicial Department,'' [*Reed et al.* v. *The County Comm'rs of Delaware County, Penn.*, 277 U.S. 376, 388 (1928)]; and

Whereas, in the course of Senate debate, it has been stated: ''The Constitution vested in this body not only the power but the duty to judge, when there is a challenged election result involving the office of U.S. Senator.'' [Congressional Record Vol. 121, Part 1, p. 440].

Therefore, the Committee on Rules and Administration, having been given jurisdiction over ''contested elections'' under Rule 25 of the Standing Rules of the Senate, authorizes the Chairman, in consultation with the ranking minority member, to direct and conduct an Investigation of such scope as deemed necessary by the Chairman, into illegal or improper activities to determine the existence or absence of a body of fact that would justify the Senate in making the determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election for United States Senator in the state of Louisiana in 1996.

This Committee Motion will operate in conjunction with and concurrent to the Standing Rules of the Senate. In addition, the following Rules of Procedure are applicable, as a supplement to the Committee Rules of Procedure:

A. *Full Committee subpoenas:* The chairman, with the approval of the ranking minority member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing or deposition, provided that the chairman

may subpoena attendance or production without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this section, the subpoena may be authorized by vote of the members of the Committee. When the Committee or chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member of the Committee designated by the chairman.

B. *Quorum:* One member of the Committee shall constitute a quorum for taking sworn or unsworn testimony.

C. *Swearing Witnesses:* All witnesses at public or executive hearings who testify to matters of fact shall be sworn. Any Member of the Committee is authorized to administer an oath.

D. *Witness Counsel:* Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition, and to advise such witness while he is testifying, of his legal rights. Provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee chairman may rule that representation by counsel from the government, corporation, or association, or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during deposition by Committee staff or consultant or during testimony before the Committee by personal counsel not from the government, corporation, or association, or by personal counsel not representing other witnesses. This rule shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such a manner so as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of the hearings; nor shall this rule be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

E. *Full Committee depositions:* Depositions may be taken prior to or after a hearing as provided in this section.

(1) Notices for the taking of depositions shall be authorized and issued by the chairman, with the approval of the ranking minority member of the Committee, provided that the chairman may initiate depositions without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the ranking minority member as provided in this subsection, the deposition notice may be authorized by a vote of the members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the Committee member(s) or Committee staff member(s) or consultant(s) who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Section D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee member(s) or Committee staff or consultant(s). If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee member(s) or Committee staff or consultant(s) may proceed with the remainder of the deposition.

(4) The Committee shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the transcript shall be made available for inspection by the witness or his or her counsel under Committee supervision. The witness shall sign a copy of the transcript and may request changes to it. If the witness fails to sign a copy, the staff shall note that fact on the transcript. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the Committee. The chairman or a staff officer designated by him may stipulate with the witness to changes in the procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

(5) The Chairman and the ranking minority member, acting jointly, or the Committee may authorize Committee staff or consultants to take testimony orally, by sworn statement, or by deposition. In the case of depositions, both the Chairman and ranking minority member shall have the right to designate Committee staff or consultants to ask questions at the deposition. This section shall only be applicable subsequent to approval by the Senate of authority for the Committee to take depositions by Committee staff or consultants.

F. *Interviews and General Inquiry:* Committee staff or consultants hired by or detailed to the Committee may conduct interviews of potential witnesses and otherwise obtain information related to this Investigation. The Chairman and the ranking minority member, acting jointly, or the Committee shall determine whether information obtained during this Investigation shall be considered secret or confidential under Rule 29.5 of the Standing Rules of the Senate and not released to any person or entity other than Committee Members, staff or consultants.

G. *Federal, State, and Local Authorities:* 1. Referral: When it is determined by the chairman and ranking minority member, or by a majority of the Committee, that there is reasonable cause to believe that a violation of law may have occurred, the chairman and ranking minority member by letter, or the Committee by resolution, are authorized to report such violation to the proper Federal, State, and/or local authorities. Such letter or report may recite the basis for the determination of reasonable cause. This rule is not authority for release of documents or testimony.

2. Coordination: The Chairman is encouraged to seek the cooperation and coordination of appropriate federal, state, and local authorities, including law enforcement authorities in the conduct of this Investigation.

H. *Conflict of Rules:* To the extent there is conflict between the Rules of Procedure contained herein and the Rules of Procedure of the Committee, the Rules of Procedure contained herein apply, as it relates to the conduct of this Investigation authorized herein.

## WILD BLUE THUNDER

Mr. FORD. Mr. President, the city of Louisville and the U.S. Air Force have proven beyond a shadow of a doubt that they know how to throw a party. On Saturday, April 20, 44 tons of fireworks were loaded onto barges in the Ohio River and 225 food booths dished up everything from corn dogs to barbecue to Cajun wings. The armed services brought 130 planes, including nearly every type of aircraft owned by the Air Force, helicopters, jets, and vintage planes.

When the party began, as many as 650,000 people were given the performance of a lifetime. Thunder Over Louisville, part of the Kentucky Derby Festival, has already gained a reputation as a one-of-a-kind air show and fireworks display. But I think everyone agreed that this year will be hard to top.

Called Wild Blue Thunder in tribute to the 50th anniversary of the U.S. Air Force, it was the world's largest show of its kind in America, both for the fireworks display and for the air performances.

The fireworks were reported to be larger than the opening and closing of the Atlanta Olympics combined and of the Inaugural fireworks. The impressive show culminated in an 11,000-foot waterfall of fireworks off the Clark Memorial Bridge.

The television and radio commercials for Thunder Over Louisville use the tag line ''you haven't seen anything until you've seen everything.'' The Air Force and other armed services certainly pulled out all the stops with air performances showcasing the ''Thunderbirds USAF Aerobatic Team,'' the F–117A stealth fighter, the B–2 stealth bomber, the SR–71A strategic reconnaissance plane, the B–1B long range strategic bomber, F–14 Tomcat jet fighter, the A–10 Warthog tank killer jet fighter, the F–15 Eagle jet fighter, the T–33 Thunderbird, and Apache and Blackhawk helicopters.

The Louisville Courier Journal reported that the F–117 stealth fighter was a crowd pleaser, along with the Army's impressive helicopter assault demonstration on the two floating bridges in the middle of the Ohio River. And after the 123d's C–130H demonstration, I can assure my colleagues the Pentagon doesn't stand a chance of taking them out of Kentucky.

I want to commend the city of Louisville, the Derby Festival, the U.S. Air Force, and Kentucky's 123d for putting on such an incredible show. Not only were the performances simply spectacular, but despite the magnitude of the crowd, I found the event to be managed with few glitches.

This was truly a day for family. And from parking to crowd control, city, Air Force, and National Guard officials did everything possible to make sure Kentucky families could enjoy themselves safely and without hassles.

Mr. President, let me close by congratulating the Air Force for their 50th

anniversary. Their service to this country is immeasureable as is our gratitude to all our Air Force service men and women. A big thanks also goes to all those involved with Saturday's event. I look forward to going back next year and seeing the festival officials, the city, the armed services, and the National Guard try and top this year's sensational performance.

## FAMILY IMMIGRATION, SMALL BUSINESS, AND ENTREPRENEURSHIP IN AMERICA

Mr. ABRAHAM. Mr. President, over the past 30 years, family immigration has contributed to a virtual renaissance of small business culture in the United States, according to Prof. Jimy M. Sanders of the University of South Carolina, a witness at a recent hearing of the Senate Immigration Subcommittee. His examination of census data and field research shows that the family is an institution that embodies an important form of social capital that immigrants draw on and that the common self-interests of family members provide financial and labor resources crucial to establishing successful enterprises.

At the hearing we heard testimony from four immigrant entrepreneurs who were sponsored by family members and whose life experiences supported Professor Sanders' findings:

Ilija Letica, an immigrant born in the former Yugoslavia, started Letica Corp. as a family business, and still employs several family members. Today, the manufacturer of plastic and paper packaging products headquartered in Rochester, MI, employs 1,800 people in 10 other States as well—Delaware, Oklahoma, Iowa, Alabama, Nevada, Indiana, Pennsylvania, Oregon, Tennessee, and Georgia. His daughter Mara Letica testified that her father witnessed the effects of communism: No food, no freedom, no opportunity, and ultimately immigrated to America so he could fulfill his entrepreneurial dreams.

Adrian Gaspar, born in Portugal, employs more than 20 people in Massachusetts at his firm Adrian A. Gaspar and Co., LLP. His company provides tax services to 400 small companies and over 1,400 individuals. He is proud that his office sits in the same building where his mother sewed clothes in the hope that she could make a better future for her son.

Perhaps the most inspiring testimony came from Ovidiu Colea, founder of Colbar Art, Inc., which manufactures sculptures and art reproductions in New York. He dreamed of seeing the Statue of Liberty with his own eyes, when an armed guard captured him trying to escape to America. Communist authorities imprisoned him for 5 years in a Romanian labor camp. After 15 more years of wait, he finally made it to America, drove a cab, swept floors, and saved his money to buy a factory, which today is the country's largest producer of replicas of the Statue of Liberty.

Finally, we heard from John Tu, president of Fountain Valley, CA-based Kingston Technology, a leading manufacturer of computer memory products for personal computers. Mr. Tu, born in China, immigrated to America after being sponsored by his sister. He and fellow immigrant David Sun employ over 500 people and built the company, started as a family based business operating out of a garage, into a company they sold last year for $1 billion. Both Mr. Tu and Mr. Sun took the $1 billion in profits from the sale of the company and gave $100 million to their employees, most of them native born, resulting in bonuses ranging from $100,000 to $300,000 per employee. ''Only in America,'' Mr. Tu testified, ''could this happen.''

Gary MacDonald, a native born employee of Kingston Technology, pointedly noted in his testimony that four of the five high-growth companies that he has worked for in his career were started by immigrant entrepreneurs.

Overall, immigrants are approximately 10 to 20 percent more likely than the native born to start a new business in this country, and more than 1 in 10 legal immigrants own their own businesses. In addition, in 1995, 12 percent of the Inc. 500—a compilation of the fastest growing corporations in America—were companies started by immigrants. It is important to have a discussion about both what is right and wrong with different aspects of U.S. immigration policy. But any balanced debate on legal immigration must take into account the economic and social contributions made by the 1 in 10 legal immigrants who own small and large businesses in this country.

I ask unanimous consent that Mr. Colea's testimony be printed in the RECORD.

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

TESTIMONY OF OVIDIU COLEA, PRESIDENT, COLBAR ART INCORPORATED—BEFORE THE SUBCOMMITTEE ON IMMIGRATION, COMMITTEE ON THE JUDICIARY, U.S. SENATE—APRIL 15, 1997

Good morning Senator ABRAHAM and subcommittee members, good morning ladies and gentlemen. My name is Ovidiu Colea, I am the founder and the president of Colbar Art Inc., manufacturer of sculptures and art reproductions, located on Long Island City, in New York State. It is a great pleasure and honor for me to be invited here. With your permission, I would like to take some time to testify through my own experience about the positive side and the benefits of the legal immigration in the United States. I would like your permission to use some parts of my life story to better understand why the liberty and freedom from this country can change some lives forever and bring many benefits to this country.

I was born in Bucharest, Romania in 1939, during the beginning of World War II in Europe. That war changed for a long time the lives of people from many countries. After the war ended in 1945, when the paranoia communists came to power in many countries, many people left their home countries, but many could not. One of those people was my own father. When I grew older, I grew up with that missing spirit of liberty and freedom. I spent time together with my father night after night and year after year enjoying the only liberty. For 30 minutes each night, we got together in the house with the lights turned off and listening to our only hope, two radio stations, Voice of America and Free Europe. This was the only freedom we could afford.

When I was 18, I took my way to liberty, hoping to reach my dream. I decided to leave the country in order to come to America. In the summer of 1958, I decided to cross the border to swim over the Danube River on the night. I hid myself in the corn fields for many hours near the river, waiting for the night. When I felt the cold metal of the guard's gun pointing on my head, on that moment, my way to freedom and liberty was closed. I was arrested, then sent to a prison labor camp for the next 5 years. What was my crime? I wanted to be free, to have liberty and to reach America. Five years of starvation, physical punishment, long hours of labor in hot and cold weather, sleeping on the floor, eating the roots of the plants and digging for growing seeds in the soil and being punished for trying to learn a foreign language. Nothing of this changed my determination of trying to come to America. After two decades, I came to America with a visa. When I came to the United States, I was penniless, but this country gave me hope.

My first job in 1978 was working in a casting factory, making $3.00 an hour. In the night, which was my second job, I drove a taxi in New York City. I also had a third job, which I worked during the weekends for over 3 years. I got married and had two children. After 9 months working for a company, I was laid off. After 1 week of unemployment, I opened a partnership company, Barrett-Colea.

In 1982, my company won a contract from AT&T for an Olympic project to make 65,000 replicas for the Olympic commemorative in Los Angeles, the largest sculpture reproduction ever produced in the United States of America. The company created many jobs for this project. In 1985, my company applied for and won a license from the Statue of Liberty-Ellis Island Foundation. We gained the right to use the symbol of the Statue of Liberty on our product. The replicas of my company's product, which are made only in the United States, were presented to President Reagan, who sent us a beautiful letter of recognition of our effort on May 12, 1986.

Many jobs were created and through their hard work, the company was able to par-

ticipate on the national effort to restore the Statue of Liberty, our Nation's most precious symbol of liberty and freedom. Our replicas are used by the INS and other institutions around the United States of America. The company made a new advancement in the art field, developing new reproduction methods using acrylic. This technology is only available in the United States, which gave our country the advantage in the art field. In 1986, I applied for and obtained a patent on a new technique of embodiment for acrylic sculptures. In 1988, my new company, Colbar Art Inc., consisted of 5 employees developed new technique and reproduction methods.

In 1989, my new company, Colbar Art Inc., began a project with the Buddhist Association of America in Carmel, NY, a project to build the biggest statue of the Buddha in the United States of America, which will stand 37 feet high. This project created new jobs for the company, the largest of its type in the United States. The project took 3 years to complete. At present through my company s efforts, the jobs created over the time increased year after year. At the present time, the company employs more than 30 people, among them, many are immigrants.

At present, my company is the largest manufacturer of Statue of Liberty replicas in the United States and a large number of my employees are working to preserve the beauty of our symbol of freedom. At the same time, the company is manufacturing the best high quality limited edition reproduction of acrylic sculptures, which are made only in our company.

A new challenge faces American companies and the challenge comes from the emerging economic power with low labor costs. In order to be more competitive in this market, American companies must find people to employ on a priority basis which mean American companies must be able to employ the right person at the right time. Any delay could greatly affect the success or failure of the company. Despite the low labor costs on other countries, I chose to keep the jobs in my country, America, giving back something that she gave to me. I thank my country for the opportunity that was given to me. American companies must do everything possible to make jobs available primarily for our people first.

Mr. Chairman and subcommittee members, I thank you very much for your time and I hope my experience will be seen as a positive contribution of one immigrant who loves this country.

## 13TH ANNUAL TUFTONIA'S WEEK CELEBRATION AT TUFTS UNIVERSITY

Mr. KENNEDY. Mr. President, this week marks the 13th annual observance of Tuftonia's Week by Tufts University in Medford, MA, in which many Tufts alumni from around the world return to honor their outstanding university. This celebration has special meaning for me. My daughter, Kara, is a graduate of Tufts, and I've worked closely with many scholars at Tufts for many years on a wide variety of public policy issues. I am proud to count myself as a member of the Tufts family.

For the second year in a row, the theme of Tuftonia's Week is community service. Participants will honor the large number of Tufts graduates across the country who are volunteering in their communities and helping to improve the lives of others in their neighborhoods through the TuftServe Program. Last year, Tufts alumni contributed more than 218,000 volunteer hours.

Tufts deserves great credit for its leadership among the Nation's universities in emphasizing service learning and providing opportunities for students to combine community service with their academic curriculum. Programs like TuftServe are the types of service initiatives that will be highlighted at the President's Summit for America's Future, beginning next Sunday, April 27. The summit will reaffirm our national commitment to community service. Every American should have the opportunity to participate in projects that help others and improve their community.

I congratulate Tufts for giving their students that opportunity. I am honored to take this opportunity to commend Tufts' President, John DiBiaggio, and the many others in the Tufts community for their impressive accomplishments in enhancing education and service.

## LEGISLATION TO RESTORE ELIGIBILITY OF LEGAL IMMIGRANTS FOR SSI AND FOOD STAMPS

Mr. MOYNIHAN. Mr. President, last year, the President and Congress enacted welfare legislation which I said was welfare repeal, not welfare reform. At that time, researchers at the Urban Institute estimated 2.6 million people would fall below the poverty line because of the legislation, 1.1 million of them children. The same researchers projected that 3.5 million children would be dropped from the rolls in 2001 because of the time limits contained in the legislation.

During the debate last year, there was little attention given to the provisions concerning the eligibility of legal immigrants for benefits. These immigrants have come to America legally. They pay taxes and serve in our military. Yet the new law eliminates the eligibility of these immigrants—should misfortune strike them—for SSI and food stamps, and it severely limits their eligibility for TANF and Medicaid. Many legal immigrants affected by these restrictions are elderly. In my own State of New York, they might be frail disabled survivors of the Holocaust, or refugees from the former Soviet Union who are about to lose their only means of support. This situation has come to our attention now because it is among the first parts of the bill to be implemented.

The President has proposed restoring eligibility for SSI to those legal immigrants who become disabled after entering this country. He has also proposed permitting refugees and asylees additional time before becoming subject to the various restrictions, in light of the difficult circumstances under which they arrive on our shores. I support these proposals, although I regret that enactment of the welfare repeal law has made this new legislation necessary.

I am pleased to join with colleagues of both parties in introducing legislation to continue SSI and food stamp benefits to those legal immigrants already receiving them and to permanently exempt refugees and asylees from the eligibility restrictions. This is a good first step in addressing the immediate and pressing needs of these immigrants, and I urge our fellow Senators to join us in this effort. It represents the beginning of a bipartisan discussion on how to address this issue, and I commend the legislation to the Senate.

## MESSAGES FROM THE PRESIDENT RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 7, 1997, the Secretary of the Senate on April 18, 1997, received a message from the President of the United States submitting a withdrawal and a nomination which was referred to the Select Committee on Intelligence.

The nomination received on April 18, 1997, is shown in today's RECORD at the end of the Senate proceedings.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination which was referred to the Committee on Energy and Natural Resources.

(The nomination received today is printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 7, 1997, the Secretary of the Senate, on April 18, 1997, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

H.R. 1003. An act to clarify Federal law with respect to restricting the use of Federal funds in support of assisted suicide.

Under the authority of the order of the Senate of January 7, 1997, the enrolled bill was signed on April 21, 1997, during the adjournment of the Senate by the President pro tempore [Mr. THURMOND].

## 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–1592. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report entitled ''Agency Compliance with the Unfunded Mandates Reform Act of 1995''; to the Committee on Governmental Affairs.

EC–1593. A communication from the Acting Director of the Office of Surface Mining, Reclamation and Enforcement, Department of the Interior, transmitting, pursuant to law, a rule entitled ''Navajo Reclamation Plan'' (NA-003-FOR) received on April 9, 1997; to the Committee on Energy and Natural Resources.

EC–1594. A communication from the Acting General Counsel of the Department of Energy, transmitting, a draft of the proposed legislation entitled ''The Powerplant and Industrial Fuel Use Repeal Act''; to the Committee on Energy and Natural Resources.

EC–1595. A communication from the Chair of the Federal Energy Regulatory Commission, transmitting, pursuant to law, a rule received on April 7, 1997; to the Committee on Energy and Natural Resources.

EC–1596. A communication from the Secretary of Defense, transmitting, pursuant to law, a report on the program plan for the Russian Reactor Core Conversion Program; to the Committee on Armed Services.

EC–1597. A communication from the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence), transmitting, pursuant to law, a report relative to the Department's automated information systems; to the Committee on Armed Services.

EC–1598. A communication from the General Counsel of the Department of Defense, transmitting, a draft of proposed legislation of revisions to the appointment of Members to the National Ocean Research Leadership Council; to the Committee on Armed Services.

EC–1599. A communication from the Director of the Office of the Secretary of Defense, transmitting, pursuant to law, a rule entitled ''Pilot Program Policy'' received on April 10, 1997; to the Committee on Armed Services.

EC–1600. A communication from the Director of the Office of the Secretary of Defense, transmitting, pursuant to law, a rule entitled ''Military Recruiting'' received on April 10, 1997; to the Committee on Armed Services.

EC–1601. A communication from the Assistant Secretary of the Interior for Land and Minerals Management, transmitting, a draft of proposed legislation entitled ''The Arizona Bureau of Land Management Wild and Scenic Rivers Act of 1997''; to the Committee on Energy and Natural Resources.

EC–1602. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, a report on equitable relief for calendar year 1996; to the Committee on Veterans' Affairs.

EC–1603. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, a report on enhanced-use leasing; to the Committee on Veterans' Affairs.

EC–1604. A communication from the Director of the Office of Regulations Management, Office of the General Counsel, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Veterans' Education'' (RIN2900–AI55) received on March 26, 1997; to the Committee on Veterans' Affairs.

EC–1605. A communication from the Director of the Office of Regulations Management, Office of the General Counsel, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Upgraded Discharges'' (RIN2900–AI40) received on March 25, 1997; to the Committee on Veterans' Affairs.

EC–1606. A communication from the Director of the Office of Regulations Management, Office of the General Counsel, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Vocational Rehabilitation'' (RIN2900–AI29) received on April 7, 1997; to the Committee on Veterans' Affairs.

EC–1607. A communication from the Director of the Office of Regulations Management, Office of the General Counsel, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Reduction of Debt'' (RIN2900–AF29) received on April 1, 1997; to the Committee on Veterans' Affairs.

EC–1608. A communication from the Director of the Office of Regulations Management, Office of the General Counsel, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Medical; Nonsubstantive Miscellaneous Changes'' (RIN2900–AI37) received on April 7, 1997; to the Committee on Veterans' Affairs.

EC–1609. A communication from the Director of the Office of Regulations Management, Office of the General Counsel, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Retroactive Payments'' (RIN2900–AI57) received on April 14, 1997; to the Committee on Veterans' Affairs.

EC–1610. A communication from the Director of the Office of Regulations Management, Office of the General Counsel, Department of Veterans Affairs, transmitting, pursuant to law, a rule entitled ''Removal of Certain Limitations'' (RIN2900–AI61) received on April 14, 1997; to the Committee on Veterans' Affairs.

EC–1611. A communication from the Assistant Secretary of Labor for Pension and Welfare Benefits, transmitting, pursuant to law, two rules including a rule entitled ''Health Insurance Portability'' (RIN1210–OO54, AA55) received on April 14, 1997; to the Committee on Labor and Human Resources.

EC–1612. A communication from the Acting Administrator of the Public Health Service, Department of Health and Human Services, transmitting, pursuant to law, a rule entitled ''Health Services Research'' (RIN0919–AA00) received on March 25, 1997; to the Committee on Labor and Human Resources.

EC–1613. A communication from the Director of Regulations Policy, Management Staff, Office of Policy, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, five rules including a rule entitled ''Medical Devices'' (RIN0919–AA09, AA19, AA53, AA29); to the Committee on Labor and Human Resources.

EC–1614. A communication from the Director of the National Science Foundation, transmitting, a draft of proposed legislation entitled ''The National Science Foundation Authorization for fiscal years 1998 and 1999''; to the Committee on Labor and Human Resources.

EC–1615. A communication from the Chairman of the National Endowment for the Arts and Member of the Federal Council on the Arts and the Humanities, transmitting, pursuant to law, the report on the Arts and Artifacts Indemnity Program for fiscal year 1996; to the Committee on Labor and Human Resources.

EC–1616. A communication from the Director of the Office of Communication and Legislative Affairs, U.S. Equal Employment Opportunity Commission, transmitting, pursuant to law, a rule entitled ''Procedures for Previously Exempt State and Local Government Employee Complaints'' (RIN3046–AA45) received on April 8, 1997; to the Committee on Labor and Human Resources.

EC–1617. A communication from the Deputy Executive Director and Chief Operating Officer of the Pension Benefit Guaranty Corporation, transmitting, pursuant to law, a rule entitled ''Allocation of Assets'' received on April 9, 1997; to the Committee on Labor and Human Resources.

EC–1618. A communication from the Acting Secretary of Labor (Chairman of the Board) and the Acting Executive Director of the Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the annual report for fiscal year 1996; to the Committee on Labor and Human Resources.

## PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–50. A resolution adopted by the Senate of the Legislature of the State of Georgia; to the Committee on the Judiciary.

RESOLUTION

Whereas, the State of Georgia and other states have a constitutional provision that prohibits its legislative body from creating a budget deficit in its appropriations process; and

Whereas, the State of Georgia has various constitutional and statutory constraints relative to debt financing which require the state to maintain a very tight credit strategy; and

Whereas, the economic welfare of the United States and its citizens depends on a stable dollar and a sound economy; and

Whereas, the federal budget deficit has had a deleterious impact on the nation's financial health and has impeded severely investment productivity and growth; and

Whereas, the Georgia General Assembly has supported an amendment requiring a balanced federal budget for many years, having specifically applied to the United States Congress to call a convention for the purpose of proposing such an amendment in 1976: Now, therefore, be it

*Resolved by the Senate* That the members of this body urge the United States Senate and the United States House of Representatives to adopt the balanced budget amendment; be it further

*Resolved* That the Secretary of the Senate is authorized and directed to transmit an appropriate copy of this resolution to the Secretary of the Senate of the United States Congress, the Clerk of the House of Representatives of the United States Congress, and to each member of the Georgia congressional delegation.

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POM–51. Petitions from citizens of the United States relative to the Personal Responsibility Act of 1996; to the Committee on Finance.

## REPORTS OF COMMITTEE

The following report of committee was submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works:

Special Report entitled ''Activities of the Committee on Environment and Public Works for the One Hundred and Fourth Congress'' (Rept. No. 105–13).

## 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, Mr. MURKOWSKI, Mr. DODD, Mr. SARBANES, Mr. GRAMM, Mr. SHELBY, Mr. MACK, Mr. FAIRCLOTH, Mr. ALLARD, Mr. LOTT, Mr. DOMENICI, Mr. AKAKA, Mr. INOUYE, Mr. COATS, Mr. COCHRAN, Mr. ROBERTS, Mr. BROWNBACK, Mr. COVERDELL, Mr. SPECTER, and Mr. NICKLES):

S. 621. A bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1997, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATCH (for himself, Mr. CONRAD, Mr. COCHRAN, Mr. GREGG, Ms. MOSELEY-BRAUN, Mr. ENZI, Mr. INOUYE, Mr. BAUCUS, Mr. REID, Mr. D'AMATO, Mr. KYL, Mr. ASHCROFT, Mr. DOMENICI, Mr. HAGEL, Mr. BOND, Mr. THOMAS, Mr. MURKOWSKI, and Mr. NICKLES):

S. 622. A bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans; to the Committee on Finance.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 623. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. BUMPERS:

S. 624. A bill to establish a competitive process for the awarding of concession contracts in units of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MCCONNELL (for himself, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. GORTON, and Mr. GRAMS):

S. 625. A bill to provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form on insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KENNEDY:

S. 626. A bill to amend the Fair Labor Standards Act of 1938 to provide for legal accountability for sweatshop conditions in the garment industry, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. JEFFORDS (for himself, Mr. MURKOWSKI, Mr. CHAFEE, Mr. COCHRAN, Mr. LEAHY, and Mr. WELLSTONE):

S. 627. A bill to reauthorize the African Elephant Conservation Act; to the Committee on Environmental and Public Works.

By Mr. GRAMM (for himself and Mrs. HUTCHISON):

S. 628. A bill to designate the United States courthouse to be constructed at the corner of 7th Street and East Jackson Street in Brownsville, Texas, as the ''Reynaldo G. Garza United States Courthouse''; to the Committee on Environment and Public Works.

By Mr. BREAUX (by request):

S. 629. A bill entitled the ''OECD Shipbuilding Agreement Act''; to the Committee on Commerce, Science, and Transportation.

By Mr. BYRD:

S. 630. A bill to amend the Internal Revenue Code of 1986 to deposit in the Highway Trust Fund the receipts of the 4.3-cent increase in the fuel tax rates enacted by the Omnibus Budget Reconciliation Act of 1993; to the Committee on Finance.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. THURMOND:

S. Res. 76. A resolution proclaiming a nationwide moment of remembrance, to be observed on Memorial Day, May 26, 1997, in order to appropriately honor American patriots lost in the pursuit of peace and liberty around the world; to the Committee on the Judiciary.

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 77. A resolution to authorize representation by the Senate Legal Counsel; considered and agreed to.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. D'AMATO (for himself, Mr. MURKOWSKI, Mr. DODD, Mr. SARBANES, Mr. GRAMM, Mr. SHELBY, Mr. MACK, Mr. FAIRCLOTH, Mr. ALLARD, Mr. LOTT, Mr. DOMENICI, Mr. AKAKA, Mr. INOUYE, Mr. COATS, Mr. COCHRAN, Mr. ROBERTS, Mr. BROWNBACK, Mr. COVERDELL, Mr. SPECTER, and Mr. NICKLES):

S. 621. A bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1997, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1997

Mr. D'AMATO. Mr. President, today I introduce the Public Utility Holding Company Act of 1997. This legislation is substantively identical to S. 1317 which the Senate Banking Committee reported in the 104th Congress. The bill would repeal the Public Utility Holding Company Act of 1935, [PUHCA] and would transfer residual regulatory authority from the Securities and Exchange Commission to the Federal Energy Regulatory Commission and State public service commissions.

Mr. President, this bill is introduced with the bipartisan cosponsorship of Senators MURKOWSKI, DODD, SARBANES, GRAMM, SHELBY, MACK, FAIRCLOTH, ALLARD, LOTT, DOMENICI, AKAKA, INOUYE, COATS, COCHRAN, ROBERTS, BROWNBACK, COVERDELL, and SPECTER.

Mr. President, this legislation would eliminate duplicative, unnecessary regulation which unfairly burdens a few utility holding companies. It would allow holding companies to improve service and possibly lower the costs of consumers' utility bills. The bill would enhance existing regulatory tools and provide State and Federal regulators new authority to ensure that they can protect energy consumers from unfair rate increases.

PUHCA was originally enacted more than six decades ago to regulate public utility holding companies. At that time, this Federal statute was needed to fill the regulatory gap that enabled holding companies to conceal assets by creating and speculating in public utility companies.

Mr. President, PUHCA has achieved the congressional purpose—it broke up the mammoth holding company structures that existed more than half a century ago. PUHCA is not only outdated, it is the relic of a different era. Today there is strong regulation of the energy industry at the State and Federal level. In addition, the Federal securities laws' registration and disclosure requirements have become effective tools for the SEC to protect investors and ensure the integrity of the market for public utility holding company securities.

Originally enacted to protect consumers and investors, PUHCA has become an unnecessary impediment to efficient and flexible business operations. Currently, there are 180 public utility holding companies in the United States. Of these 180 companies, 165 are exempt from PUHCA and only 15 companies are subject to direct SEC regulation. As a result, PUHCA imposes a burdensome regulatory scheme on these 15 registered holding companies and prevents them from diversifying into new business areas. PUHCA keeps these holding companies from diversifying, limits their growth opportunities and options, and requires the companies to apply for SEC permission to engage in almost all new business activities.

PUHCA also hinders the growth of nonregistered, exempt holding companies. Once exempt companies expand their business across State lines they too become subject to PUHCA's restrictions. As a result, exempt companies refrain from expanding across State lines even when such a move would lead to cheaper and more efficiently produced energy for consumers. Similarly, PUHCA prevents non-utility holding companies from diversifying into utility business.

Mr. President, PUHCA is more than just another example of Government overregulation—it is an impediment to both the deregulation of the energy industry and to the growth and diversification of existing businesses. Since many States have begun to deregulate the energy industry and Congress plans to review energy reform issues, the time for PUHCA reform is now. This year, in my own backyard, Long Island, two utility companies will merge.

This merger is expected to reduce energy bills for Long Island energy customers who currently pay the highest rates for energy in the continental U.S. The merger will not only lead to lower rates, but it should also mean better service for customers.

While Long Island's energy customers can finally look forward to lower rates, PUHCA prevents other utility companies from expanding, merging, and offering new services to consumers. Like any other utility merger, the State, the FERC and other Federal regulators will have to approve this merger. Under PUHCA, if either of these companies was a registered holding company or the merger involved companies from neighboring States, the companies would also have to seek SEC approval of the merger in advance and at all subsequent stages of restructuring. For example, if this merger included utility companies from New Jersey or Connecticut, PUHCA's restrictions on diversification and burdensome requirements, could have prevented a merger that would benefit consumers, investors, and business.

As one of the leaders in energy deregulation, New York State provides an example of why PUHCA reform is necessary now. Without PUHCA reform, companies will choose alternative corporate structures to avoid PUHCA's restrictive requirements, preventing the efficient restructuring of the energy industry. Congress must reform PUHCA so that the energy industry will be efficient and consumers can realize the reduction in rates and improvement in services they deserve.

Mr. President, the bill I introduce today follows the SEC's Division of Investment Management's 1995 recommendation to conditionally repeal PUHCA since ''the current regulatory system imposes significant costs, in direct administrative charges and foregone economies of scale and scope, that often cannot be justified in terms of benefits to utility investors.'' The legislation has been crafted in consultation with State and Federal utility regulators, public interest groups, the Senate Energy Committee, and both registered and non-registered utility companies.

Mr. President, let me summarize the purpose of the bill. The Public Utility Company Act of 1997 would maintain the provisions of the 1935 Act essential to consumer protection. In fact, the bill enhances consumer safeguards by enabling energy regulators to oversee all holding company operations. Specifically, the bill makes it easier for FERC and State public service commissions to protect consumers from paying nonutility related costs by giving the regulators expanded authority to review the books and records of all holding company activities to determine energy rates. At the same time, the bill would preserve FERC's authority to review transactions, acquisitions, and mergers of utilities and would clarify the FERC and state commission's authority to allocate costs when setting rates. The bill also gives state commissions vital enforcement backup to ensure that they can access all the books and records necessary to make rate determinations.

Mr. President, the goal of PUHCA reform is increased competition—to make sure consumers ultimately pay lower utility rates not higher ones. While some would prefer to address PUHCA reform in the larger context of comprehensive energy deregulation, there is no reason to delay consideration of this separate bill I introduce today. Rather than package PUHCA with comprehensive reform of the federal energy laws, PUHCA reform can proceed, on a stand alone basis, as it does not affect the larger energy issues which my knowledgeable colleagues on the Energy Committee are considering.

In fact, the experts in the energy field, lead by the distinguished chairman and former ranking member of the Energy Committee, Senators MURKOWSKI and Johnston, who testified before the Banking Committee on this issue last year, believe that PUHCA reform should move independently of, and separate from, full energy deregulation. PUHCA reform is a necessary first step in creating an efficient energy industry.

Mr. President, I have been a proponent of PUHCA reform for 16 years. Congress should allow consumers access to the cheapest power and the best services by repealing this burdensome and unnecessary law. The American people deserve and expect an efficient energy industry unfettered by unnecessary regulation. The legislation I introduce today accomplishes this by removing the energy industry from the 60-year-old regulatory shackles put in place by PUHCA. I urge my colleagues to support this legislation so that we may provide consumers with a highly efficient energy market that has better consumer protections.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 621

*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 ''Public Utility Holding Company Act of 1997''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—The Congress finds that—

(1) the Public Utility Holding Company Act of 1935 was intended to facilitate the work of Federal and State regulators by placing certain constraints on the activities of holding company systems;

(2) developments since 1935, including changes in other regulation and in the electric and gas industries, have called into question the continued relevance of the model of regulation established by that Act;

(3) there is a continuing need for limited Federal and State regulation in order to ensure the rate protection of utility customers; and

(4) limited Federal regulation is necessary to supplement the work of State commissions for the continued rate protection of electric and gas utility customers.

(b) PURPOSES.—The purposes of this Act are—

(1) to eliminate unnecessary regulation, yet continue to provide for consumer protection by facilitating existing rate regulatory authority through improved Federal and State commission access to books and records of all companies in a holding company system, to the extent that such information is relevant to rates paid by utility customers, while affording companies the flexibility required to compete in the energy markets; and

(2) to address protection of electric and gas utility customers by providing for Federal and State access to books and records of all companies in a holding company system that are relevant to utility rates.

**SEC. 3. DEFINITIONS.**

For purposes of this Act—

(1) the term ''affiliate'' of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company;

(2) the term ''associate company'' of a company means any company in the same holding company system with such company;

(3) the term ''Commission'' means the Federal Energy Regulatory Commission;

(4) the term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing;

(5) the term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale;

(6) the terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935, as those sections existed on the day before the effective date of this Act;

(7) the term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power;

(8) the term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon holding companies;

(9) the term ''holding company system'' means a holding company, together with its subsidiary companies;

(10) the term ''jurisdictional rates'' means rates established by the Commission for the

transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use;

(11) the term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale;

(12) the term ''person'' means an individual or company;

(13) the term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce;

(14) the term ''public utility company'' means an electric utility company or a gas utility company;

(15) the term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies;

(16) the term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon subsidiary companies of holding companies; and

(17) the term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

**SEC. 4. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed, effective 18 months after the date of enactment of this Act.

**SEC. 5. FEDERAL ACCESS TO BOOKS AND RECORDS.**

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

**SEC. 6. STATE ACCESS TO BOOKS AND RECORDS.**

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, and subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information, a holding company or its associate company or affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission deems are relevant to costs incurred by such public utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, records, or any other information, or in any way limit the rights of any State to obtain books, records, or any other information under Federal law, contract, or otherwise.

(c) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

**SEC. 7. EXEMPTION AUTHORITY.**

(a) RULEMAKING.—Not later than 90 days after the date of enactment of this Act, the Commission shall promulgate a final rule to exempt from the requirements of section 5 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds that the books, records, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility company, the Commission shall exempt such person or transaction from the requirements of section 5.

**SEC. 8. AFFILIATE TRANSACTIONS.**

Nothing in this Act shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

**SEC. 9. APPLICABILITY.**

No provision of this Act shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of his or her official duty.

**SEC. 10. EFFECT ON OTHER REGULATIONS.**

Nothing in this Act precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

**SEC. 11. ENFORCEMENT.**

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825d–825p) to enforce the provisions of this Act.

**SEC. 12. SAVINGS PROVISIONS.**

(a) IN GENERAL.—Nothing in this Act prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the effective date of this Act, if that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this Act limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

**SEC. 13. IMPLEMENTATION.**

Not later than 18 months after the date of enactment of this Act, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this Act; and

(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this Act and the amendments made by this Act.

**SEC. 14. TRANSFER OF RESOURCES.**

All books and records that relate primarily to the functions transferred to the Commission under this Act shall be transferred from the Securities and Exchange Commission to the Commission.

**SEC. 15. EFFECTIVE DATE.**

This Act shall take effect 18 months after the date of enactment of this Act.

**SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such funds as may be necessary to carry out this Act.

**SEC. 17. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.**

Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

Mr. MURKOWSKI. Mr. President, I rise to cosponsor the Public Utility Holding Company Act of 1997. Enactment of this legislation is long overdue.

Mr. President, the Public Utility Holding Company Act was enacted in 1935 to curb serious abuses by utilities that hurt consumers. Back then it was needed, but since then much has

changed. As a result, PUHCA now does more harm than good.

This legislation will eliminate unnecessary regulation. It will also streamline and make more effective the regulation that is still needed. By doing so, it will promote competition in the electric power industry without jeopardizing consumer protections.

Over the past six decades, a comprehensive State-Federal regulatory system has been developed to protect consumers. In a nutshell, State public utility commissions regulate transactions that are intrastate in nature, and the Federal Energy Regulatory Commission regulates those that are interstate in nature. State commissions perform their regulatory activities pursuant to State law, and the FERC performs it pursuant to the Federal Power Act.

With the maturity of both State and Federal utility regulation, PUHCA is now at best superflouous, but in some instances it actually interferes with appropriate regulation. For example, the Ohio Power court case held that decisions by the Securities and Exchange Commission under PUHCA preempt FERC's regulatory authority over utilities under the Federal Power Act. This legislation solves that problem by giving the FERC clear and exclusive authority to address matters within its jurisdiction and expertise. It will also enhance the ability of State regulatory agencies to do their jobs. In short, the streamlining of the regulatory system proposed by this legislation will not diminish needed consumer protection, and in several important ways it will actually enhance it.

If the regulatory system created by PUHCA were necessary for consumer protection, then the regulatory burdens it imposes might be justified. But as everyone now acknowledges, PUHCA is not needed to protect consumers. As a result, regulatory costs caused by PUHCA are simply passed on to consumers in the form of higher rates without any offsetting consumer benefits.

Congress has long recognized that PUHCA creates problems. In 1978, the Public Utility Regulatory Policies Act provided an exemption from PUHCA for certain types of electric power generators. In 1992, the Energy Policy Act gave additional exemptions to certain other types of electric power generators. These were Band-Aid fixes to PUHCA; needed, but not a complete solution. Fundamental reform of PUHCA is needed and is justified. The time is ripe to streamline and modernize the act. It is for these reasons that I am cosponsoring Senator D'AMATO's legislation.

Mr. President, there may be some who will try to use this legislation as a vehicle to restructure the electric utility industry, including to impose retail wheeling or to federally preempt State public utility commissions. I will strenuously resist any such effort. I have received assurances that Senator D'AMATO is of like mind. This is not the place to do this. Retain wheeling and other utility competitive issues are not linked to the issues involved in PUHCA reform. Moreover, retail wheeling and other Federal Power Act matters are entirely within the jurisdiction of the Committee on Energy and Natural Resources, not the Committee on Banking, Housing and Urban Affairs, to which this legislation will be referred. Electric utility issues are very complex, and they are very significant not only to consumers but also to this Nation's competitiveness and economic well-being. These kinds of changes cannot, and will not be made without careful and complete consideration by the Committee on Energy and Natural Resources of all aspects of the issues and questions they raise. That is why the Committee on Energy and Natural Resources is now in the process of reviewing the factors that affect the competitiveness of the electric power industry.

Mr. President, it is for these reasons that I am today cosponsoring this legislation and I hope that it will soon be on the President's desk for his signature.

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By Mr. HATCH (for himself, Mr. CONRAD, Mr. COCHRAN, Mr. GREGG, Ms. MOSELEY-BRAUN, Mr. ENZI, Mr. INOUYE, Mr. BAUCUS, Mr. REID, Mr. D'AMATO, Mr. KYL, Mr. ASHCROFT, Mr. DOMENICI, Mr. HAGEL, Mr. BOND, Mr. THOMAS, Mr. MURKOWSKI, and Mr. NICKLES):

S. 622. A bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans; to the Committee on Finance.

NONDISCRIMINATION RULES FOR GOVERNMENT PENSION PLANS LEGISLATION

Mr. HATCH. Mr. President, I rise today to introduce legislation with Senators CONRAD, COCHRAN, GREGG, MOSELEY-BRAUN, ENZI, INOUYE, BAUCUS, REID, D'AMATO, KYL, ASHCROFT, DOMENICI, HAGEL, BOND, THOMAS, and MURKOWSKI that would make permanent the current moratorium on the application of the pension nondiscrimination rules to State and local government pension plans. During the last Congress, I introduced similar legislation as S. 2047. And this year, a similar provision was included in S. 14, introduced by Senator DASCHLE.

The current laws governing private pension plans contain specific rules aimed at ensuring that pension plans do not discriminate in favor of highly paid employees. For nearly 20 years, State and local government pension plans have been deemed to satisfy these complex nondiscrimination rules until Treasury can figure out how or if these rules are applicable to unique government pension plans. This bill simply puts an end to this stalled process and dispels two decades of uncertainty for administrators of State and local government retirement plans. Let me summarize the evolution of this issue and why this bill is being introduced today.

Mr. President, the Federal Government has long ago established a policy of encouraging tax-deferred retirement savings. Most retirement plans that benefit employees are employer-sponsored tax-deferred retirement plans. Over the years, Congress has required that these plans meet strict nondiscrimination standards designed to ensure that they do not provide disproportionate benefits to business owners, officers, or highly compensated individuals relative to other employees.

In response to the growing popularity of employer-sponsored tax-deferred pension plans, Congress passed the Employee Retirement Income Security Act [ERISA] in 1974 to enhance the rules governing pension plans. However, during consideration of ERISA, Congress recognized that nondiscrimination rules for private pension plans were not readily applicable to public pension plans because of the unique nature of governmental employers. Former Representative Al Ullman stated, during Ways and Means Committee consideration of ERISA, that Congress was not prepared to apply nondiscrimination rules to public plans, saying that:

> The committee exempted Government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on governmental plans.

After studying the issue, the Internal Revenue Service on August 10, 1977, issued News Release IR–1869, which stated that issues concerning discrimination under State and local government retirement plans would not be raised until further notice. Thus, an indefinite moratorium was placed on the application of the new rules to government plans.

In 1986, Congress passed the Tax Reform Act of 1986, which made further changes to pension laws and the general nondiscrimination rules. On May 18, 1989, the Department of the Treasury, in proposed regulations, lifted the 12-year public sector moratorium and required that public sector plans comply with the new rules immediately. However, further examination revealed, and Treasury and the IRS recognized, that a separate set of rules was required for State and local government plans because of their unique features.

Consequently, through final rules issued in September 1991, the Treasury reestablished the moratorium on a temporary basis until January 1, 1993, and solicited comments for consideration. In addition, State and local government pension plans were deemed to satisfy the statutory nondiscrimination requirements for years prior to 1993. Since then, the moratorium has been extended three more times, the latest of which is in effect until 1999.

Mr. President, here we are, in April 1997, 23 years since the passage of

ERISA, and State and local government pension plans are still living under the shadow of having to comply with the cumbersome, costly, and complex nondiscrimination rules. Experience over the past 20 years has shown that the existing nondiscrimination rules have limited utility in the public sector. Furthermore, the long delay in action illustrates the seriousness of the problem and the doubtful issuance of nondiscrimination regulations by the Department of the Treasury.

Mr. President, during consideration of another extension of the moratorium, a coalition of associations representative of State and local governmental plans summarized their current position in a letter to IRS Commissioner Margaret Richardson dated October 13, 1995.

In our discussions with Treasury over the past two years, there have been no abuses or even significant concerns identified that would warrant the imposition of such a cumbersome thicket of federal rules on public plans that already are the subject of State and local government regulation.

Accordingly, while we always remain open to further discussion, as our Ways and Means statement indicates, the experience of the past two years in working with Treasury to develop a sensible and workable set of nondiscrimination rules for governmental plans has convinced us that the task ultimately is a futile one—portending tremendous cost, complexity, and disruption of sovereign State operations in the absence of any identifiable problem.

Mr. President, the sensible conclusion of this 20-year exercise is to admit that the Treasury is not likely to issue regulations for State and local pension plans and Congress should make the temporary moratorium permanent.

Furthermore, there are examples to support this legislation. Relief from the pension nondiscrimination rules is not a new concept. In reality, Mr. President, State and local government pension plans face a higher level of scrutiny. State law generally requires publicly elected legislators to amend the provisions of a public plan. Electoral accountability to the voters and media scrutiny serve as protections against abusive and discriminatory benefits.

Moreover, precedent exists for Congress to grant relief from the nondiscrimination rules. In 1986, the Congress established the Thrift Savings Fund for Federal employees. As originally enacted, the fund was required to comply with the 401(k) nondiscrimination rules on employee contributions and matching contributions to the fund. However, in 1987, as part of a Continuing Appropriations Act for 1988, the Congress passed a provision that made these nondiscrimination rules inapplicable to the Federal Thrift Savings Fund. Thus, Congress has reaffirmed the need to treat governmental pension plans as unique.

Mr. President, this legislation is not sweeping, nor does it grant any new treatment to these plans. Because of the moratorium, governmental plans are currently treated as satisfying the nondiscrimination rules. Lifting the moratorium would impose on governmental pension plans the cost task of testing for discrimination when no significant abuses or concerns exist. In fact, finally imposing the nondiscrimination rules at this juncture may require benefits to be reduced for State and local government employees and force costly modifications to these retirement plans. This legislation coincides with the principle of allowing a State to enjoy the right to determine the compensation of its employees.

Mr. President, with another expiration of the moratorium looming in the future, I believe it is time to address this issue. I have no illusion that it will be resolved quickly. The complexities of these rules and the uniqueness of governmental plans have brought us to where we are today. I believe that, as Senators better understand the history of this issue, they will agree with us that the appropriate step is to end this uncertainty and make the temporary moratorium permanent.

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. 622

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. MODIFICATIONS TO NONDISCRIMINATION AND MINIMUM PARTICIPATION RULES WITH RESPECT TO GOVERNMENTAL PLANS.**

(a) GENERAL NONDISCRIMINATION AND PARTICIPATION RULES.—

(1) NONDISCRIMINATION REQUIREMENTS.—Section 401(a)(5) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by adding at the end the following:

''(G) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).''.

(2) ADDITIONAL PARTICIPATION REQUIREMENTS.—Section 401(a)(26)(H) of such Code (relating to additional participation requirements) is amended to read as follows:

''(H) EXCEPTION FOR GOVERNMENTAL PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).''.

(3) MINIMUM PARTICIPATION STANDARDS.—Section 410(c)(2) of such Code (relating to application of participation standards to certain plans) is amended to read as follows:

''(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section for purposes of section 401(a), except that in the case of a plan described in subparagraph (B), (C), or (D) of paragraph (1), this paragraph shall only apply if such plan meets the requirements of section 401(a)(3) (as in effect on September 1, 1974).''.

(b) PARTICIPATION STANDARDS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—Section 401(k)(3) of the Internal Revenue Code of 1986 (relating to application of participation and discrimination standards) is amended by adding at the end the following:

''(G)(i) The requirements of subparagraph (A)(i) and (C) shall not apply to a governmental plan (within the meaning of section 414(d)).

''(ii) The requirements of subsection (m)(2) (without regard to subsection (a)(4)) shall apply to any matching contribution of a governmental plan (as so defined).''.

(c) NONDISCRIMINATION RULES FOR SECTION 403(b) PLANS.—Section 403(b)(12) of the Internal Revenue Code of 1986 (relating to nondiscrimination requirements) is amended by adding at the end the following:

''(C) GOVERNMENTAL PLANS.—For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) shall not apply to a governmental plan (within the meaning of section 414(d)).''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section apply to taxable years beginning on or after the date of enactment of this Act.

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403 (b)(1)(D) and (b)(12), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.

Mr. CONRAD, Mr. President, I rise today as an original cosponsor of legislation to modify the application of pension nondiscrimination rules to State and local governmental pension plans. This legislation, originally introduced by Senator HATCH and myself in the 104th Congress, will provide relief to State and local governments from unnecessary and overly burdensome Federal regulations.

Pension nondiscrimination laws are to assure that workers at all levels of employment are given access to the benefits of tax-exempt pension plans. As employers, State and local governments employ a wide range of workers, from judges to firefighters to teachers. Each occupation requires that its unique circumstances be considered when determining pension benefits. Laws that were created by the Federal Government do not adequately address the needs of the diverse work force of State and local governments.

Public pension plans are negotiated by popularly elected governments and subject to public scrutiny. They do not require a high degree of Federal review. The process of enacting these plans promotes fair benefits for governmental employees. Public pension plans have been given temporary exemption from nondiscrimination laws for almost 20 years, and the result is that full-time public employees enjoy almost twice the pension coverage rate of their counterparts in the private sector. It is time to make this temporary exemption permanent.

This bill enjoys a wide range of support from State and local governments, as well as public employee representatives. I urge my colleagues to join Senator HATCH and me, along with a bipartisan group of Senators, to ease the burden of Federal regulation on State and local governments. I look forward to this bill's consideration in committee and on the Senate floor.

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By Mr. INOUYE (for himself and Mr. AKAKA):

S. 623. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the

Government of the Commonwealth of the Phillipines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans Affairs.

THE FILIPINO VETERANS EQUITY ACT OF 1997

Mr. INOUYE. Mr. President, I rise to introduce legislation which amends title 38, United States Code, to restore full veterans' benefits, by reason of service to certain organized military forces of the Philippine Commonwealth Army and the Philippine Scouts.

On July 26, 1942, President Roosevelt issued a military order that called members of the Philippine Commonwealth Army into the service of the U.S. Forces of the Far East. Under the command of Gen. Douglas MacArthur, our Filipino allies joined American soldiers in fighting some of the most fiercest battles of World War II.

From the onset of the war through February 18, 1946, Filipinos who were called into service under President Roosevelt's order were entitled to full veterans' benefits by reason of their active service in our Armed Forces. Unfortunately, on February 18, 1946, the Congress enacted the Rescission Act of 1946 (now codified as section 107, title 38, United States Code), which states that service performed by these Filipino veterans is not deemed as active service for purposes of any law of the United States conferring rights, privileges, or benefits. On May 27, 1946, the Congress extended the limitation on benefits to the new Philippine Scouts units.

Interestingly enough, section 107 denied Filipino veterans access to health care, particularly for nonservice connected disability, and denied them other benefits such as pensions and home loan guarantees. Additionally, section 107 limited the benefits received for service-connected disabilities and death compensation to 50 percent of what was received by their American counterparts.

As a result, Filipino veterans sued to obtain relief from this discriminatory treatment. The U.S. District Court for the District of Columbia, on May 12, 1989, in Quiban versus U.S. Veterans Administration, declared section 107 unconstitutional. However, the U.S. Court of Appeals for the District of Columbia reversed that ruling and the veterans did not file a petition for certiorari to the U.S. Supreme Court. Thus, the Congress is the only hope for rectifying this injustice.

For many years, Filipino veterans of World War II have sought to correct this injustice by seeking equal treatment for their valiant military service in our Armed Forces. We must not ignore the recognition they duly deserve as U.S. veterans. Accordingly, I urge my colleagues to support this measure which would restore full veterans' benefits, by reason of service, to our Filipino allies of World War II.

Mr. President, I ask unanimous consent that the text of my bill be placed in the RECORD.

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

S. 623

*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 ''Filipino Veterans Equity Act of 1997''.

**SEC. 2. CERTAIN SERVICE IN THE ORGANIZED MILITARY FORCES OF THE PHILIPPINES AND THE PHILIPPINE SCOUTS DEEMED TO BE ACTIVE SERVICE.**

(a) IN GENERAL.—Section 107 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out ''not'' after ''Army of the United States, shall''; and

(B) by striking out '', except benefits under—'' and all that follows and inserting in lieu thereof a period; and

(2) in subsection (b)—

(A) by striking out ''not'' after ''Armed Forces Voluntary Recruitment Act of 1945 shall''; and

(B) by striking out ''except—'' and all that follows and inserting in lieu thereof a period.

(b) CONFORMING AMENDMENTS.—(1) The heading of such section is amended to read as follows:

**§107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts".**

(2) The item relating to such section in the table of sections at the beginning of chapter 1 of such title is amended to read as follows: ''107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts.''.

**SEC. 3. EFFECTIVE DATE.**

(a) IN GENERAL.—The amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—No benefits shall accrue to any person for any period before the effective date of this Act by reason of the amendments made by this Act.

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By Mr. BUMPERS:

S. 624. A bill to establish a competitive process for the awarding of concession contracts in units of the National Park System, and for other purposes; to the Committee on Energy and Natural Resources.

THE NATIONAL PARK SERVICE CONCESSION POLICY REFORM ACT OF 1997

Mr. BUMPERS. Mr. President, as a part of the Earth Day celebration, I am, once again, introducing legislation to reform the concessions policies of the National Park Service. This bill is very similar to a bill I sponsored in the 103d Congress—listen to this—which passed the Senate 90 to 9 and passed the House 386 to 30, but it is not yet law. It repeals the 1965 Concessions Policy Act which has been over a 30-year-old outrage.

My legislation would establish an open competitive process for awarding concessions contracts in units of the National Park System. It will be a competitive process for the first time. These contracts are very lucrative the way they are let under the 1965 act, and the American people are getting shafted and have been for a very long time.

Instead of putting the money that we get today back into the Treasury for general purposes, under my bill, the money we get from the contracts will go to a special account for the use of the National Park Service, and Lord only knows every study shows they need it.

This will be the 18th year that I have worked to reform the concession policies of this country. The very first oversight hearing I ever held upon becoming chairman of the Parks Subcommittee in 1979 was on this very issue. One has to have a lot of patience to operate around here.

Since that time, there has been no telling how many reports, hearings, markups, floor debates there have been. Everybody agrees the existing law ought to be changed, but in 18 years, with the most diligent efforts I can put into it, it has not been changed, simply because the park concessioners have more clout with some Members of the Senate than have I. They have more clout than the American people have with the U.S. Senate.

Mr. President, let me just tell you what has been happening.

In 1995—that is the latest year for which we have complete information on these concession contracts—in 1995, the United States received just under $16 million in franchise fees on gross concession revenues of $676 million, a whopping 2.4-percent return.

These contracts are almost handed down from generation to generation. They probably put them in their will and give them to their first-born son. It is almost impossible to undo one. But the U.S. taxpayer had a 2.4 percent return on $676 million of national park concessions fees last year.

In all fairness, let me add this. Under the existing law, a concessioner can also make improvements in the parks in consultation and agreement with the National Park Service. He can make improvements, he might even build a new hotel—all kinds of things like that—and he is entitled then to take that into consideration as a part of his fee. But even when you add that in, even when you add in the amount that concessioners spend to improve the park, which, incidentally, is to their benefit because it invariably increases revenues, that increases the amount we received to $40 million on $676 million, still only a 5.9-percent return.

You can invest in a T-bill and do as well, but this is our land, our property, the reason tourists go there and spend their money, because it is a park that Congress, in its infinite wisdom, established. Any property owner in the United States should ask yourself this question: Would you lease your property out for that kind of return when it was producing that kind of revenue for the lessee? You would not even consider it.

A 5.9-percent return we are getting now is better than we have received in the past, but listen to this, just to show you how ridiculous the current policy is. You will recall that Matsushita bought MCA, which owned the Yosemite Park and Curry Co., the concessioner at Yosemite. So Matsushita, when they bought this company, inherited the concessions contract at Yosemite, which produces the most concessions revenue of any park in the United States.

This will show what happens when you have competition. The people in this place, incidentally, are supposed to believe in capitalism. They believe in competition. They believe if you leave it to the marketplace, everything will work out just hunky-dory, except, it seems, for mining and concessions.

So, here was a contract that Matsushita gave up, and whoever got the new contract was going to have to pay off a $62 million note.

What happened in this contract, Matsushita gave up the contract, the National Park Foundation took it for 1 day just for transition purposes, and then Delaware North bid and was awarded the new contract, the first time, I believe, in the history of the National Park Service, since the old law, that a contract had been let competitively.

Would you like to know what happened? The year before this contract was let, the taxpayers got a return from the Yosemite concessions operations of three-quarters of 1 percent. And the first year—the first year—Delaware North had it under the new, actually competitively let contract; on over $80 million of gross revenues, the taxpayers received about a 16-percent return.

Why, Mr. President, do we continue to beat this dog about how important it is to rebuild these facilities in the parks and give a concessioner credit for it and all that?

My bill eliminates the anticompetitive measures of the 1965 act, but it also recognizes that all concessions are not the same.

People come to me and say, ''How about the small operators? They're struggling to make ends meet.'' Under my bill small family operations grossing less than $500,000 a year would retain a preference to renew their contracts—so would outfitters and guide operators. Even though they are not a major share of the revenue, we probably exempt 80 to 90 percent of the concession operations because most of them are admittedly rather small. But my bill ensures that there will be open competition for the large contracts which generate over 90 percent of the total concessions revenue.

As I have already pointed out, the revenues that we get under this bill will go straight into a special account to be used by the National Park Service, similar to the entrance fee legislation just enacted last Congress.

Mr. President, one of the major changes that is made in this bill is the elimination of what is known as possessory interest. And here is the way it has been working. A concessioner goes to the National Park Service—this is just a hypothetical case—and says, ''We want to build a hotel for $10 million.'' They work out the deal and the Park Service approves it.

What happens at that point is, they start depreciating that hotel. Any businessman does that, of course. So the concessioner starts depreciating this $10 million hotel over a 30- or 40-year period, whatever the IRS requires—let us assume it is a 40-year depreciation—and at the end of 20 years he has depreciated $5 million and has $5 million left to recover.

Under existing law, he is entitled to receive whatever he can get for that hotel. If he surrenders the contract, or is kicked out, or for any other reason, loses his contract, he can receive literally the fair market value of the hotel, which may very well be $15 million. He only paid $10 million, he has a tax deduction of $5 million, and he can turn right around and sell it for $15 million and make that an obligation of the next concessioner.

How much nonsense can you put in one law? You think about that. Now, you talk about a bird's nest on the ground, that is possessory interest.

Mr. President, there is one other provision in the old law that is equally as egregious. And that is the preferential right an incumbent concessioner gets to renew his contract. Another hypothetical case—you have a 15-year contract, we will say, in Yellowstone National Park. At the end of the 15 years, the Park Service will put out a notice to anybody who might be interested to let them know if they would like to bid on the concessions operation at Yellowstone.

So let us assume that I would kind of like to have the Yellowstone contract, so I go to the Park Service and say, ''I would like to bid on this.'' And the Park Service says, ''That's just jakey. You go ahead and bid. Tell us what you would give us for it.'' But let me tell you something, whatever you bid, the guy who has the contract now is entitled meet your bid, and if so, he gets it.

You tell me, why would I spend a half-million dollars or whatever it takes preparing a bid on something as significant as the concessions in Yelowstone National Park, knowing that the person who has that contract now need only meet my bid?

He may have paid a 2-percent return to the Federal Government last year. I may be willing to pay 10 percent. And the incumbent concessioner knows what the contract is worth. So he comes in and says, ''Well, I'll give you 10 percent, too.'' So I ask you, if you are a businessman, who in his right mind is going to go out there and spend a lot of money preparing a bid, knowing that the person who has the contract right now only need match your bid?

I hear a lot of talk on the floor of the Senate about good old capitalism and good old competition and how it solves all problems. This is the most egregious policy I can imagine and yet it has been going on for years and years.

But if we pass this bill it will not go on any more.

Mr. President, we have made some progress through the efforts of the administration. However, they have gone about as far as they can go just doing things by regulation. They cannot do very much more. But I give a lot of credit to Bruce Babbitt and President Clinton for at least trying to bring some equity into this without changing the law.

But you know, we have a lot of Senators here who have good friends who had the concession contract on some park in their State for 40 years, and they just cannot see fit to change the law.

You know, the other night I was watching some show on NBC about mining and how egregious our mining policies are. I have worked on that for about 8 years. And I think this year may finally be the year because it is getting to be a kind of a political hot potato for people who are not from mining States to continue to allow that kind of ripoff, rape, and pillage of the taxpayers. But I can tell you it is not a bit worse than this concessions policy we have had for all these years.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 624

*Be it enacted in the Senate and the House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''National Park Service Concession Policy Reform Act of 1997''.

**SEC. 2. FINDINGS AND POLICY.**

(a) FINDINGS.—In furtherance of the Act of August 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–4), which directs the Secretary of the Interior to administer areas of the National Park System in accordance with the fundamental purpose of preserving their scenery, wildlife, natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress finds that the preservation and conservation of park resources and values requires that such public accommodations, facilities, and services as the Secretary determines are necessary and appropriate in accordance with this Act—

(1) should be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair these values; and

(2) should be limited to locations and designs consistent to the highest practicable degree with the preservation and conservation of park resources and values.

(b) POLICY.—It is the policy of the Congress that—

(1) development on Federal lands within a park shall be limited to those facilities and services that the Secretary determines are necessary and appropriate for public use and enjoyment of the park in which such facilities and services are located;

(2) development of such facilities and services within a park should be consistent to

the highest practicable degree with the preservation and conservation of the park's resources and values;

(3) such facilities and services should be provided by private persons, corporations, or other entities, except when no qualified private interest is willing to provide such facilities and services;

(4) if the Secretary determines that development should be provided within a park, such development shall be designed, located, and operated in a manner that is consistent with the purposes for which such park was established;

(5) the right to provide such services and to develop or utilize such facilities should be awarded to the person, corporation, or entity submitting the best proposal through a competitive selection process; and

(6) such facilities or services should be provided to the public at reasonable rates.

**SEC. 3. DEFINITIONS.**

As used in this Act, the term—

(1) ''concessioner'' means a person, corporation, or other entity to whom a concession contract has been awarded;

(2) ''concession contract'' means a contract or permit (but not a commercial use authorization issued pursuant to section 6) to provide facilities or services, or both, at a park;

(3) ''facilities'' means improvements to real property within parks used to provide accommodations, facilities, or services to park visitors;

(4) ''park'' means a unit of the National Park System;

(5) ''proposal'' means the complete proposal for a concession contract offered by a potential or existing concessioner in response to the minimum requirements for the contract established by the Secretary; and

(6) ''Secretary'' means the Secretary of the Interior.

**SEC. 4. REPEAL OF CONCESSION POLICY ACT OF 1965.**

(a) REPEAL.—The Act of October 9, 1965, Public Law 89–249 (79 Stat. 969, 16 U.S.C. 20–20g), entitled ''An Act relating to the establishment of concession policies administered in the areas administered by the National Park Service and for other purposes'', is hereby repealed. The repeal of such Act shall not affect the validity of any contract entered into under such Act, but the provisions of this Act shall apply to any such contract except to the extent such provisions are inconsistent with the express terms and conditions of the contract.

(b) CONFORMING AMENDMENT.—The fourth sentence of section 3 of the Act of August 25, 1916 (16 U.S.C. 3; 39 Stat. 535) is amended by striking all through ''no natural'' and inserting in lieu thereof, ''No natural''.

**SEC. 5. CONCESSION POLICY.**

Subject to the findings and policy stated in section 2, and upon a determination by the Secretary that facilities or services are necessary and appropriate for the accommodation of visitors at a park, the Secretary shall, consistent with the provisions of this Act, laws relating generally to the administration and management of units of the National Park System, and the park's general management plan, concession plan, and other applicable plans, authorize private persons, corporations, or other entities to provide and operate such facilities or services as the Secretary deems necessary and appropriate.

**SEC. 6. COMMERCIAL USE AUTHORIZATIONS**

(a) IN GENERAL.—To the extent specified in this section, the Secretary, upon request, may authorize a private person, corporation, or other entity to provide services to park visitors through a commercial use authorization.

(b) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—(1) The authority of this section may be used only to authorize provision of services that the Secretary determines will have minimal impact on park resources and values and which are consistent with the purposes for which the park was established and with all applicable management plans for such park.

(2) The Secretary—

(A) shall require payment of a reasonable fee for issuance of an authorization under this section, such fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administration costs;

(B) shall require that the provision of services under such an authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values;

(C) shall take appropriate steps to limit the liability of the United States arising from the provision of services under such an authorization; and

(D) shall have no authority under this section to issue more authorizations than are consistent with the preservation and proper management of park resources and values, and shall establish such other conditions for issuance of such an authorization as the Secretary determines appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and proper management of the resources and values of the park.

(c) LIMITATIONS.—Any authorization issued under this section shall be limited to—

(1) commercial operations with annual gross revenues of not more than $25,000 resulting from services originating and provided solely within a park pursuant to such authorization; or

(2) the incidental use of park resources by commercial operations which provide services originating outside of the park's boundaries: *Provided*, That such authorization shall not provide for the construction of any structure, fixture, or improvement on Federal lands within the park.

(d) DURATION.—The term of any authorization issued under this section shall not exceed two years.

(e) OTHER CONTRACTS.—A person, corporation, or other entity seeking or obtaining an authorization pursuant to this section shall not be precluded from also submitting proposals for concession contracts.

**SEC. 7. COMPETITIVE SELECTION PROCESS.**

(a) IN GENERAL.—(1) Except as provided in subsection (b), and consistent with the provisions of subsection (g), any concession contract entered into pursuant to this Act shall be awarded to the person, corporation, or other entity submitting the best proposal as determined by the Secretary, through a competitive selection process, as provided in this section.

(2)(A) As soon as practicable after the date of enactment of this Act, the Secretary shall promulgate appropriate regulations establishing the competitive selection process.

(B) The regulations shall include provisions for establishing a procedure for the resolution of disputes between the Secretary and a concessioner in those instances where the Secretary has been unable to meet conditions or requirements or provide such services, if any, as set forth in a prospectus pursuant to sections 7(c)(2) (D) and (E).

(b) TEMPORARY CONTRACT.—Notwithstanding the provisions of subsection (a), the Secretary may award a temporary concession contract in order to avoid interruption of services to the public at a park, except that prior to making such a determination, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid such an interruption.

(c) PROSPECTUS.—(1)(A) Prior to soliciting proposals for a concession contract at a park, the Secretary shall prepare a prospectus soliciting proposals, and shall publish a notice of its availability at least once in local or national newspapers or trade publications, as appropriate, and shall make such prospectus available upon request to all interested parties.

(B) A prospectus shall assign a weight to each factor identified therein related to the importance of such factor in the selection process. Points shall be awarded for each such factor, based on the relative strength of the proposal concerning that factor.

(2) The prospectus shall include, but need not be limited to, the following information—

(A) the minimum requirements for such contract, as set forth in subsection (d);

(B) the terms and conditions of the existing concession contract awarded for such park, if any, including all fees and other forms of compensation provided to the United States by the concessioner;

(C) other authorized facilities or services which may be provided in a proposal;

(D) facilities and services to be provided by the Secretary to the concessioner, if any, including but not limited to, public access, utilities, and buildings;

(E) minimum public services to be offered within a park by the Secretary, including but not limited to, interpretive programs, campsites, and visitor centers; and

(F) such other information related to the proposed concession operation as is provided to the Secretary pursuant to a concession contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

(d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No proposal shall be considered which fails to meet the minimum requirements as determined by the Secretary. Such minimum requirements shall include, but need not be limited to—

(A) the minimum acceptable franchise fee;

(B) any facilities, services, or capital investment required to be provided by the concessioner; and

(C) measures necessary to ensure the protection and preservation of park resources.

(2) The Secretary shall reject any proposal, notwithstanding the franchise fee offered, if the Secretary determines that the person, corporation, or entity is not qualified, is likely to provide unsatisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

(3) If all proposals submitted to the Secretary either fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(e) SELECTION OF BEST PROPOSAL.—(1) In selecting the best proposal, the Secretary shall consider the following principal factors:

(A) the responsiveness of the proposal to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities and services to the public at reasonable rates;

(B) the experience and related background of the person, corporation, or entity submitting the proposal, including but not limited to, the past performance and expertise of such person, corporation, or entity in providing the same or similar facilities or services;

(C) the financial capability of the person, corporation, or entity submitting the proposal; and

(D) the proposed franchise fee: *Provided*, That consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

(2) The Secretary may also consider such secondary factors as the Secretary deems appropriate.

(3) In developing regulations to implement this Act, the Secretary shall consider the extent to which plans for employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in the operation of concession contracts should be identified as a factor in the selection of a best proposal under this section.

(f) CONGRESSIONAL NOTIFICATION.—(1) The Secretary shall submit any proposed concession contract with anticipated annual gross receipts in excess of $5,000,000 or a duration of ten or more years to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

(2) The Secretary shall not award any such proposed contract until at least 60 days subsequent to the notification of both Committees.

(g) NO PREFERENTIAL RIGHT OF RENEWAL.—(1) Except as provided in paragraph (2), the Secretary shall not grant a preferential right to a concessioner to renew a concession contract entered into pursuant to this Act.

(2) The Secretary shall grant a preferential right of renewal with respect to a concession contract covered by subsections (h) and (i), subject to the requirements of the appropriate subsection.

(A) As used in this subsection, and subsections (h) and (i), the term ''preferential right of renewal'' means that the Secretary shall allow a concessioner satisfying the requirements of this subsection (and subsections (h) or (i), as appropriate) the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best proposal.

(B) A concessioner who exercises a preferential right of renewal in accordance with the requirements of this paragraph shall be entitled to award of the new concession contract with respect to which such right is exercised.

(h) OUTFITTING AND GUIDE CONTRACTS.—(1) The provisions of paragraph (g)(2) shall apply only—

(A) to a concession contract—

(i) which solely authorizes a concessioner to provide outfitting, guide, river running, or other substantially similar services within a park; and

(ii) which does not grant such concessioner any interest in any structure, fixture, or improvement pursuant to section 12; and

(B) where the Secretary determines that the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof); and

(C) where the Secretary determines that the concessioner has submitted a responsive proposal for a new contract which satisfies the minimum requirements established by the Secretary pursuant to section 7.

(2) With respect to a concession contract (or extension thereof) covered by this subsection which is in effect on the date of enactment of this Act, the provisions of this paragraph shall apply if the holder of such contract, under the laws and policies in effect on the day before the date of enactment of this Act, would have been entitled to a preferential right to renew such contract upon its expiration.

(i) CONTRACTS WITH ANNUAL GROSS RECEIPTS UNDER $500,000.—(1) The provisions of paragraph (g)(2) shall also apply to a concession contract—

(A) which the Secretary estimates will result in annual gross receipts of less than $500,000;

(B) where the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof); and

(C) that the concessioner has submitted a responsive proposal for a new concession contract which satisfies the minimum requirements established by the Secretary pursuant to section 7.

(2) The provisions of this subsection shall not apply to a concession contract which solely authorizes a concessioner to provide outfitting, guide, river running, or other substantially similar services within a park pursuant to subsection (h).

(j) NO PREFERENTIAL RIGHT TO ADDITIONAL SERVICES.—The Secretary shall not grant a preferential right to a concessioner to provide new or additional services at a park.

**SEC. 8. FRANCHISE FEES.**

(a) IN GENERAL.—Franchise fees shall not be less than the minimum fee established by the Secretary of each contract. The minimum fee shall be determined in a manner that will provide the concessioner with a reasonable opportunity to realize a profit on the operation as a whole, commensurate with the capital invested and the obligations assumed under the contract.

(b) MULTIPLE CONTRACTS WITHIN A PARK.—If multiple concession contracts are awarded to authorize concessioners to provide the same or similar outfitting, guide, river running, or other similar services at the same approximate location or resource within a specific park, the Secretary shall establish an identical franchise fee for all such contracts, subject to periodic review and revision by the Secretary. Such fee shall reflect fair market value.

(c) ADJUSTMENT OF FRANCHISE FEES.—The amount of any franchise fee for the term of the concession contract shall be specified in the concession contract and may only be modified to reflect substantial changes from the conditions specified or anticipated in the contract.

**SEC. 9. USE OF FRANCHISE FEES.**

(a) DEPOSITS TO TREASURY.—All receipts collected pursuant to this Act shall be covered into a special account established in the Treasury of the United States. Except as provided in subsection (b), amounts covered into such account in a fiscal year shall be available for expenditure, subject to appropriation, solely as follows:

(1) Fifty percent shall be allocated among the units of the National Park System in the same proportion as franchise fees collected from a specific unit bears to the total amount covered into the account for each fiscal year, to be used for resource management and protection, maintenance activities, interpretation, and research.

(2) Fifty percent shall be allocated among the units of the National Park System on the basis of need, in a manner to be determined by the Secretary, to be used for resource management and protection, maintenance activities, interpretation, and research.

(b) SPECIAL ACCOUNT.—(1) Beginning in fiscal year 1998, all receipts collected in the previous year in excess of the following amounts shall be made available from the special account to the Secretary without further appropriation, to be allocated among the units of the National Park System on the basis of need, in a manner to be determined by the Secretary, to be used for resource management and protection, maintenance activities, interpretation, and research:

(1) $17,000,000 for fiscal year 1998.
(2) $18,000,000 for fiscal year 1999.
(3) $18,000,000 for fiscal year 2000.
(4) $18,000,000 for fiscal year 2001.
(5) $18,000,000 for fiscal year 2002.

(c) EXISTING CONCESSIONER IMPROVEMENT FUNDS.—Nothing in this section shall affect or restrict the use of funds maintained by a concessioner in an existing concessioner improvement account pursuant to a concession contract in effect as of the date of enactment of this Act. No new, renewed, or extended contracts entered into after the date of enactment of this Act shall provide for or authorize the use of such concessioner improvement accounts.

(d) INSPECTOR GENERAL AUDITS.—Beginning in fiscal year 1998, the Inspector General of the Department of the Interior shall conduct a biennial audit of the concession fees generated pursuant to this Act. The Inspector General shall make a determination as to whether concession fees are being collected and expended in accordance with this Act and shall submit copies of each audit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives.

**SEC. 10. DURATION OF CONTRACT.**

(a) MAXIMUM TERM.—A concession contract entered into pursuant to this Act shall be awarded for a term not to exceed ten years: *Provided, however,* That the Secretary may award a contract for a term of up to twenty years if the Secretary determines that the contract terms and conditions necessitate a longer term.

(b) TEMPORARY CONTRACT.—A temporary concession contract awarded on a non-competitive basis pursuant to section 7(b) shall be for a term not to exceed two years.

**SEC. 11. TRANSFER OF CONTRACT.**

(a) IN GENERAL.—No concession contract may be transferred, assigned, sold, or otherwise conveyed by a concessioner without prior written notification to, and approval of the Secretary.

(b) APPROVAL OF TRANSFER.—The Secretary shall not unreasonably withhold approval of a transfer, assignment, sale, or conveyance of a concession contract, but shall not approve the transfer, assignment, sale, or conveyance of a concession contract to any individual, corporation or other entity if the Secretary determines that—

(1) such individual, corporation or entity is, or is likely to be, unable to completely satisfy all of the requirements, terms, and conditions of the contract;

(2) such transfer, assignment, sale or conveyance is not consistent with the objectives of protecting and preserving park resources, and of providing necessary and appropriate facilities or services to the public at reasonable rates;

(3) such transfer, assignment, sale, or conveyance relates to a concession contract which does not provide to the United States consideration commensurate with the probable value of the privileges granted by the contract; or

(4) the terms of such transfer, assignment, sale, or conveyance directly or indirectly attribute a significant value to intangible assets or otherwise may so reduce the opportunity for a reasonable profit over the remaining term of the contract that the United States may be required to make substantial additional expenditures in order to avoid interruption of services to park visitors.

**SEC. 12. PROTECTION OF CONCESSIONER INVESTMENT.**

(a) CURRENT CONTRACT.—(1) A concessioner who before the date of the enactment of this Act has acquired or constructed, or is required under an existing concession contract

to commence acquisition or construction of any structure, fixture, or improvement upon land owned by the United States within a park, pursuant to such contract, shall have a possessory interest therein, to the extent provided by such contract.

(2) Unless otherwise provided in such contract, said possessory interest shall not be extinguished by the expiration or termination of the contract and may not be taken for public use without just compensation. Such possessory interest may be assigned, transferred, encumbered, or relinquished.

(3) Upon the termination of a concession contract in effect before the date of enactment of this title, the Secretary shall determine the value of any outstanding possessory interest applicable to the contract, such value to be determined for all purposes on the basis of applicable laws and contracts in effect on the day before the date of enactment of this Act.

(4) Nothing in this subsection shall be construed to grant a possessory interest to a concessioner whose contract in effect on the date of enactment of this Act does not include recognition of a possessory interest.

(b) NEW CONTRACTS.—(1)(A) With respect to a concession contract entered into on or after the date of enactment of this Act, the value of any outstanding possessory interest associated with such contract shall be set at the value determined by the Secretary pursuant to subsection (a)(3).

(B) As a condition of entering into a concession contract, the value of any outstanding possesory interest shall be reduced on an annual basis, in equal portions, over the same number of years as the time period associated with the straight line depreciation of the structure, fixture, or improvement associated with such possessory interest, as provided by applicable Federal income tax laws and regulations in effect on the day before the date of enactment of this Act.

(C) In the event that the contract expires or is terminated prior to the elimination of any outstanding possessory interest, the concessioner shall be entitled to receive from the United States or the successor concessioner payment equal to the remaining value of the possessory interest.

(D) A successor concessioner may not revalue any outstanding possessory interest, nor the period of time over which such interest is reduced.

(E) Title to any structure, fixture, or improvement associated with any outstanding possessory interest shall be vested in the United States.

(2)(A) If the Secretary determines during the competitive selection process that all proposals submitted either fail to meet the minimum requirements or are rejected (as provided in section 7), the Secretary may, solely with respect to any outstanding possessory interest associated with the contract and established pursuant to a concession contract entered into prior to the date of enactment of this Act, suspend the reduction provisions of subsection (b)(1)(B) for the duration of the contract, and re-initiate the competitive selection process as provided in section 7.

(B) The Secretary may suspend such reduction provisions only if the Secretary determines that the establishment of other new minimum contract requirements is not likely to result in the submission of satisfactory proposals, and that the suspension of the reduction provisions is likely to result in the submission of satisfactory proposals: *Provided, however,* That nothing in this paragraph shall be construed to require the Secretary to establish a minimum franchise fee at a level below the franchise fee in effect for such contract on the day before the expiration date of the previous contract.

(c) NEW STRUCTURES.—(1) On or after the date of enactment of this Act, a concessioner who constructs or acquires a new, additional, or replacement structure, fixture, or improvement upon land owned by the United States within a park, pursuant to a concession contract, shall have an interest in such structure, fixture, or improvement equivalent to the actual original cost of acquiring or constructing such structure, fixture, or improvement, less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles: *Provided,* That in no event shall the estimated useful life of such asset exceed the depreciation period used for such asset for Federal income tax purposes.

(2) In the event that the contract expires or is terminated prior to the recovery of such costs, the concessioner shall be entitled to receive from the United States or the successor concessioner payment equal to the value of the concessioner's interest in such structure, fixture, or improvement. A successor concessioner may not revalue the interest in such structure, fixture, or improvement, the method of depreciation, or the estimated useful life of the asset.

(3) Title to any such structure, fixture, or improvement shall be vested in the United States.

(d) INSURANCE, MAINTENANCE AND REPAIR.—Nothing in this section shall affect the obligation of a concessioner to insure, maintain, and repair any structure, fixture, or improvement assigned to such concessioner and to insure that such structure, fixture, or improvement fully complies with applicable safety and health laws and regulations.

**SEC. 13. RATES AND CHARGES TO PUBLIC.**

The reasonableness of a concessioner's rates and charges to the public shall, unless otherwise provided in the bid specifications and contract, be judged primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration for length of season, seasonal variance, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Secretary.

**SEC. 14. CONCESSIONER PERFORMANCE EVALUATION.**

(a) REGULATIONS.—as soon as practicable after the date of enactment of this Act, the Secretary shall publish, after an appropriate period for public comment, regulations establishing standards and criteria for evaluating the performance of concessions operating within parks.

(b) PERIODIC EVALUATION.—(1) The Secretary shall periodically conduct an evaluation of each concessioner operating under a concession contract pursuant to this Act, as appropriate, to determine whether such concessioner has performed satisfactorily. In evaluating a concessioner's performance, the Secretary shall seek and consider applicable reports and comments from appropriate Federal, State, and local regulatory agencies, and shall seek and consider the applicable views of park visitors and concession customers. If the Secretary's performance evaluation results in an unsatisfactory rating of the concessioner's overall operation, the Secretary shall provide the concessioner with a list of the minimum requirements necessary for the operation to be rated satisfactory, and shall so notify the concessioner in writing.

(2) The Secretary may terminate a concession contract if the concessioner fails to meet the minimum operational requirements identified by the Secretary within the time limitations established by the Secretary at the time notice of the unsatisfactory rating is provided to the concessioner.

(3) If the Secretary terminates a concession contract pursuant to this section, the Secretary shall solicit proposals for a new contract consistent with the provisions of this Act.

**SEC. 15. RECORDKEEPING REQUIREMENTS.**

(a) IN GENERAL.—Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessioner's contract have been, and are being faithfully performed, and the Secretary or any of the Secretary's duly authorized representatives shall, for the purpose of audit and examination, have access to such records and to other books, documents and papers of the concessioner pertinent to the contract and all the terms and conditions thereof as the Secretary deems necessary.

(b) GENERAL ACCOUNTING OFFICE REVIEW.—The Comptroller General of the United States or any of his or her duly authorized representatives shall, until the expiration of five calendar years after the close of the business year for each concessioner, have access to and the right to examine any pertinent books, documents, papers, and records of the concessioner related to the contracts or contracts involved.

**SEC. 16. EXEMPTION FROM CERTAIN LEASE REQUIREMENTS.**

The provisions of section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leasing of buildings and properties of the United States, shall not apply to contracts awarded by the Secretary pursuant to this Act.

**SEC. 17. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

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By Mr. MCCONNELL (for himself, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. GORTON and Mr. GRAMS):

S. 625. A bill to provide for competition between forms of motor vehicle insurance, to permit an owner of a motor vehicle to choose the most appropriate form on insurance for that person, to guarantee affordable premiums, to provide for more adequate and timely compensation for accident victims, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE AUTO CHOICE REFORM ACT OF 1997

Mr. MCCONNELL. Mr. President, I am happy today to join with my esteemed colleagues, Senator MOYNIHAN and Senator LIEBERMAN, to announce the introduction of the Auto Choice Reform Act. As you know, we introduced this bill in the last Congress, along with Senator Dole. We are proud to announce that Senator SLADE GORTON and Senator ROD GRAMS have also joined us as original cosponsors.

You will hear lots of discussion today, and in the coming months, about various aspects of automobile insurance and tort liability. But, everything you will hear about Auto Choice can be summed up in two words: choice and savings.

Consumers want, need, and deserve both.

Very simply, the Auto Choice Reform Act offers consumers the choice of opting out of the pain and suffering litigation lottery. The consumers who make this choice will achieve a substantial

savings on automobile insurance premiums.

Based on an analysis by the Rand Institute for Civil Justice, the Joint Economic Committee estimates that, under Auto Choice, consumers could save a total of $45 billion nationwide in 1997—at no cost to the Government. And, over 5 years, Auto Choice could make available a total of $246 billion in savings. Now, that's better than any tax cut that either party has proposed.

What does a $45 billion annual savings mean to the average driver? Well, that savings is colorfully and clearly illustrated behind me with this check: ''Pay to the Order of the American Driver—$243.'' And this check is not a one-time payment. Motorists could achieve this type of savings every year.

However, before you can truly comprehend the benefits of Auto Choice, you must understand the terrible costs of the current tort liability system.

The Nation's auto insurance system desperately needs an overhaul. And nobody knows this better than the American motorist—who is now paying on average $757 for automobile insurance. Between 1987 and 1994, average premiums rose 44 percent—nearly 1½ times the rate of inflation.

Why are consumers forced to pay so much?

Because the auto insurance system is clogged and bloated by fraud, wasteful litigation, and abuse.

First, let's talk about fraud. In 1995, the F.B.I. announced a wave of indictments stemming from Operation Sudden Impact, the most wide-ranging investigation of criminal fraud schemes involving staged car accidents and massive fraud in the health care system. The F.B.I. uncovered criminal enterprises staging bus and car accidents in order to bring lawsuits and collect money from innocent people, businesses and governments. F.B.I. Director Louis Freeh estimates that every American household is burdened by an additional $200 in unnecessary insurance premiums to cover this enormous amount of fraud.

In addition to the pervasive criminal fraud that exists, the incentives of our litigation system encourage injured parties to make excessive medical claims to drive up their damage claims in lawsuits. The Rand Institute for Civil Justice, in a study released in 1995, concluded that 35 to 42 percent of claimed medical costs in car accident cases are excessive and unnecessary. Let me repeat that in simple English: well over one-third of doctor, hospital, physical therapy, and other medical costs claimed in car accident cases are for nonexistent injuries or for unnecessary treatment.

The value of this wasteful health care? Four billion dollars annually. I don't need to remind anyone of the ongoing local and national debate over our health care system. While people have strongly-held differences over the causes and solutions to that problem, the Rand data make one thing certain—lawsuits, and the potential for hitting the jackpot, drive overuse and abuse of the health care system. Reducing those costs by $4 billion annually, without depriving one person of needed medical care, is clearly in our national interest.

Why would an injured party inflate their medical claims, you might ask. It's simple arithmetic. For every $1 of economic loss, a party stands to recover up to $3 in pain and suffering awards. In short, the more you go to the doctor, the more you get from the jury. And, the more you get from the jury, the more money your attorney puts in his own pocket.

In addition to the massive fraud encouraged by the liability system, seriously injured people are grossly undercompensated under the tort system. A 1991 Rand study reveals that people with economic losses between $25,000 and $100,000 recover on the average only 50 percent of their economic losses. People with losses in excess of $100,000 recover only 9 percent.

Moreover, liability insurance does not pay until the claim is resolved. Studies show that the average time to recover is 16 months, and it takes longer in serious injury cases.

The Auto Choice bill gives consumers a way out of this system of high premiums, rampant fraud, and slow, inequitable compensation. Our bill would remove the perverse incentives of lawsuits, while ensuring that car accident victims recover fully for their economic loss.

Now, I'd like to answer the question: what is Auto Choice? Let me first answer with what it is not. It does not abolish lawsuits, and it does not eliminate the concept of fault within the legal system. There will no doubt be less reason to go to court, but the right to sue is absolutely not abolished.

What it does do is allow drivers to decide how they want to be insured. In establishing the choice mechanism, the bill unbundles economic and noneconomic losses and allows the driver to choose whether to be covered for noneconomic losses—that is, pain and suffering losses.

In other words, if a driver wants to be covered for pain and suffering, he stays in the current State system. If he wants to opt-out of the pain and suffering regime, he chooses the personal protection system.

This choice, which sounds amazingly simple and imminently reasonable, is, believe it or not, currently unavailable for over ninety percent of all motorists. Auto Choice will change that.

Let me briefly explain the choices that our bill will offer every consumer. A consumer will be able to choose one of two insurance systems.

The first choice is the tort maintenance system. Drivers who wish to stay in their current system would choose this system and be able to sue and be sued for pain and suffering. These drivers would essentially buy the same type of insurance that they currently carry—and would recover, or fail to recover, in the same way that they do today. The only change for tort drivers would be that, in the event that they are hit by a personal protection driver, the tort driver would recover both economic and noneconomic damages from his own insurance policy. This supplemental first-party policy for tort drivers will be called tort maintenance coverage.

The second choice is the personal protection system. Consumers choosing this system would be guaranteed prompt recovery of their economic losses, up to the levels of their own insurance policy. These drivers would give up recovery of pain and suffering damages in exchange for being immune from pain and suffering lawsuits. Personal protection drivers would achieve substantially reduced premiums because the personal protection system would dramatically reduce: First, pain and suffering damages, second, fraud, and third, the bulk of attorney fees.

Under both insurance systems—tort maintenance and personal protection—the injured party whose economic losses exceed his own coverage will have the right to sue the responsible party for the excess. Moreover, tort drivers will retain the right to sue each other for both economic and noneconomic loss. Critics who say the right to sue is abolished by this bill are plain wrong.

The advantages of personal protection coverage are enormous.

First, personal protection coverage assures that those who suffer injury, regardless of whether someone else is responsible, will be paid for their economic losses. The driver does not have to leave compensation up to the vagaries of how an accident occurs and how much coverage the other driver has. A driver whose car goes off a slippery road will be able to recover for his economic losses. Such a blameless driver could not recover under the tort system because no other person was at fault. No matter when and how a driver or a member of his family is injured, the driver knows his insurance will protect his family.

Second, the choice as to how much insurance protection to purchase is in the hands of the driver, who is in the best position to know how much coverage he and his family need. He can choose as much or as little insurance as his circumstances require, from $20,000 of protection to $1 million of coverage.

Third, people who elect the personal protection option will, in the event they are injured, be paid promptly, as their losses accrue.

Fourth, we will have more rational use of precious health care resources. Insuring on a first-party basis eliminates the incentives for excess medical claiming. When a person chooses to be compensated for actual economic loss, the tort system's incentives for padding one's claims disappear.

Fifth, Auto Choice offers real benefits for low-income drivers because the

savings are progressive. Low-income drivers will see the biggest savings because they pay a higher proportion of their disposable income in insurance costs. A study of low income residents of Maricopa County, AZ, revealed that households below 50 percent of the poverty line spent an amazing 31.6 percent of their disposable income on car insurance.

For many low-income families the choices are stark: car insurance and the ability to get to the job, or medicine, new clothing or extra food for the children. Or, they choose the worst alternative of all—driving without any insurance. Should we allow our litigation system to promote such unlawful conduct?

Moreover, Auto Choice offers benefits to all taxpayers, even those who don't drive. For example, local governments will save taxpayer dollars through decreased insurance and litigation costs. This will allow governments to use our tax dollars to more directly benefit the community. Think of all the additional police and firefighters that could be hired with money now spent on lawsuits. Or, schools and playgrounds that could be better equipped. New York City spends more on liability claims than it spends on libraries, botanical gardens, the Bronx Zoo, the Metropolitan Museum of Art and the Department of Youth Services, combined. Imagine the improved quality of life in our urban areas if governments were free of spending on needless lawsuits.

Last, we will create incentives for safer cars. Now, it actually costs more to insure a safer car. That's because a driver in a bigger car who is responsible for another's injury may have a bigger claim to pay. After all, the bigger, safer car may cause more damage to the person in a smaller, less safe car. So insuring a bigger, safer car costs more. But under auto choice and first-party coverage, insurance companies would reward customers with lower premiums for safer cars.

The bottom line? We think that consumers should be able to make one simple choice: ''Do you want to continue to pay $757 a year for auto insurance and have the right to recover pain and suffering damages? Or would you rather save $243 a year on your premiums, be promptly reimbursed for your economic losses, and forego pain and suffering damages?''

It's really that simple. And, we're not even going to tell them which answer is the right one. Because that's not up to us. It's up to the consumer. We simply want to give them the choice.

In closing, I'd like to do something I rarely do—quote the New York Times—which summed up the benefits, and indeed, the simplicity of Auto Choice: Auto Choice ''would give families the option of foregoing suits for nonmonetary losses in exchange for quick and complete reimbursement for every blow to their pocketbook. Everyone would win—except the lawyers.''

Now, before I turn over the floor to Senator MOYNIHAN, I'd like to share with you a scathing indictment of the tort liability system that was written more than a quarter of a century ago by a true visionary:

No one involved has an incentive to moderation or reasonableness. The victim has every reason to exaggerate his losses. It is some other person's insurance company that must pay. The company has every reason to resist. It is somebody else's customer who is making the claim. Delay, fraud, contentiousness are maximized, and in the process the system becomes grossly inefficient and expensive. Automobile accident litigation has become a 20th-Century equivalent of Dickens's Court of Chancery, eating up the pittance of widows and orphans, a vale from which few return with their respect for just[ice] undiminished.

Well, those insightful and prophetic words were spoken by none other than the man who stands here with me as an original cosponsor today, my colleague from the State of New York, PAT MOYNIHAN. PAT, it's taken over 25 years, but I think we're finally going to overhaul this broken-down auto insurance system.

Mr. President, this bill has broad support from across the spectrum. It should be obvious by the support and endorsements that this bill has already received that this is not conservative or liberal legislation. It is consumer legislation. I ask unanimous consent that the text of the bill and statements in support of Auto Choice from the Republican mayor of New York City, Rudolph Giuliani, the former Massachusetts Governor and Democratic presidential candidate, Michael Dukakis, and the executive director of the Reform Party, Russ Verney, be printed in the RECORD.

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

S. 625

*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 ''Auto Choice Reform Act of 1997''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) the costs of operating a motor vehicle are excessive due in substantial part to the legal and administrative costs associated with the resolution of claims under the tort liability insurance system;

(2) the tort liability insurance system often results in—

(A) the failure to provide compensation commensurate with loss;

(B) an unreasonable delay in the payment of benefits; and

(C) the expenditure of an excessive amount for legal fees;

(3) the incentives of the tort liability insurance system for motor vehicles are distorted, and result in—

(A) significant fraud in the claims process, which exacerbates the level of distrust of many individuals in the United States with respect to the legal process and the rule of law;

(B) significant, wasteful, fraudulent, and costly overuse and abuse of scarce health care resources and services;

(C) unbearable cost burdens on low-income individuals, imposing on them the Hobson's choice of driving on an unlawful, uninsured basis or foregoing essential needs, such as food and adequate shelter;

(D) significant reductions in, access to, and purchases of, motor vehicles, which—

(i) damage the economic well-being of many low-income individuals; and

(ii) cause unnecessary harm to a critical component of the economy of the United States;

(E) significant deterioration of the economic well-being of the majority of major cities in the United States through the imposition of a massive tort tax that—

(i) places a disproportionate burden on urban residents; and

(ii) contributes to the abandonment of the cities by many taxpayers who are able to achieve substantial after-tax savings on automobile insurance premiums by moving to adjacent suburban communities; and

(F) significant inability to achieve market-based discounts in insurance rates for owners of safer cars, which reduces the level of safety for drivers and passengers of motor vehicles;

(4) insurance to indemnify individuals for personal injuries arising from motor vehicle collisions is frequently unavailable at a reasonable cost because of the potential liability for third-party tort claims;

(5) a system that gives consumers the opportunity to insure themselves and that separates economic and noneconomic damages for the purposes of purchasing insurance would provide significant cost savings to drivers of motor vehicles;

(6) a system that enables individuals to choose the form of motor vehicle insurance that best suits their needs would—

(A) enhance individual freedom;

(B) reduce the cost of motor vehicle insurance; and

(C) increase average compensation in the event of an accident; and

(7) a system that targets and emphasizes the scourge of those individuals who drive under the influence of drugs or alcohol will further deter such dangerous and unlawful conduct.

**SEC. 3. PURPOSE.**

The purpose of this Act is to allow consumers of motor vehicle insurance to choose between—

(1) an insurance system that provides substantially the same remedies as are available under applicable State law; and

(2) a predominately first-party insurance system that provides for—

(A) more comprehensive recovery of economic loss in a shorter period of time; and

(B) the right to sue negligent drivers for any uncompensated economic losses.

**SEC. 4. DEFINITIONS.**

In this Act:

(1) ACCIDENT.—The term ''accident'' means an unforeseen or unplanned event that—

(A) causes loss or injury; and

(B) arises from the operation, maintenance, or use of a motor vehicle.

(2) ADD-ON LAW.—The term ''add-on law'' means a State law that provides that persons injured in motor vehicle accidents—

(A) are compensated without regard to fault for economic loss; and

(B) have the right to claim without any limitation for noneconomic loss based on fault.

(3) ECONOMIC LOSS.—The term ''economic loss'' means any objectively verifiable pecuniary loss resulting from an accident, including—

(A) reasonable and necessary medical and rehabilitation expenses;

(B) loss of earnings;

(C) burial costs;

(D) replacement services loss;

(E) costs of making reasonable accommodations to a personal residence to make the residence more habitable for an injured individual; and

(F) loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(4) FINANCIAL RESPONSIBILITY LAW.—The term ''financial responsibility law'' means a law (including a law requiring compulsory coverage) penalizing motorists for failing to carry defined limits of tort liability insurance covering motor vehicle accidents.

(5) INJURY.—The term ''injury'' means bodily injury, sickness, disease, or death.

(6) INSURER.—The term ''insurer'' means—

(A) any person who is engaged in the business of issuing or delivering motor vehicle insurance policies (including an insurance agent); or

(B) any person who is self-insured within the meaning of applicable State law.

(7) INTENTIONAL MISCONDUCT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''intentional misconduct'' means conduct—

(i) with respect to which harm is intentionally caused or attempted to be caused by a person who acts or fails to act for the purpose of causing harm, or with knowledge that harm is substantially certain to result from that action or failure to act; and

(ii) that causes or substantially contributes to the harm that is the subject of a claim.

(B) CLARIFICATION.—For purposes of this paragraph, a person does not intentionally cause or attempt to cause harm—

(i) solely because that person acts or fails to act with the understanding that the action or failure to act creates a grave risk of causing harm; or

(ii) if the act or omission by that person causing bodily harm is for the purpose of averting bodily harm to that person or another person.

(8) MOTOR VEHICLE.—The term ''motor vehicle'' means a vehicle of any kind required to be registered under the provisions of the applicable State law relating to motor vehicles.

(9) NO-FAULT MOTOR VEHICLE LAW.—The term ''no-fault motor vehicle law'' means a State law that provides that—

(A) persons injured in motor vehicle accidents are paid compensation without regard to fault for their economic loss that results from injury; and

(B) in return for the payment referred to in subparagraph (A), claims based on fault including claims for noneconomic loss, are limited to a defined extent.

(10) NONECONOMIC LOSS.—The term ''noneconomic loss'' means subjective, nonmonetary losses including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and humiliation.

(11) OCCUPY.—The term ''occupy'' means, with respect to the operation, maintenance, or use of a motor vehicle, to be in or on a motor vehicle or to be engaged in the immediate act of entering into or alighting from a motor vehicle before or after its use for transportation.

(12) OPERATION, MAINTENANCE, OR USE OF A MOTOR VEHICLE.—

(A) IN GENERAL.—The term ''operation, maintenance, or use of a motor vehicle'' means occupying a motor vehicle.

(B) EXCLUSIONS.—The term ''operation, maintenance, or use of a motor vehicle'' does not include—

(i) conduct within the course of a business of manufacturing, sale, repairing, servicing, or otherwise maintaining motor vehicles, unless the conduct occurs outside of the scope of the business activity; or

(ii) conduct within the course of loading or unloading a motor vehicle, unless the conduct occurs while occupying the motor vehicle.

(13) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(14) PERSONAL PROTECTION INSURANCE.—The term ''personal protection insurance'' means insurance that provides for—

(A) benefits to an insured person for economic loss without regard to fault for injury resulting from a motor vehicle accident; and

(B) a waiver of tort claims in accordance with this Act.

(15) REPLACEMENT SERVICES LOSS.—The term ''replacement services loss'' means expenses reasonably incurred in obtaining ordinary and necessary services from other persons who are not members of the injured person's household, in lieu of the services the injured person would have performed for the benefit of the household.

(16) RESIDENT RELATIVE OR DEPENDENT.—The term ''resident relative or dependent'' means a person who—

(A) is related to the owner of a motor vehicle by blood, marriage, adoption, or otherwise (including a dependent receiving financial services or support from such owner); and

(B)(i) resides in the same household as the owner of the motor vehicle at the time of the accident; or

(ii) usually makes a home in the same family unit as that owner, even though that person may temporarily live elsewhere.

(17) STATE.—The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and any other territory or possession of the United States.

(18) TORT LIABILITY.—The term ''tort liability'' means the legal obligation to pay damages for an injury adjudged to have been committed by a tort-feasor.

(19) TORT LIABILITY INSURANCE.—The term ''tort liability insurance'' means a contract of insurance under which an insurer agrees to pay, on behalf of an insured, damages that the insured is obligated to pay to a third person because of the liability of the insured to that person.

(20) TORT MAINTENANCE COVERAGE.—

(A) IN GENERAL.—The term ''tort maintenance coverage'' means insurance coverage under which a person described in subparagraph (B), if involved in an accident with a person covered by personal protection insurance, retains a right to claim for injury based on fault for economic and noneconomic losses under applicable State law, without modification by any other provision of this Act.

(B) TORT MAINTENANCE INSURED.—A person described in this subparagraph is a person covered by the form of insurance described in section 5(a)(2).

(C) RESPONSIBILITY FOR PAYMENT.—The responsibility for payment for any claim under subparagraph (A) is assumed by the insurer of the person with tort maintenance coverage to the extent of such coverage.

(21) UNCOMPENSATED ECONOMIC LOSS.—

(A) IN GENERAL.—The term ''uncompensated economic loss'' means economic loss payable based on fault.

(B) ATTORNEYS' FEES.—The term includes a reasonable attorney's fee calculated on the basis of the value of the attorney's efforts as reflected in payment to the attorney's client.

(C) EXCLUSIONS.—The term does not include amounts paid under—

(i) personal protection insurance;

(ii) tort maintenance coverage;

(iii) no-fault or add-on motor vehicle insurance;

(iv) Federal, State, or private disability or sickness programs;

(v) Federal, State, or private health insurance programs;

(vi) employer wage continuation programs; or

(vii) workers' compensation or similar occupational compensation laws.

(22) UNINSURED MOTORIST.—The term ''uninsured motorist'' means the owner of a motor vehicle, including the resident relatives or dependents of the owner, who is uninsured under either the personal protection system or the tort maintenance system described in section 5(a)—

(A) at the limits prescribed by the applicable State financial responsibility law; or

(B) an amount prescribed under section 5(b)(1)(A).

**SEC. 5. AUTO CHOICE INSURANCE SYSTEM.**

(a) OPERATION OF THE RIGHT TO CHOOSE.—Under this Act, a person shall have the right to choose between the following insurance systems:

(1) PERSONAL PROTECTION SYSTEM.—A person may choose insurance under a system that provides for personal protection insurance for that person and any resident relative or dependent of that person.

(2) TORT MAINTENANCE SYSTEM.—A person may choose insurance under a system that provides for the form of motor vehicle insurance (including tort liability, no-fault, add-on, or uninsured motor vehicle insurance) that is otherwise required in the State in which the person is insured.

(b) PERSONAL PROTECTION SYSTEM.—

(1) MINIMUM POLICY REQUIREMENTS.—In order for a personal protection insurance policy to be covered by this Act, a motor vehicle insurance policy issued by an insurer shall, at a minimum—

(A) provide personal protection insurance coverage—

(i) with no per accident limit; and

(ii) in coverage amounts equal to the greater of—

(I) the minimum per person limits of liability insurance for personal injury under the applicable State financial responsibility law; or

(II) in a State covered by a no-fault motor vehicle insurance law, the minimum level of insurance required for no-fault benefits;

(B) contain provisions for a waiver of certain tort rights in accordance with this Act; and

(C) contain provisions under the applicable State financial responsibility law relating to liability for—

(i) property damage; and

(ii) bodily injury to protect third parties whose rights to recover both economic and noneconomic loss are not affected by the immunities provided under this Act for those persons choosing personal protection insurance coverage.

(2) SUPERSEDING PROVISION.—This Act supersedes a State law to the extent that, with respect to the issuance of a personal protection insurance policy, the State law—

(A) would otherwise bar a provision that provides for the personal protection authorizations and accompanying immunities set forth in this Act; or

(B) is otherwise inconsistent with the requirements of this Act.

(3) PRIMACY OF PAYMENT.—

(A) IN GENERAL.—Personal protection insurance benefits shall be reduced by an amount equal to any benefits provided or required to be provided under an applicable Federal or State law for workers' compensation or any State-required nonoccupational disability insurance.

(B) REIMBURSEMENT OF PAYORS.—

(i) IN GENERAL.—A personal protection insurer may take appropriate measures to ensure that any person otherwise eligible for personal protection benefits who has been paid or is being paid for losses payable by personal protection insurance from a source other than the applicable personal protection insurer shall not receive multiple payment for those losses.

(ii) ACCRUAL OF RIGHTS.—Any right to payment for losses referred to in clause (i) from a personal protection insurer accrues only to that payor. Payments by a payor referred to in clause (i) shall not be counted against personal protection limits for personal protection insurance until such time as the payor is reimbursed under this subparagraph.

(4) PROMPT AND PERIODIC PAYMENT.—

(A) IN GENERAL.—A personal protection insurer may pay personal protection benefits periodically as losses accrue.

(B) LATE PAYMENT.—Unless the treatment or expenses related to the treatment are in reasonable dispute, a personal protection insurer who does not pay a claim for economic loss covered by a personal protection insurance policy issued under this Act within 30 days after payment is due, shall pay—

(i) the loss compounded at a rate of 24 percent per annum, as liquidated damages and in lieu of any penalty or exemplary damages; and

(ii) a reasonable attorney's fee calculated on the basis of the value of the attorney's efforts as reflected in payment to the attorney's client.

(C) ADMINISTRATION OF PERSONAL PROTECTION BENEFITS.—To the extent consistent with this Act, any applicable provision of a State no-fault motor vehicle law or add-on law governing the administration of payment of benefits without reference to fault shall apply to the payment of benefits under personal protection insurance under this subsection.

(5) MOTOR VEHICLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.—A personal protection insurer may offer, but shall not require, personal protection coverage of any motor vehicle that has fewer than 4 load-bearing wheels, not including the wheels of an attachment to the motor vehicle.

(6) AUTHORIZATIONS FOR PERSONAL PROTECTION INSURERS.—A personal protection insurer may write personal protection coverage—

(A)(i) without any deductible; or

(ii) subject to a reasonable deductible, applicable in an amount not to exceed $1,000 per person per accident;

(B) with an exclusion of coverage for persons whose losses are caused by driving under the influence of alcohol or illegal drugs;

(C) at appropriately reduced premium rates, deductibles and exclusions reasonably related to health, disability, and accident coverage on an insured person; and

(D) the deductibles and exclusions described in subparagraphs (A) and (C) shall apply only to—

(i) the person named in the applicable insurance policy; and

(ii) the resident relatives or dependents of the person described in clause (i).

(c) TORT MAINTENANCE SYSTEM.—

(1) REQUIRED TORT MAINTENANCE COVERAGE.—The coverage for a person who chooses insurance under subsection (a)(2) shall include tort maintenance coverage at a level that is at least equivalent to the level of insurance required under the applicable State financial responsibility law for bodily injury liability.

(2) ADMINISTRATION OF TORT MAINTENANCE COVERAGE BENEFITS.—To the extent consistent with this Act, any applicable provision of a State law governing the administration of payment of benefits under uninsured or underinsured motorist coverage applies to the payment of benefits under tort maintenance coverage under section 5(c).

(d) EFFECT OF CHOICE ON RESIDENT RELATIVES AND DEPENDENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person who chooses either personal protection insurance or tort maintenance coverage also binds the resident relatives and dependents of that person.

(2) EXCEPTION.—An adult resident relative or a dependent of a person described in paragraph (1) may select the form of insurance that that person does not select if the adult relative makes that selection expressly in writing.

(3) IMPLIED CONSENT.—In any case in which the resident relative or dependent is injured in a motor vehicle accident, the coverage of such person shall be the same as the person described in paragraph (1).

(4) TERMS AND CONDITIONS.—Insurers may specify reasonable terms and conditions governing the commencement, duration, and application of the chosen coverage depending on the number of motor vehicles and owners thereof in a household.

(e) RULES TO ENCOURAGE UNIFORMITY OF CHOICE.—In order to minimize conflict between the 2 options described in subsection (d), insurers may maintain and apply underwriting rules that encourage uniformity within a household.

(f) FAILURE TO ELECT TYPE OF INSURANCE.—

(1) IN GENERAL.—Any person who fails to elect a type of insurance under this section shall be deemed to have elected insurance under the tort maintenance system in effect in that State.

(2) RULE OF CONSTRUCTION.—This subsection shall not be construed to prevent a State from enacting a law that deems a person who fails to elect a type of insurance under this section to have elected insurance under the personal protection system.

(g) CONSUMER INFORMATION PROGRAM.—The State official charged with jurisdiction over insurance rates for motor vehicles shall establish and maintain a program designed to ensure that consumers are adequately informed about—

(1) the comparative cost of insurance under the personal protection system and the tort maintenance system; and

(2) the benefits, rights, and obligations of insurers and insureds under each system.

**SEC. 6. SOURCE OF COMPENSATION IN CASES OF ACCIDENTAL INJURY.**

(a) ACCIDENTS INVOLVING PERSONS CHOOSING THE TORT MAINTENANCE SYSTEM.—A person described in section 5(a)(2) who is involved in an accident with another person shall be subject to applicable tort law for injury except that, based on fault, that person—

(1) may claim against any person covered by personal protection insurance only for uncompensated economic loss; and

(2) may be claimed against by a person covered by personal protection insurance only for uncompensated economic loss.

(b) ACCIDENTS INVOLVING PERSONS WITH PERSONAL PROTECTION INSURANCE.—

(1) RIGHT TO RECOVER ECONOMIC LOSS.—A person covered by a personal protection insurance policy who is injured in an accident is compensated under that policy only for economic loss, without regard to fault.

(2) RIGHT TO SUE FOR UNCOMPENSATED ECONOMIC LOSS BASED ON FAULT.—If a person who chooses personal protection insurance is—

(A) involved in an accident with a person insured under either the personal protection system or tort maintenance system under section 5(a); and

(B) sustains uncompensated economic loss, that person shall have the right to claim against the other person involved in the accident for that loss based on fault.

(c) ACCIDENTS INVOLVING PERSONS WITH PERSONAL PROTECTION INSURANCE AND PERSONS WHO ARE UNLAWFULLY UNINSURED.—

(1) IN GENERAL.—A person covered by personal protection insurance who is involved in an accident with an uninsured motorist shall—

(A) be compensated under that insured person's insurance policy for economic loss without regard to fault; and

(B) have the right to claim against the uninsured motorist for economic loss and for noneconomic loss based on fault.

(2) FORFEITURE OF RIGHTS.—An uninsured motorist forfeits the right to claim against a motorist who has chosen personal protection insurance for—

(A) noneconomic loss; and

(B) economic loss in an amount up to the amount of per-person bodily injury limits mandated by the applicable State financial responsibility law.

(d) ACCIDENTS INVOLVING MOTORISTS UNDER THE INFLUENCE OF ALCOHOL OR ILLEGAL DRUGS OR ENGAGING IN INTENTIONAL MISCONDUCT.—A person who is insured under personal protection insurance shall have the right to claim, and be subject to a claim, for—

(1) driving under the influence of alcohol or illegal drugs (as those terms are defined under applicable State law); or

(2) intentional misconduct.

(e) PRIORITY OF BENEFITS.—A person who is insured under the personal protection system or tort maintenance system under section 5(a) may only claim benefits under such coverage up to the limits selected by or on behalf of such person in the following priority:

(1) The coverage under which the injured person was an insured at the time of the accident.

(2) The coverage of a motor vehicle involved in the accident, if the person injured was an occupant of, or was struck as a pedestrian by, such motor vehicle at the time of the accident, except that such person shall not recover under the coverage of both paragraph (1) and this paragraph.

(f) SUBROGATION RIGHTS.—A personal protection insurer is subrogated, to the extent of the obligations of that insurer, to all of the rights of the persons insured with personal protection insurance issued by the insurer with respect to an accident caused in whole or in part, as determined by applicable State law, by—

(1) the negligence of an uninsured motorist;

(2) operating a motor vehicle under the influence of alcohol or illegal drugs;

(3) intentional misconduct; or

(4) any other person who is not affected by the limitations on tort rights and liabilities under this Act.

(g) RIGHTS OF LAWFULLY UNINSURED PERSONS.—Nothing in this Act shall be construed to affect the tort rights of any person lawfully uninsured under the terms of an applicable State law for insurance under either the personal protection system or tort maintenance system under section 5(a).

(h) RIGHTS OF PERSONS OCCUPYING MOTOR VEHICLES WITH FEWER THAN 4 LOAD-BEARING WHEELS.—Nothing in this Act shall be construed to affect the tort rights of a person

who occupies a motor vehicle with fewer than 4 load-bearing wheels or an attachment thereto, unless an applicable contract for personal protection insurance under which that person is insured specifies otherwise. The preceding sentence applies without regard to whether the person is otherwise legally insured for personal protection insurance or tort maintenance coverage.

(i) RENEWAL OR CANCELLATION.—An insurer shall not cancel, fail to renew, or increase the premium of a person insured by the insurer solely because that insured person or any other injured person made a claim—

(1) for personal protection insurance benefits; or

(2) if there is no basis for ascribing fault to the insured or one for whom the insured is vicariously liable, for tort maintenance coverage.

(j) IMMUNITY.—Unless an insurer or an insurance agent willfully misrepresents the available choices or fraudulently induces the election of one motor vehicle insurance system described in paragraph (1) over the other, no insurer or insurance agent, employee of such insurer or agent, insurance producer representing a motor vehicle insurer, automobile residual market plan, or attorney licensed to practice law within a State, shall be liable in an action for damages on account of—

(1) an election of—

(A) the tort maintenance system under section 5(a); or

(B) the personal protection system under section 5(a); or

(2) a failure to make a required election.

**SEC. 7. RULES OF CONSTRUCTION.**

Nothing in this Act shall be construed—

(1) to waive or affect any defense of sovereign immunity asserted by any State under any law or by the United States;

(2) to affect the awarding of punitive damages under any State law;

(3) to preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(4) to affect the right of any court to transfer venue, to apply the law of a foreign nation, or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum;

(5) subject to paragraph (1), to create or vest jurisdiction in the district courts of the United States over any motor vehicle accident liability or damages action subject to this Act which is not otherwise properly in the United States District Court;

(6) to prevent insurers and insureds from contracting to limit recovery for lost wages and income under personal protection coverage in such manner that only 60 percent or more of lost wages or income is covered;

(7) to prevent an insurer from contracting with personal protection insureds, as permitted by applicable State law, to have submitted to arbitration any dispute with respect to payment of personal protection benefits;

(8) to relieve a motorist of the obligations imposed by applicable State law to purchase tort liability insurance for bodily injury to protect third parties who are not affected by the immunities under this Act;

(9) to preclude a State from enacting, for all motor vehicle accident cases including cases covered by this Act, a minimum dollar value for defined classes of cases involving death or serious bodily injury;

(10) to preclude a State from providing that forms of insurance other than those listed in section 5(b)(3) shall be subtracted from personal protection insurance benefits otherwise payable for injury;

(11) to preclude a State from enacting a law that—

(A) allows litigation by tort maintenance insureds against personal protection insureds for economic and noneconomic loss; and

(B) assures through a reallocation device that the advantage of tort claim waivers by personal protection insureds against tort maintenance insureds is reflected in the premiums of personal protection insureds; or

(12) to alter or diminish the authority or obligation of the Federal courts to construe the terms of this Act.

**SEC. 8. APPLICABILITY TO STATES; CHOICE OF LAW; AND JURISDICTION.**

(a) ELECTION OF NONAPPLICABILITY BY STATES.—This Act shall not apply with respect to a State if such State enacts a statute that—

(1) cites the authority of this subsection;

(2) declares the election of such State that this Act shall not apply; and

(3) contains no other provision.

(b) NONAPPLICABILITY BASED ON STATE FINDING.—

(1) IN GENERAL.—This Act shall not apply with respect to a State, if—

(A) the State official charged with jurisdiction over insurance rates for motor vehicles makes a finding that the statewide average motor vehicle premiums for bodily injury insurance in effect immediately before the effective date of this Act will not be reduced by an average of at least 30 percent for persons choosing personal protection insurance (without including in the calculation for personal protection insureds any cost for uninsured, underinsured, or medical payments coverages);

(B) a finding described under subparagraph (A) is supported by evidence adduced in a public hearing and reviewable under the applicable State administrative procedure law; and

(C) a finding described under subparagraph (A) and any review of such finding under subparagraph (B) occurs not later than 90 days after the date of enactment of this Act.

(2) COMPARISON OF BODILY INJURY PREMIUMS.—For purposes of making a comparison under paragraph (1)(A) of premiums for personal protection insurance with preexisting premiums for bodily injury insurance (in effect immediately before the date of enactment of this Act), the preexisting bodily injury insurance premiums shall include premiums for—

(A) bodily injury liability, uninsured and underinsured motorists' liability, and medical payments coverage; and

(B) if applicable, no-fault benefits under a no-fault motor vehicle law or add-on law.

(c) CHOICE OF LAW.—In disputes between citizens of States that elect nonapplicability under subsection (a) and citizens of States that do not make such an election, ordinary choice of law principles shall apply.

(d) JURISDICTION.—This Act shall not confer jurisdiction on the district courts of the United States under section 1331 or 1337 of title 28, United States Code.

(e) STATUTES OF LIMITATIONS.—Nothing in this Act shall supersede an applicable State law that imposes a statute of limitations for claims related to an injury caused by an accident, except that such statute shall be tolled during the period wherein any personal protection or tort maintenance benefits are paid.

**SEC. 9. EFFECTIVE DATE.**

This Act shall take effect 90 days after the date of enactment of this Act.

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STATEMENT OF MAYOR RUDOLPH W. GIULIANI

Today, members of Congress and other leaders from across the political spectrum, representing diverse populations and constituencies, unite in expressing support for the introduction and passage of bold, necessary federal legislation reforming auto insurance and tort law in America.

The introduction of auto-choice legislation marks a milestone in the nation's response to motorist demands for fair, equitable and cost-effective insurance coverage. Millions of drivers are presently paying excessive insurance premiums because of inflated claims and huge pain and suffering awards. Under this legislation proposed by Senators Lieberman, McConnell and Moynihan, among others, the nation as a whole stands to save $45 billion in insurance premiums this year alone, with the average driver nationwide saving $243 per year. That amounts to the equivalent of a $243 tax cut without any corresponding cut in services. The newly released report by the Joint Economic Committee of the United States Congress on ''The Benefits and Savings of Auto-Choice'' estimates that with auto choice, New York City motorists will see an average decrease of $417 per driver per year.

The genius of this bill is the unbundling of pain and suffering coverage from insurance premiums and the switch to first party coverage—similar to no-fault coverage. Moreover, people who want coverage for pain and suffering—and are willing to pay for it—can obtain it. But, they will not recover pain and suffering damages at the expense of third parties, or at the expense of our court system where sympathetic juries often grant windfalls for being injured in the form of subjective non-economic damages. There is simply no justification for many of the enormous awards to the injured who—though rightfully compensated for objective pecuniary loss—are rewarded for unsubstantiated pain and suffering damages, often with no regard for the relationship to the fault of the parties concerned.

Over the years, New York City has risked losing the valuable civic contributions of many of its residents to the suburbs where insurance rates are usually more affordable. Coupled with the reduction in crime our City has experienced, reduced insurance premiums would provide added incentive for City residents to keep their homes and their businesses in the City. These reforms come at no cost to City residents nor would they diminish governmental services. Motorists in municipalities and urban centers across the land stand to reap these enormous savings.

When we value the productivity of our urban residents and demonstrate our respect for their contributions, we improve the quality of life for the City as a whole and ensure its prosperity for years to come. Auto-choice assists in doing precisely that. It demonstrates our leaders' respect for the economic well being of even the most hard pressed motorist.

But equally as important, the bill would help restore a little faith in our courts and judicial system, which have been increasingly plagued with criticism by, and stands to lose the confidence of, ordinary citizens. When people see some lawyers running from the hospital to the court to the insurance company, they understand why their premiums are so high. Plaintiffs receive barely one-half of all settlements after lawyers, experts and court fees are paid. Under existing law, plaintiff attorneys have tremendous incentive to shoot for the gold—that giant pain and suffering cash cow—paid for by the American motorist through excessive insurance premiums.

People wonder: why can't this process be controlled? Today, we tell these people that they, not special interests, are in charge. We assure them that money which should not be unjustly taken from them, will not be. We give them the chance to determine for themselves how much insurance coverage is

enough coverage for them and their families. And, keep in mind, under auto-choice, all motorists obtain coverage for objective economic loss, such as medical bills or lost wages.

The bill is sensible and fair, and I respectfully urge Congress to pass this important legislation.

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NORTHEASTERN UNIVERSITY, COLLEGE OF ARTS AND SCIENCES, DEPARTMENT OF POLITICAL SCIENCE,
*April 17, 1997.*

I enthusiastically endorse the ''choice'' auto insurance bill you are jointly sponsoring. Your action is an important act of bipartisan leadership on an issue that significantly affects all Americans.

The issue you address has been a great concern of mine throughout my political career ever since I sponsored the first no-fault auto insurance bill in the nation.

Given the horrendous high costs of auto insurance, coupled with its long delays, high overhead, and rank unfairness when it comes to payment, your ''choice'' reform takes the sensible approach of allowing consumes to choose how to insure themselves. In other words, your reform trust the American people to decide for themselves whether to spend their money on ''pain and suffering'' coverage of food, medicine, life insurance or any other expenditure they deem more valuable for themselves and their families.

The bill is a particularly important to the people who live in American cities where premiums are the highest. It is no surprise that the cost studies done by the Joint Economic Committee indicate that while your reform will make stunning cost savings available to all American consumers, its largest benefits will go to the low income drivers living in urban areas.

The bill will also help resolve the country's problems with runaway health costs. By allowing consumer to remove themselves from a system whose perverse incentives trigger the cost of health care costs, your reform will lower the cost of health care for all Americans while ensuring that health care expenditure are more clearly targeted to health care needs.

I look forward to assisting you to the fullest possible degree as you exercise your vitally need leadership on behalf of America's consumers.

MICHAEL S. DUKAKIS.

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STATEMENT OF REFORM PARTY CHAIRMAN RUSSELL J. VERNEY

Only on rare occasions does Congress have the opportunity to stimulate our national economy without adding to the $5.2 trillion debt burden this generation is leaving to our children and grandchildren.

Auto Choice Reform is one of those rare opportunities. It allows the owners of automobiles the choice of the level of insurance coverage they wish to provide for their own losses. protects an injured or harmed person's right to collect for their losses and can cut the average automobile owner's annual insurance rate by an average of $243 per year.

Auto Choice Reform is an idea whose time has come. Unfortunately, it will also stimulate a new furious round of campaign (investments) contributions by special interests who benefit from the current high cost of auto insurance rates and protracted litigation associated with automobile insurance and accidents injuries.

As list of top donors to political parities and candidates during 1995 and 1996, published by Mother Jones Magazine listed numerous individuals from the insurance industry and trial lawyers who have established their right of access to our top political leaders in this country.

The sponsors and promoters of the common sense Auto Choice Reform Act will have to overcome the easy access special interests have to our country's decision makers if this $44 billion per year cost savings for motorists in this country is to be achieved.

Mr. MOYNIHAN. Mr. President, I am pleased to be an original cosponsor of the Auto Choice Reform Act of 1997, a bill submitted by my distinguished colleague, Senator MCCONNELL.

This legislation is designed to create a new option in auto insurance for consumers who would prefer a system that guarantees quick and complete compensation. This alternative system would change most insurance coverage to a first-party system from a third-party system and it would separate economic and noneconomic compensation by unbundling the premium. Therefore, drivers would be allowed to insure themselves for only economic loss or for both economic and noneconomic loss.

In the 1950's, I first became interested in the issue of auto insurance reform as a member of New York Gov. Averell Harriman's Traffic Safety Policy Coordinating Committee. At that time, while working on auto safety issues, I became convinced that as the number of automobiles increased, the number of automobile accidents would, inexorably, also increase. And the problem with the current state of the insurance system begins right there. A driver buys protection against the risk that he will negligently cause an accident that will injure another person. If that should occur, the driver's insurance company is responsible for compensating the victim. But this contradicts the very nature of traffic accidents. If they were orderly events, in which cause and effect could be clearly discerned and ascribed, then the present insurance system could work. But accidents are nothing of the sort. It is often very difficult to determine fault in traffic accidents. It is the role of the liable party's insurance company to argue that the plaintiff's injuries—no matter how hideous—are not as serious as he or she claims. These cases overwhelm the court system and in so doing, they prevent real justice from occurring. Justice is possible only when it is done quickly and reflects the sense of what is right and what is wrong, as I wrote in ''Next: A New Auto Insurance Policy,'' which appeared in the August 27, 1967 New York Times magazine:

The most serious secondary effect of the existing insurance system, however, lies in its impact on the courts. This process begins with the use of the police to enforce the traffic laws, as a result of which the incidence of arrest by armed police in the United States is the highest of any society in history. The jam starts there, and is followed by a flood of accident litigation cases that derive, in part at least, from the original criminal case. We have now reached the point where accident litigation accounts for an estimated 65 to 80 percent of the total civil court cases tried in the United States. This in turn has brought us to the point where delays in justice here are the longest of any democracy on earth. It now takes an average of 30.1 months to obtain a jury trial in the metropolitan areas of the nation. In Westchester and Kings counties, it is 50 months plus. In Chicago it is 60 months plus.

A legal expert in the field, James Marshall, has argued that persons involved in or witnessing an automobile accident are not really capable of reconstructing it in court. The event is too complex, and levels of perception too low. (How would a witness to a shooting respond to a question as to which way the bullet was traveling?) *A fortiori* the attempt to reconstruct such an episode three, four, or five years afterward is nigh impossible. Thus the question must be asked whether a social concern of the highest order—the administration of justice—is not being sacrificed to one of a much lower priority, the reenactment of traffic accidents. (As indeed the whole cops-and-robbers, shoot-'em-up paradigm for managing the road system must be questioned. It was not just chance that the riots in Watts and Newark began with police arresting a motorist.)

There is little likelihood, however, that greater efforts toward the administration of justice—more judges, or whatever—would change matters. A New York survey has shown that of 220,000 annual claims of victims seeking to recover damages caused by another's fault, only 7,000 reach trial, and 2,500 reach verdict. Given the number and rate of accidents in the existing transport system, a kind of Malthusian principle governs the courts: the number of litigated cases will automatically increase to use up all the available judicial facilities and maintain a permanent backlog. At a time when issues of justice, violence, and civic peace are of immediate and pressing concern, to devote the better part of the judicial (and an enormous portion of the legal) resources of the nation to managing the road system is the kind of incompetence that societies end up paying for.

Only one adult response is possible: the present automobile insurance system has to change . . .

In that article, 30 years ago, I proposed two alternatives to traditional tort coverage as solutions for the problem. One was to have the Federal Government provide insurance—financed by a penny or so increases in the Federal gasoline tax—for injuries and economic losses, with claims being adjusted in a fashion similar to the workers' compensation system. The second alternative was along the lines of the current legislation. For the past 35 years, Jeffrey O'Connell, the Samuel McCoy Professor of Law at the University of Virginia, has been figuring out the permutations of this second type of reform. It is his recommendations that shape today's legislation.

Over 16 million motor vehicle accidents occur every year. The average amount of time it takes to receive compensation for losses in a tort case is over 18 months. Minimally injured parties are overcompensated while victims of serious injuries often fail to receive full restitution. According to a study by the RAND Institute, people with economic losses of under $5,000 receive over two to three times that amount in compensation. People with $25,000 to $100,000 worth of losses, however, currently are compensated for just over one-half of their losses, on average. The very seriously injured—

those with economic losses of over $100,000—receive compensation worth only 9 percent of their damages, on average. The current system does not work.

This legislation is called Auto Choice because drivers would have a choice between this new system, called personal protection insurance [PPI], or they could remain insured under the system currently operating in their State—the tort maintenance system [TM]. For people who choose to insure themselves for only economic damages, this is akin to a $243 tax cut, according to a recent report by the Joint Economic Committee, only without any impact on the Federal budget. Our legislation would ensure more complete and more rapid recovery of losses for the people who incur them, and it would reduce the number of cases that presently overwhelm the courts.

I thank my friend from Kentucky for inviting me to cosponsor this legislation, and hope other Senators agree with us that the time for auto choice has come.

Mr. LIEBERMAN. Mr. President, I am here today with Senators MCCONNELL, MOYNIHAN, GORTON, and GRAMS to introduce the Auto Choice Reform Act of 1997. If enacted, this bill would save American consumers tens of billions of dollars, while at the same time producing an auto insurance system that operates more efficiently and promises drivers better and quicker compensation.

America's drivers are plagued today by an auto accident insurance and compensation system that is too expensive and that does not work. Each of us currently pays an average of $785 annually for our auto insurance per car. This is an extraordinarily large sum, and one that is particularly difficult for people of modest means—and almost impossible for poor people—to afford. A study of Maricopa County, AZ drives this point home. That study found that families living below 50 percent of the poverty line spend nearly one-third of their household income on premiums when they purchase auto insurance.

Perhaps those costs would be worth it if they meant that people injured in car accidents were fully compensated for their injuries. But under our current tort system, that often is not the case, particularly for people who are seriously injured. Because of the need to prove fault and the ability to receive compensation only through someone else's insurance policy, some injured drivers—like those in one car accidents or those who are found to have been at fault themselves—are left without any compensation at all. Others must endure years of litigation before receiving any compensation for their injuries. In the end, people who suffer minimal injuries in auto accidents generally end up overcompensated, while victims of serious injuries often fail to receive full restitution. According to a study by Rand's Institute for Civil Justice, people who suffer economic losses—lost wages and medical bills, for example—in the range of $25,000 to $100,000 currently are compensated for just over one-half of their losses on average. The very seriously injured—those with economic losses of over $100,000—receive compensation worth just 9 percent of those damages on average. Much of this shortfall is due to the high transaction costs—the 33-percent attorneys' fee regularly taken out of a plaintiff's recovery, for one thing—associated with the current system.

These statistics show that our auto insurance and compensation laws violate the cardinal rule I think those of us in the business legislating have a duty to follow: to draft our laws to encourage people to minimize their disputes, and to encourage those who do have disputes to resolve them as efficiently, as economically, and as quickly as possible. This is particularly true when we are dealing with laws impacting on people who are physically injured, because injured people simply—and literally—cannot afford to wait the years it often takes for a lawsuit to wind its way through our legal system. The laws governing our auto accident and insurance system do not now meet those simple criteria. They instead require consumers to pay extraordinarily high premiums to purchase auto insurance. That auto insurance, in turn and as a result of our broken legal system, does not bring seriously injured people either speedy or full compensation for their injuries.

My colleagues and I set out to rethink the legal framework governing our car insurance and compensation system. We asked ourselves whether we could write a law that would both lower premiums and better compensate people for injuries suffered in car accidents. Why, we wondered, should people hurt in car crashes—people who have bought and paid for insurance policies—not be able to receive compensation for their injuries unless they find someone else who was at fault, sue them, engage in potentially years of litigation, and collect from that other person? Why, we asked, couldn't auto insurance instead be more like health and homeowner insurance, where people know when they buy their policies that they will be compensated immediately for any covered injury, regardless of who caused the injury and without having to find and pay a lawyer and often suffer through years of litigation?

The answer we came up with was that there is no reason not to change our auto insurance and compensation laws to address these problems. Our Auto Choice proposal would address these problems by introducing reason into our auto insurance and accident laws. The bill would produce a system that would guarantee immediate compensation to injured people. At the same time, it would bring tremendous savings to the system—up to $45 billion annually according to a recent study. And, it would do so, not by forcing people to do something they do not want to do, but by giving them the choice—the right to determine for themselves what is in their best interests.

Here's how our plan would work: All drivers would be required to purchase a certain minimum level of insurance, but they would get to choose the type of coverage they want. Those drivers who value immediate compensation for their injuries and lower premiums would be able to purchase what we call personal protection insurance. If the driver with that type of coverage is injured in an accident, he or she would get immediate compensation for all economic losses—things like lost wages, medical bills and attorneys fees—up to the limits of his or her policy, without regard to who was at fault in the accident.

If their economic losses exceeded those policy limits, the injured party could sue the other driver for the extra economic loss on a fault basis. The only thing the plaintiff could not do is sue the other driver for noneconomic losses, the so-called pain and suffering damages.

Those drivers who did not want to give up the ability to collect pain and suffering damages could choose a different option, called tort maintenance coverage. Drivers with that type of policy would be able to cover themselves for whatever level of economic and noneconomic damages they want, and they would then be able to collect those damages, also from their own insurance company, after proving fault.

As I mentioned earlier, the savings from this new Choice system would be dramatic. According to a newly released report from the Joint Economic Committee, if all American drivers opted for personal protection insurance, they would save an average of $243 annually on their auto insurance premiums. Drivers in my home State of Connecticut would see even better savings, putting an additional $383 per year into their pockets. All told, the American economy could save up to $45 billion each and every year under our proposal.

Our Auto Choice plan, I think, both serves the reform goals I discussed above and incorporates all of the lessons we learned during our past experiences with no-fault laws. It ensures that most injured people would be compensated immediately and that we all can purchase auto insurance at a reasonable rate. As I said at the outset, we as legislators do our best when we make sure that our legal system minimizes the potential for disputes in society and facilitates the resolution of those disputes that exist. The Auto Choice law would do exactly that. It would ensure that something tens of thousands of us now have disputes about—who should compensate whom for car accidents—no longer would be the subject of disputes because everyone who is injured will know from the outset that they will be compensated, they will know by whom they will be compensated, and they will know they will be compensated without having to sue someone else first. Mr. President,

this bill would be a boon to the American driver and to the American economy. I look forward to working with my colleagues to see it enacted into law.

Mr. GORTON. Mr. President, I am pleased to join Senators MCCONNELL, GRAMS, MOYNIHAN, and LIEBERMAN in cosponsoring the Auto Choice Reform Act, a measure that offers consumers a quick-pay, low-cost policy to replace their current policies—policies that are grossly inflated by the costs of damage claims for pain and suffering.

Auto Choice Reform Act. Choice. Removing the perverse incentives to inflate damages that our current system creates, and allowing consumers to make rational choices, lies at the heart of this bill. Unlike some other no-fault measures, the Auto Choice Reform Act gives consumers, and States, choices. Choices which, if exercised, should significantly lower insurance premiums. For States, the choice is whether or not to offer the no-fault option to residents. A State can opt out legislatively, or if the State commissioner of insurance shows that a no-fault system will not result in a 30 percent decrease in bodily injury premiums for those who choose PPI. If States choose to offer the no-fault option, however, consumers still have the choice of whether or not to participate in the no-fault system. No driver will be deprived of her ability to sue, but instead, can choose between two systems.

If they want, consumers can avail themselves of the new no-fault insurance system that the bill creates. If a consumer elects the personal protection insurance [PPI] system, then, in the event of an accident, and regardless of fault, she is compensated by her own insurer for economic losses, such as car repair, medical expenses or lost wages, up to her policy limit. She does not, however, recover for noneconomic losses, pain and suffering, and she may not be sued for pain and suffering damages. If her economic damages exceed her policy limit, however, she may sue for economic damages. By taking the often-inflated damages for pain and suffering out of the equation, consumers choosing PPI should see a significant savings in their insurance premiums—a savings that has been estimated at $243 per policy.

Motorists who choose not to participate in the no-fault system are allowed that option under this legislation. Again, the choice is with the consumer. By opting for what the bill refers to as tort maintenance coverage, a TMC driver can keep her traditional liability policy under which she can sue other TMC drivers for both economic and noneconomic damages. To cover noneconomic damages in accidents with PPI drivers, who TMC drivers cannot sue for noneconomic damages, the TMC driver can purchase a supplemental policy and recover the noneconomic damages from her own insurer.

What does all of this mean? The New York Times perhaps summed it up best in an editorial that predicted that Auto Choice ''would give families the option of forgoing suits for non-monetary losses in exchange for quick and complete reimbursement for every blow to their pocketbook. Everyone would win—except the lawyers.'' Mr. President, I hope the Senate will act promptly to pass this bill.

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By Mr. KENNEDY:

S. 626. A bill to amend the Fair Labor Standards Act of 1938 to provide for legal accountability for sweatshop conditions in the garment industry, and for other purposes; to the Committee on Labor and Human Resources.

STOP THE SWEATSHOPS ACT OF 1997

Mr. KENNEDY. Mr. President, last Monday, President Clinton announced an agreement by the Apparel Industry Partnership that establishes a workplace code of conduct for the industry. I commend this agreement, which is the product of a presidential task force on the exploitation of garment industry workers by unscrupulous clothing manufacturers. The agreement is designed to encourage voluntary compliance with labor standards in all countries that manufacture clothing sold in the United States.

Congress can build on this agreement by acting to abolish sweatshops in our own country. Last year, Congressman BILL CLAY and I introduced the Stop the Sweatshops Act. Today I am introducing that legislation to help fulfill the promise of the Apparel Industry Partnership agreement. This bill will reinforce that agreement by making clothing manufacturers liable for sweatshop practices by contractors. This liability will help to ensure that honest employers who obey our laws will not lose out in competition with dishonest employers who do not. Without this bill, economic forces in the clothing industry make it unlikely that the Apparel Industry Partnership agreement will be fully effective in protecting American workers.

Sweatshops continue to plague the garment industry. As important as the Apparel Industry Partnership agreement is, it has a significant deficiency. It has no enforcement mechanism. It applies only to manufacturers who agree to its terms and it does not specify how violations will be remedied or what penalties will be imposed. The Stop the Sweatshops Act remedies these deficiencies for all clothing manufacturing done in this country.

This bill will require manufacturers to exert their considerable economic power to ensure fair treatment of garment workers. It will prevent manufacturers from playing one contractor against another, which drives down the prices of their goods. It is the cutthroat competition resulting from such practices that causes dangerous and unhealthy working conditions, brutally long hours, and inadequate pay.

The record of worker exploitation in the garment industry shows that effective enforcement is crucial. Of the 22,000 manufacturers of clothing and accessories in the United States, the Department of Labor finds that more than half are paying wages substantially below the minimum wage, and a third are exposing their workers to serious safety and health risks.

Sweatshops run by unscrupulous contractors have a long and sordid history in this country. In 1911, a tragic fire at the Triangle Shirtwaist Co. on Lower East Side in New York City killed 146 young immigrant women. They suffocated or were burned to death because the exits had been locked or blocked.

Eighty-six years later, we still find too often that conditions have not improved. In August 1996, four Brooklyn garment factories were closed and their owners were arrested for operating sweatshops. Serious fire code violations were found, including locked exit doors, obstructed aisles, and violations of sprinkler system requirements. In addition, the contractors maintained two sets of accounting records, one showing that workers were being paid as little as $2.67 per hour—far less than the minimum wage. The workers were all Asian immigrants making clothes for K-Mart.

K-Mart requires its garment contractors to identify all subcontractors they employ, and to make ''regular and surprise inspections'' of manufacturing operations. But this requirement did not prevent the fire code violations, wage violations, and other illegal practices of the contractors arrested in Brooklyn last summer. This example shows that voluntary codes of conduct and monitoring programs, as the Apparel Industry Partnership agreement encourages, cannot, by themselves, eradicate the problem.

Another sweatshop scandal came to light last spring, with respect to clothing made for Wal-Mart. It shows how far some manufacturers are willing to go to cut costs, and the terrible human toll that follows. In August 1995, Federal investigators raided a sewing factory outside Los Angeles. In a compound surrounded by barbed wire, agents found dozens of Thai and Mexican immigrant women working 20-hour days for as little as $1.00 per hour. The women were held captive at their sewing tables by guards who threatened them if they tried to escape.

American consumers do not want their clothing produced in this way. A U.S. News and World Report poll showed that 6 in 10 Americans are concerned about working conditions in U.S. manufacturing firms. A poll reported in Newsday showed that 83 percent of consumers would be willing to pay an extra $1 on a $20 item if they knew the garment wasn't made in a sweatshop.

Many law-abiding manufacturers already recognize the need to stamp out sweatshops in the United States. But, as these examples make clear, current law and voluntary codes of conduct are not adequate to prevent abuses. The 800 investigators of the Department of

Labor who monitor compliance with wage and hour laws cannot do the job alone. Manufacturers have the economic muscle and market power to end these abuses. But, under the current system, the market power works in the wrong direction—it encourages contractors to inflict sweatshop conditions on employees, rather than pay fair wages and maintain proper working conditions.

The most effective way to enlist manufacturers in the battle against sweatshops is to make them liable along with their contractors for violations of the law. Manufacturers who know they will face liability will take the steps necessary to ensure that their contractors comply with applicable laws.

Our Stop the Sweatshops Act does just that. It amends the Fair Labor Standards Act to make manufacturers in the garment industry liable, along with their contractors, for violations of these laws.

Manufacturers will be liable for injunctive relief and civil penalties assessed against a contractor found to have broken the law. They will also be liable for back pay owed to employees for such violations. Manufacturers will be liable only for violations committed on work done for that manufacturer.

The bill also authorizes the Secretary of Labor to assess a civil penalty of up to $1,000 for each employee in cases where contractors fail to keep required payroll records. If the records are fraudulent, the Secretary can assess penalties up to $10,000 for the first offense and $15,000 for further offenses. These penalties will give employers an incentive to keep proper records, and punish contractors who attempt to conceal abuses by maintaining two sets of records.

This bill sends a clear message to garment industry employers. Exploitation of workers will not be tolerated. Sweatshops are unacceptable. We intend to do all we can to stamp them out, and this legislation will help us achieve that goal.

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. 626

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE AND REFERENCE.**

(a) SHORT TITLE.—This Act may be cited as the ''Stop Sweatshops Act of 1997''.

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

**SEC. 2. FINDINGS.**

The Congress makes the following findings:

(1) The production of garments in violation of minimum labor standards burdens commerce and the free flow of goods in commerce by spreading and perpetuating labor conditions that undermine minimum living standards and by providing an unfair means of competition to the detriment of employers who comply with the law.

(2) The existence of working conditions detrimental to fair competition and the maintenance of minimum standards of living necessary for health, efficiency, and general well-being of workers is a continuing and growing problem in the domestic garment industry.

(3) The Congress concurs in the findings of the Comptroller General that most sweatshop employers violate the recordkeeping requirements of the Fair Labor Standards Act of 1938 and that the failure of such employers to maintain adequate records has affected, and continues to affect adversely, the ability of the Department of Labor to collect wages due to workers.

(4) The amendment of the Fair Labor Standards Act of 1938 to provide for legal responsibility on the part of manufacturers for compliance with such Act's wage and hour, child labor, and industrial homework provisions by contractors in the garment industry and to provide civil penalties for violations of that Act's recordkeeping requirements is necessary to promote fair competition and working conditions that are not detrimental to the maintenance of health, efficiency, and general well-being of workers in the garment industry.

**SEC. 3. LEGAL RESPONSIBILITY FOR COMPLIANCE WITH WAGE AND HOUR PROVISIONS IN THE GARMENT INDUSTRY.**

(a) AMENDMENT.—The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) is amended by inserting after section 14 the following:

''LEGAL RESPONSIBILITY FOR COMPLIANCE IN THE GARMENT INDUSTRY WITH SECTIONS 6 AND 7

''SEC. 14A. (a) Every manufacturer engaged in the garment industry who contracts to have garment manufacturing operations performed by another person as a contractor—

''(1) shall be civilly liable, with respect to those garment manufacturing operations, to the same extent as the contractor for any violation by the contractor of section 6 (except for violations of subsection (d)) or 7, for any violation by the contractor of the provisions of section 11 regulating, restricting, or prohibiting industrial homework, and for violation by the contractor of section 12; and

''(2) shall be subject to the same civil penalties assessed against the contractor for violations of such sections.

''(b) In this section:

''(1) The term 'contractor' means any person who contracts, directly or indirectly through an intermediary or otherwise, with a manufacturer to perform the cutting, sewing, dyeing, washing, finishing, assembling, pressing, or otherwise producing of any men's, women's, children's, or infants' apparel (including clothing, knit goods, hats, gloves, handbags, hosiery, ties, scarves, and belts, or a section or component of apparel, except for premanufactured items such as buttons, zippers, snaps, and studs) that is designed or intended to be worn by any individual and that is to be sold or offered for sale.

''(2) The term 'garment industry' means the designing, cutting, sewing, dyeing, washing, finishing, assembling, pressing, or otherwise producing of men's, women's, children's, or infants' apparel (including clothing, knit goods, hats, gloves, handbags, hosiery, ties, scarves, and belts, or a section or component of apparel, except for premanufactured items such as buttons, zippers, snaps, and studs) that is designed or intended to be worn by any individual and that is to be sold or offered for sale.

''(3) The term 'manufacturer' means any person, including a retailer, who—

''(A) contracts, directly or indirectly through an intermediary or otherwise, with a contractor to perform the cutting, sewing, dyeing, washing, finishing, assembling, pressing, or otherwise producing of any men's, women's, children's, or infants' apparel (including clothing, knit goods, hats, gloves, handbags, hosiery, ties, scarves, and belts, or a section or component of apparel, except for premanufactured items such as buttons, zippers, snaps, and studs) that is designed or intended to be worn by any individual and that is to be sold or offered for sale; or

''(B) designs, cuts, sews, dyes, washes, finishes, assembles, presses, or otherwise produces or is responsible for the production of any men's, women's, children's, or infants' apparel (including clothing, knit goods, hats, gloves, handbags, hosiery, ties, scarves, and belts, or a section or component of apparel, except for premanufactured items such as buttons, zippers, snaps, and studs) that is designed or intended to be worn by any individual and that is to be sold or offered for sale.

''(4) The term 'retailer' means any person engaged in the sale of apparel to the ultimate consumer for personal use.''.

(b) LIABILITY TO EMPLOYEES.—Section 16 (29 U.S.C. 216) is amended—

(1) in subsection (b), by inserting after the first sentence the following: ''A manufacturer in the garment industry (as defined in section 14A(b)(3)) shall also be jointly and severally liable to such an employee to the same extent as the contractor in the garment industry (as defined in section 14A(b)(1)) who employed such employee if the contractor violated section 6 (other than subsection (d)) or 7 in the production of apparel or components of apparel for such manufacturer.'';

(2) in subsection (b), by inserting in the last sentence ''or by a manufacturer in the garment industry'' after ''by an employer''; and

(3) in subsection (c)—

(A) in the third sentence, by striking ''first sentence'' and inserting ''first or second sentence''; and

(B) in the third sentence, by inserting ''or by a manufacturer in the garment industry'' before ''liable''.

**SEC. 4. RECORDKEEPING.**

Section 16(e) (29 U.S.C. 216(e)) is amended by inserting after the first sentence the following: ''Any person who fails to establish, maintain, and preserve payroll records as required under section 11(c) shall be subject to a civil penalty of not to exceed $1,000 for each employee who was the subject of such a violation. The Secretary may, in the Secretary's discretion, impose civil penalties under this subsection for willful violations. Any person who submits fraudulent payroll records to the agencies enforcing this Act in any of the agencies' investigations or hearings, or as evidence in a court action, that conceal the actual hours of labor worked by employees or the violation of section 6, 7, 11(d), or 12 shall be subject to a civil penalty of $10,000 for each act of fraud and $15,000 for each act of fraud for a second offense.''.

**SEC. 5. EFFECTIVE DATE.**

The amendments made by this Act shall take effect upon the expiration of 30 days after the date of enactment of this Act.

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By Mr. JEFFORDS (for himself, Mr. MURKOWSKI, Mr. CHAFEE, Mr. COCHRAN, Mr. LEAHY and Mr. WELLSTONE):

S. 627. A bill to reauthorize the African Elephant Conservation Act; to the Committee on Environment and Public Works.

THE AFRICAN ELEPHANT CONSERVATION ACT REAUTHORIZATION ACT OF 1997

Mr. JEFFORDS. Mr. President, I rise today in celebration of Earth Day to introduce legislation to reauthorize the African Elephant Conservation Act of 1988, a historic conservation measure that continues to successfully preserve the African elephant in its natural environment. This legislation will extend the act through September of the year 2002.

The African Elephant Conservation Act has resulted in the stabilization of elephant populations on the African Continent. By the late 1980's, the population of African elephants had dramatically declined from approximately 1.3 million animals in 1979 to less than 700,000 in 1987. The primary reason for this decline was the poaching and illegal slaughter of elephants for their tusks, which fueled the international trade in ivory.

To address this problem, the U.S. Congress enacted the African Elephant Conservation Act to provide assistance to African nations in their efforts to stop poaching and to develop and implement effective conservation programs. To accomplish this goal, the legislation created the African elephant conservation fund. Since 1988, Congress has appropriated over $6 million to fund 48 conservation projects in 17 range states throughout Africa, with additional contributions of $7 million through private matching moneys.

The African elephant conservation fund has resulted in the development and implementation of various elephant conservation plans. Today, elephant populations have stabilized and are on the increase in southern Africa, the international ivory trade has been dramatically reduced, and wildlife rangers are better equipped to stop illegal poaching activities. The conservation fund originally focused on antipoaching efforts. Over the last several years, the projects have diversified to include elephant population research, efforts to mitigate elephant and human conflicts, the cataloging of ivory stockpiles, and the identification of new techniques for effective elephant management. It is important, however, to keep in mind that, while the African elephant conservation fund has resulted in several successful conservation projects, much work remains to be done to ensure that the African elephant continues to survive in its natural environment.

We must work to ensure that the African elephant does not once again decline and disappear from its historic range. I am confident that additional conservation projects funded through the legislation will help to preserve this flagship species for many future generations. I urge my colleagues to join me in supporting the African Elephant Conservation Reauthorization Act of 1997.

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By Mr. GRAMM (for himself and Mrs. HUTCHISON):

S. 628. A bill to designate the United States courthouse to be constructed at the corner of 7th Street and East Jackson Street in Brownsville, Texas, as the ''Reynaldo G. Garza United States Courthouse''; to the Committee on Environment and Public Works.

THE REYNALDO G. GARZA U.S. COURTHOUSE DESIGNATION ACT OF 1997

Mr. GRAMM. Mr. President, along with my colleague, Senator HUTCHISON, I am proud to introduce legislation that would name the Federal courthouse in Brownsville, TX after a man who has been involved in the administration of justice throughout South Texas for nearly 60 years, Judge Reynaldo G. Garza.

Judge Garza was the first Mexican-American to be appointed to a Federal judgeship in the history of our country, when President Kennedy appointed him to a district court bench in 1961. Judge Garza served as a U.S. District Judge until 1979, when President Carter appointed him to the Fifth Circuit Court of Appeals, where he still serves, at the age of 81, in senior status.

Besides being named a the first Mexican-American Federal district judge, he was the first Mexican-American chief district judge, and the first Mexican-American Federal circuit court judge. He would have been the first Mexican-American ever to have been appointed to a President's Cabinet if he had accepted President Carter's request to serve as the Nation's attorney general in 1977. Sensibly, however, Judge Garza didn't want to move from Brownsville to Washington, DC.

Judge Garza's life has been filled with extraordinary accomplishments. Born in 1915 in Brownsville to Ygnacio and Zoila Garza, both Mexican immigrants, he was the sixth of eight children. Judge Garza reached adulthood during the Depression and, through sheer ability, hard work and determination, graduated from the University of Texas Law School in 1939. He then established a law practice in Brownsville, mixing his work with the demands of raising five children and serving his community in capacities ranging from the local school board and city commission to the Knights of Columbus.

Following the Japanese attack on Pearl Harbor in December of 1941, Reynaldo Garza enlisted in the U.S. Army and served until the war's end in 1945 as a gunnery sergeant and in other capacities. In 1943, Garza was selected to serve as translator in a meeting between President Franklin D. Roosevelt and Mexican President Miguel Avila Camacho, marking the first time a U.S. president had met with a Mexican president on Mexican soil.

Judge Garza's selfless commitment to his family, his community and his Nation is exemplary, and today, he serves as a role model for people both inside and outside of the legal profession.

I am privileged to introduce this legislation in Judge Garza's honor today and look forward to working with my colleagues to make the Reynaldo G. Garza Federal courthouse a reality.

Mrs. HUTCHISON. Madam President, today we honor our Nation's first Mexican-American Federal judge, Judge Reynaldo G. Garza. I am proud to cosponsor legislation with Senator GRAMM to name the new Federal courthouse in Brownsville for Judge Garza. In this way, we will record for generations to come Judge Garza's selfless service to the city of Brownsville, to Texas and to our Nation.

Traditionally, we reserve this honor for judges who no longer walk the courthouse halls. However, we wish to grant an exception for this exceptional man. Born of immigrant parents, Reynaldo Garza has paved a hopeful path for other immigrant sons. After distinguishing himself as a lawyer, he served on the U.S. District Court for the Southern District until his appointment to the U.S. Court of Appeals for the Fifth Circuit in 1979 by President Carter. As the first Mexican-American to achieve these distinctions, Judge Garza truly personifies the pioneer spirit of this great Nation.

I would like Judge Garza to be remembered as well for his gracious response to this action. Upon learning that the courthouse might be named for him, Judge Garza said simply, ''I'm humbled by the fact that somebody would even think I'm worthy of it.'' Indeed, no one is worthier than Judge Garza of this small token of our respect and admiration.

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By Mr. BREAUX (by request):

S. 629. A bill entitled the ''OECD Shipbuilding Agreement Act''; to the Committee on Commerce, Science, and Transportation.

THE OECD SHIPBUILDING AGREEMENT ACT

Mr. BREAUX. Mr. President: today I introduce a bill to implement the OECD shipbuilding agreement to end foreign shipbuilding subsidies. This bill is an administration draft that I submit to better focus upcoming congressional discussion of the issues. With Europe just announcing $2.1 billion in new subsidies for its shipyards, the United States cannot afford to delay action on this agreement any longer.

The United States has taken a leadership role in pushing for the elimination of unfair subsidies in the international commercial shipbuilding sector. In 1981, the United States unilaterally eliminated its own commercial shipbuilding subsidies. In October 1989, the United States, at the request of the six defense-oriented shipyards and the smaller commercial shipyards, initiated negotiations in the OECD aimed at eliminating trade distorting foreign shipbuilding subsidies. After 5 years of negotiations and constant prodding by the U.S. Congress, the OECD shipbuilding agreement was signed by the European Union, Japan, the Republic of Korea, Finland, Norway, and the United States on December 21, 1994.

The OECD shipbuilding agreement, which covers over 80 percent of the

world's commercial shipbuilding and repair capacity, would prohibit government subsidies to the shipbuilding industry, as well as discipline export credits, set common rules for government financing programs, and establish a mechanism for addressing injurious pricing, that is, dumping. As of June 1, 1996, all signatories, except the United States, had ratified the agreement.

In the last Congress, several parties expressed serious concerns about certain aspects of the agreement and the proposed implementing legislation which we were unable to address before the end of the last session. As a result, the agreement's entry into force has been delayed by more than a year. I am hopeful that an agreement on implementing legislation can be reached early this session and I think the bill I am introducing today is a huge step in that direction.

I am very concerned, however, that further delay in confirming United States commitment to this agreement will seriously undermine U.S. long-term efforts to eliminate foreign shipbuilding subsidies, especially as other countries face increased pressure to resume the granting of subsidies to their shipbuilding industries. The United States can't afford a shipbuilding subsidies race. We are cutting funding of important domestic programs now. The United States needs to approve and implement the shipbuilding agreement in order to give us the tools to challenge foreign subsidies and protect our shipbuilding industry against unfair foreign competition.

I ask you to join the battle against unfair international shipbuilding subsidies by supporting the swift passage of legislation approving and implementing the OECD shipbuilding agreement.

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. 629

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**PART 1—GENERAL PROVISIONS**

**SECTION 101. SHORT TITLE; TABLE OF CONTENTS; PURPOSES.**

(a) SHORT TITLE.—This Act may be cited as the ''OECD Shipbuilding Agreement Act''.

(b) TABLE OF CONTENTS.—



(c) PURPOSES.—The purposes of this Act are—

(1) to enhance the competitiveness of U.S. Shipbuilders which has been diminished as a result of foreign subsidy and predatory pricing practices;

(2) to ensure that U.S. ownership, manning, and construction of coastwise trade (Jones Act) vessels, which have provided the Department of Defense with mariners and assets in time of national emergency, cannot be compromised by the OECD Shipbuilding Agreement; and

(3) to strengthen our shipbuilding industrial base to ensure that its full capabilities are available in time of national emergency.

**SEC. 102. APPROVAL OF THE SHIPBUILDING AGREEMENT.**

The Congress approves The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (referred to in this Act as the ''Shipbuilding Agreement''), a reciprocal trade agreement which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

**SEC. 103. INJURIOUS PRICING AND COUNTERMEASURES RELATING TO SHIPBUILDING.**

The Tariff Act of 1930 is amended by adding at the end the following new title:

''TITLE VIII—INJURIOUS PRICING AND COUNTERMEASURES RELATING TO SHIPBUILDING



''Subtitle A—Imposition of Injurious Pricing Charge and Countermeasures

**''SEC. 801. INJURIOUS PRICING CHARGE.**

''(a) BASIS FOR CHARGE.—If—

''(1) the administering authority determines that a foreign vessel has been sold directly or indirectly to one or more United States buyers at less than its fair value, and

''(2) the Commission determines that—

''(A) an industry in the United States—

''(i) is or has been materially injured, or

''(ii) is threatened with material injury, or

''(B) the establishment of an industry in the United States is or has been materially retarded,

by reason of the sale of such vessel, then there shall be imposed upon the foreign producer of the subject vessel an injurious pricing charge, in an amount equal to the amount by which the normal value exceeds the export price for the vessel. For purposes of this subsection and section 805(b)(1), a reference to the sale of a foreign vessel includes the creation or transfer of an ownership interest in the vessel, except for an ownership interest created or acquired solely for the purpose of providing security for a normal commercial loan.

''(b) FOREIGN VESSELS NOT MERCHANDISE.—No foreign vessel may be considered to be, or to be part of, a class or kind of merchandise for purposes of subtitle B of title VII.

**''SEC. 802. PROCEDURES FOR INITIATING AN INJURIOUS PRICING INVESTIGATION.**

''(a) INITIATION BY ADMINISTERING AUTHORITY.—

''(1) GENERAL RULE.—Except in the case in which subsection (d)(6) applies, an injurious pricing investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a charge under section 801(a) exist, and whether a producer described in section 861(17)(C) would meet the criteria of subsection (b)(1)(B) for a petitioner.

''(2) TIME FOR INITIATION BY ADMINISTERING AUTHORITY.—An investigation may only be initiated under paragraph (1) within 6 months after the time the administering authority first knew or should have known of the sale of the vessel. Any period during which an investigation is initiated and pending as described in subsection (d)(6)(A) shall not be included in calculating that 6-month period.

''(b) INITIATION BY PETITION.—

''(1) PETITION REQUIREMENTS.—

''(A) IN GENERAL.—Except in a case in which subsection (d)(6) applies, an injurious pricing proceeding shall be initiated whenever an interested party, as defined in subparagraph (C), (D), (E), or (F) of section 861(17), files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subparagraph (B), (C), (D), or (E) of this paragraph, and which is accompanied by information reasonably available to the petitioner supporting those allegations and identifying the transaction concerned.

''(B) PETITIONERS DESCRIBED IN SECTION 861(17)(C).—

''(i) IN GENERAL.—If the petitioner is a producer described in section 861(17)(C), and—

''(I) if the vessel was sold through a broad multiple bid, the petition shall include information indicating that the petitioner was invited to tender a bid on the contract at issue, the petitioner actually did so, and the bid of the petitioner substantially met the delivery date and technical requirements of the bid,

''(II) if the vessel was sold through any bidding process other than a broad multiple bid and the petitioner was invited to tender a

bid on the contract at issue, the petition shall include information indicating that the petitioner actually did so and the bid of the petitioner substantially met the delivery date and technical requirements of the bid, or

''(III) except in a case in which the vessel was sold through a broad multiple bid, if there is no invitation to tender a bid, the petition shall include information indicating that the petitioner was capable of building the vessel concerned and, if the petitioner knew or should have known of the proposed purchase, it made demonstrable efforts to conclude a sale with the United States buyer consistent with the delivery date and technical requirements of the buyer.

''(ii) REBUTTABLE PRESUMPTION REGARDING KNOWLEDGE OF PROPOSED PURCHASE.—For purposes of clause (i)(III), there is a rebuttable presumption that the petitioner knew or should have known of the proposed purchase if it is demonstrated that—

''(I) the majority of the producers in the industry have made efforts with the United States buyer to conclude a sale of the subject vessel, or

''(II) general information on the sale was available from brokers, financiers, classification societies, charterers, trade associations, or other entities normally involved in shipbuilding transactions with whom the petitioner had regular contacts or dealings.

''(C) PETITIONERS DESCRIBED IN SECTION 861(17)(D).—If the petitioner is an interested party described in section 861(17)(D), the petition shall include information indicating that members of the union or group of workers described in that section are employed by a producer that meets the requirements of subparagraph (B) of this paragraph.

''(D) PETITIONERS DESCRIBED IN SECTION 861(17)(E).—If the petitioner is an interested party described in section 861(17)(E), the petition shall include information indicating that a member of the association described in that section is a producer that meets the requirements of subparagraph (B) of this paragraph.

''(E) PETITIONERS DESCRIBED IN SECTION 861(17)(F).—If the petitioner is an interested party described in section 861(17)(F), the petition shall include information indicating that a member of the association described in that section meets the requirements of subparagraph (C) or (D) of this paragraph.

''(F) AMENDMENTS.—The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

''(2) SIMULTANEOUS FILING WITH COMMISSION.—The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

''(3) DEADLINE FOR FILING PETITION.—

''(A) DEADLINE.—(i) A petitioner to which paragraph (1)(B)(i) (I) or (II) applies shall file the petition no later than the earlier of—

''(I) 6 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or

''(II) 6 months after delivery of the subject vessel.

''(ii) A petitioner to which paragraph (1)(B)(i)(III) applies shall—

''(I) file the petition no later than the earlier of 9 months after the time that the petitioner first knew or should have known of the sale of the subject vessel, or 6 months after delivery of the subject vessel, and

''(II) submit to the administering authority a notice of intent to file a petition no later than 6 months after the time that the petitioner first knew or should have known of the sale (unless the petition itself is filed within that 6-month period).

''(B) PRESUMPTION OF KNOWLEDGE.—For purposes of this paragraph, if the existence of the sale, together with general information concerning the vessel, is published in the international trade press, there is a rebuttable presumption that the petitioner knew or should have known of the sale of the vessel from the date of that publication.

''(c) ACTIONS BEFORE INITIATING INVESTIGATIONS.—

''(1) NOTIFICATION OF GOVERNMENTS.—Before initiating an investigation under either subsection (a) or (b), the administering authority shall notify the government of the exporting country of the investigation. In the case of the initiation of an investigation under subsection (b), such notification shall include a public version of the petition.

''(2) ACCEPTANCE OF COMMUNICATIONS.—The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 861(17)(C), (D), (E), or (F) before the administering authority makes its decision whether to initiate an investigation pursuant to a petition, except for inquires regarding the status of the administering authority's consideration of the petition or a request for consultation by the government of the exporting country.

''(3) NONDISCLOSURE OF CERTAIN INFORMATION.—The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under subsection (b)(1).

''(d) PETITION DETERMINATION.—

''(1) TIME FOR INITIAL DETERMINATION.—

''(A) IN GENERAL.—Within 45 days after the date on which a petition is filed under subsection (b), the administering authority shall, after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition—

''(i) alleges the elements necessary for the imposition of an injurious pricing charge under section 801(a) and the elements required under subsection (b)(1)(B), (C), (D), or (E), and contains information reasonably available to the petitioner supporting the allegation; and

''(ii) determine if the petition has been filed by or on behalf of the industry.

''(B) CALCULATION OF 45-DAY PERIOD.—Any period in which paragraph (6)(A) applies shall not be included in calculating the 45-day period described in subparagraph (A).

''(2) AFFIRMATIVE DETERMINATION.—If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the vessel was sold at less than fair value, unless paragraph (6) applies.

''(3) NEGATIVE DETERMINATIONS.—If—

''(A) the determination under clause (i) or (ii) of paragraph (1)(A) is negative, or

''(B) paragraph (6)(B) applies, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

''(4) DETERMINATION OF INDUSTRY SUPPORT.—

''(A) GENERAL RULE.—For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the domestic industry, if—

''(i) the domestic producers or workers who support the petition collectively account for at least 25 percent of the total capacity of domestic producers capable of producing a like vessel, and

''(ii) the domestic producers or workers who support the petition collectively account for more than 50 percent of the total capacity to produce a like vessel of that portion of the domestic industry expressing support for or opposition to the petition.

''(B) CERTAIN POSITIONS DISREGARDED.—In determining industry support under subparagraph (A), the administering authority shall disregard the position of domestic producers who oppose the petition, if such producers are related to the foreign producer or United States buyer of the subject vessel, or the domestic producer is itself the United States buyer, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an injurious pricing charge.

''(C) POLLING THE INDUSTRY.—If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total capacity to produce a like vessel—

''(i) the administering authority shall poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

''(ii) if there is a large number of producers in the industry, the administering authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

''(D) COMMENT BY INTERESTED PARTIES.—Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 861(17) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

''(5) DEFINITION OF DOMESTIC PRODUCERS OR WORKERS.—For purposes of this subsection, the term 'domestic producers or workers' means interested parties as defined in section 861 (17) (C), (D), (E), or (F).

''(6) PROCEEDINGS BY WTO MEMBERS.—The administering authority shall not initiate an investigation under this section if, with respect to the vessel sale at issue, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party—

''(A) has been initiated and has been pending for not more than on year, or

''(B) has been completed and resulted in the imposition of antidumping measures or a negative determination with respect to whether the sale was at less than fair value or with respect to injury.

''(e) NOTIFICATION TO COMMISSION OF DETERMINATION.—The administering authority shall—

''(1) notify the Commission immediately of any determination it makes under subsection (a) or (d), and

''(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

**''SEC. 803. PRELIMINARY DETERMINATIONS.**

''(a) DETERMINATION BY COMMISSION OF REASONABLE INDICATION OF INJURY.—

''(1) GENERAL RULE.—Except in the case of a petition dismissed by the administering authority under section 802(d)(3), the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that—

''(A) an industry in the United States—

''(i) is or has been materially injured, or

''(ii) is threatened with material injury, or

''(B) the establishment of an industry in the United States is or has been materially retarded, by reason of the sale of the subject vessel. If the Commission makes a negative determination under this paragraph, the investigation shall be terminated.

''(2) TIME FOR COMMISSION DETERMINATION.—The Commission shall make the determination described in paragraph (1) within 90 days after the date on which the petition is filed or, in the case of an investigation initiated under section 802(a), within 90 days after the date on which the Commission receives notice from the administering authority that the investigation has been initiated under such section.

''(b) PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—

''(1) PERIOD OF INJURIOUS PRICING INVESTIGATION.—

''(A) IN GENERAL.—The administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that the subject vessel was sold at less than fair value.

''(B) COST DATA USED FOR NORMAL VALUE.—If cost data is required to determine normal value on the basis of a sale of a foreign like vessel that has not been delivered on or before the date on which the administering authority initiates the investigation, the administering authority shall make its determination within 160 days after the date of delivery of the foreign like vessel.

''(C) NORMAL VALUE BASED ON CONSTRUCTED VALUE.——If normal value is to be determined on the basis of constructed value, the administering authority shall make its determination within 160 days after the date of delivery of the subject vessel.

''(d) OTHER CASES.—In cases in which subparagraph (B) or (C) does not apply, the administering authority shall make its determination within 160 days after the date on which the administering authority initiates the investigation under section 802.

''(E) AFFIRMATIVE DETERMINATION BY COMMISSION REQUIRED.—In no event shall the administering authority make its determination before an affirmative determination is made by the Commission under subsection (a).

''(2) DE MINIMIS INJURIOUS PRICING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis. For purposes of the preceding sentence, an injurious pricing margin is de minimis if the administering authority determines that the injurious pricing margin is less than 2 percent of the export price.

''(c) EXTENSION OF PERIOD IN EXTRAORDINARILY COMPLICATED CASES OR FOR GOOD CAUSE.—

''(1) IN GENERAL.—If—

''(A) the administering authority concludes that the parties concerned are cooperating and determines that—

''(i) the case is extraordinarily complicated by reason of—

''(I) the novelty of the issues presented, or

''(II) the nature and extent of the information required, and

''(ii) additional time is necessary to make the preliminary determination, or

''(B) a party to the investigation requests an extension and demonstrates good cause for the extension,

then the administering authority may postpone the time for making its preliminary determination.

''(2) LENGTH OF POSTPONEMENT.—The preliminary determination may be postponed under paragraph (1)(A) or (B) until not later than the 190th day after—

''(A) the date of delivery of the foreign like vessel, if subsection (b)(1)(B) applies,

''(B) the date of delivery of the subject vessel, if subsection (b)(1)(C) applies, or

''(C) the date on which the administering authority initiates an investigation under section 802, in a case in which subsection (b)(1)(D) applies.

''(3) NOTICE OF POSTPONEMENT.—The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

''(d) EFFECT OF DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the preliminary determination of the administering authority under subsection (b) is affirmative, the administering authority shall—

''(1) determine an estimated injurious pricing margin, and

''(2) make available to the Commission all information upon which its determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

''(e) NOTICE OF DETERMINATION.—Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

**''SEC. 804. TERMINATION OR SUSPENSION OF INVESTIGATION.**

''(a) TERMINATION OF INVESTIGATION UPON WITHDRAWAL OF PETITION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an investigation under this subtitle may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner.

''(2) LIMITATION ON TERMINATION BY COMMISSION.—The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 803(b).

''(b) TERMINATION OF INVESTIGATIONS INITIATED BY ADMINISTERING AUTHORITY.—The administering authority may terminate any investigation initiated by the administering authority under section 802(a) after providing notice of such termination to all parties to the investigation.

''(c) ALTERNATE EQUIVALENT REMEDY.—The criteria set forth in subparagraphs (A) through (D) of section 806(e)(1) shall apply to any agreement that forms the basis for termination of an investigation under subsection (a) or (b).

''(d) PROCEEDINGS BY WTO MEMBERS.—

''(1) SUSPENSION OF INVESTIGATION.—The administering authority and the Commission shall suspend an investigation under this section if a WTO member that is not a Shipbuilding Agreement Party initiates an antidumping proceeding described in section 861(30)(A) with respect to the sale of the subject vessel.

''(2) TERMINATION OF INVESTIGATION.—If an antidumping proceeding described in paragraph (1) is concluded by—

''(A) the imposition of antidumping measures, or

''(B) a negative determination with respect to whether the sale is at less than fair value or with respect to injury, the administering authority and the Commission shall terminate the investigation under this section.

''(3) CONTINUATION OF INVESTIGATION.—(A) If such a proceeding—

''(i) is concluded by a result other than a result described in paragraph (2), or

''(ii) is not concluded within one year from the date of the initiation of the proceeding, then the administering authority and the Commission shall terminate the suspension and continue the investigation. The period in which the investigation was suspended shall not be included in calculating deadlines applicable with respect to the investigation.

''(B) Notwithstanding subparagraph (A)(ii), if the proceeding is concluded by a result described in paragraph (2)(A), the administering authority and the Commission shall terminate the investigation under this section.

**''SEC. 805. FINAL DETERMINATIONS.**

''(a) DETERMINATIONS BY ADMINISTERING AUTHORITY.—

''(1) IN GENERAL.—Within 75 days after the date of its preliminary determination under section 803(b), the administering authority shall make a final determination of whether the vessel which is the subject of the investigation has been sold in the United States at less than its fair value.

''(2) EXTENSION OF PERIOD FOR DETERMINATION.—

''(A) GENERAL RULE.—The administering authority may postpone making the final determination under paragraph (1) until not later than 290 days after—

11(i) the date of delivery of the foreign like vessel, in an investigation to which section 803(b)(1)(B) applies,

''(ii) the date of delivery of the subject vessel, in an investigation to which section 803(b)(1)(C) applies, or

''(iii) the date on which the administering authority initiates the investigation under section 802, in an investigation to which section 803(b)(1)(D) applies.

''(B) REQUEST REQUIRED.—The administering authority may apply subparagraph (A) if a request in writing is made by—

''(i) the producer of the subject vessel, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was affirmative, or

''(ii) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 803(b) was negative.

''(3) DE MINIMIS INJURIOUS PRICING MARGIN.—In making a determination under this subsection, the administering authority shall disregard any injurious pricing margin that is de minimis as defined in section 803(b)(2).

''(b) FINAL DETERMINATION BY COMMISSION.—

''(1) IN GENERAL.—The Commission shall make a final determination of whether—

''(A) an industry in the United States—

''(i) is or has been materially injured, or

''(ii) is threatened with material injury, or

''(B) the establishment of an industry in the United States is or has been materially

retarded, by reason of the sale of the vessel with respect to which the administering authority has made an affirmative determination under subsection (a)(1).

''(2) PERIOD FOR INJURY DETERMINATION FOLLOWING AFFIRMATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 803(b) is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of—

''(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 803(b), or

''(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

''(3) PERIOD FOR INJURY DETERMINATION FOLLOWING NEGATIVE PRELIMINARY DETERMINATION BY ADMINISTERING AUTHORITY.—If the preliminary determination by the administering authority under section 803(b) is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

''(c) EFFECT OF FINAL DETERMINATIONS.—

''(1) EFFECT OF AFFIRMATIVE DETERMINATION BY THE ADMINISTERING AUTHORITY.—If the determination of the administering authority under subsection (a) is affirmative, then the administering authority shall—

''(A) make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority, and

''(B) calculate an injurious pricing charge in an amount equal to the amount by which the normal value exceeds the export price of the subject vessel.

''(2) ISSUANCE OF ORDER; EFFECT OF NEGATIVE DETERMINATION.—If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative, then the administering authority shall issue an injurious pricing order under section 806. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination.

''(d) PUBLICATION OF NOTICE OF DETERMINATIONS.—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

''(e) CORRECTION OF MINISTERIAL ERRORS.—The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term 'ministerial error' includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

**SEC. 806. IMPOSITION AND COLLECTION OF INJURIOUS PRICING CHARGE.**

''(a) IN GENERAL.—Within 7 days after being notified by the Commission of an affirmative determination under section 805(b), the administering authority shall publish an order imposing an injurious pricing charge on the foreign producer of the subject vessel which—

''(1) directs the foreign producer of the subject vessel to pay to the Secretary of the Treasury, or the designee of the Secretary, within 180 days from the date of publication of the order, an injurious pricing charge in an amount equal to the amount by which the normal value exceeds the export price of the subject vessel,

(2) includes the identity and location of the foreign producer and a description of the subject vessel, in such detail as the administering authority deems necessary, and

''(3) informs the foreign producer that—

''(A) failure to pay the injurious pricing charge in a timely fashion may result in the imposition of countermeasures with respect to that producer under section 807,

''(B) payment made after the deadline described in paragraph (1) shall be subject to interest charges at the Commercial Interest Reference Rate (CIRR), and

''(C) the foreign producer may request an extension of the due date for payment under subsection (b).

''(b) EXTENSION OF DUE DATE FOR PAYMENT IN EXTRAORDINARY CIRCUMSTANCES.—

''(1) EXTENSION.—Upon request, the administering authority may amend the order under subsection (a) to set a due date for payment or payments later than the date that is 180 days from the date of publication of the order, if the administering authority determines that full payment in 180 days would render the producer insolvent or would be incompatible with a judicially supervised reorganization. When an extended payment schedule provides for a series of partial payments, the administering authority shall specify the circumstances under which default on one or more payments will result in the imposition of countermeasures.

''(2) INTEREST CHARGES.—If a request is granted under paragraph (1), payments made after the date that is 180 days from the publication of the order shall be subject to interest charges at the CIRR.

''(c) NOTIFICATION OF ORDER.—The administering authority shall deliver a copy of the order requesting payment to the foreign producer of the subject vessel and to an appropriate representative of the government of the exporting country.

''(d) REVOCATION OF ORDER.—The administering authority—

''(1) may revoke an injurious pricing order if the administering authority determines that producers accounting for substantially all of the capacity to produce a domestic like vessel have expressed a lack of interest in the order, and

''(2) shall revoke an injurious pricing order—

''(A) if the sale of the vessel that was the subject of the injurious pricing determination is voided,

''(B) if the injurious pricing charge is paid in full, including any interest accrued for late payment,

''(C) upon full implementation of an alternative equivalent remedy described in subsection (e), or

''(D) if, with respect to the vessel sale that was at issue in the investigation that resulted in the injurious pricing order, an antidumping proceeding conducted by a WTO member who is not a Shipbuilding Agreement Party has been completed and resulted in the imposition of antidumping measures.

''(e) ALTERNATIVE EQUIVALENT REMEDY.—

''(1) AGREEMENT FOR ALTERNATE REMEDY.—The administering authority may suspend an injurious pricing order if the administering authority enters into an agreement with the foreign producer subject to the order on an alternative equivalent remedy, that the administering authority determines—

''(A) is at least as effective a remedy as the injurious pricing charge,

''(B) is in the public interest,

''(C) can be effectively monitored and enforced, and

''(D) is otherwise consistent with the domestic law and international obligations of the United States.

''(2) PRIOR CONSULTATION AND SUBMISSION OF COMMENTS.—Before entering into an agreement under paragraph (1), the administering authority shall consult with the industry, and provide for the submission of comments by interested parties, with respect to the agreement.

''(3) MATERIAL VIOLATIONS OF AGREEMENT.—If the injurious pricing order has been suspended under paragraph (1), and the administering authority determines that the foreign producer concerned has materially violated the terms of the agreement under paragraph (1), the administering authority shall terminate the suspension.

**''SEC. 807. IMPOSITION OF COUNTERMEASURES.**

''(a) GENERAL RULE.—

''(1) ISSUANCE OF ORDER IMPOSING COUNTERMEASURES.—Unless an injurious pricing order is revoked or suspended under section 806(d) or (e), the administering authority shall issue an order imposing countermeasures.

''(2) CONTENTS OF ORDER.—The countermeasure order shall—

''(A) state that, as provided in section 468, a permit to lade or unlade passengers or merchandise may not be issued with respect to vessels contracted to be built by the foreign producer of the vessel with respect to which an injurious pricing order was issued under section 806, and

''(B) specify the scope and duration of the prohibition on the issuance of a permit to lade or unlade passengers or merchandise.

''(b) NOTICE OF INTENT TO IMPOSE COUNTERMEASURES.—

''(1) GENERAL RULE.—The administering authority shall issue a notice of intent to impose countermeasures not later than 30 days before the expiration of the time for payment specified in the injurious pricing order (or extended payment provided for under section 806(b)), and shall publish the notice in the Federal Register within 7 days after issuing the notice.

''(2) ELEMENTS OF THE NOTICE OF INTENT.—The notice of intent shall contain at least the following elements:

''(A) SCOPE.—A permit to lade or unlade passengers or merchandise may not be issued with respect to any vessel—

''(i) built by the foreign producer subject to the proposed countermeasures, and

''(ii) with respect to which the material terms of sale are established within a period of 4 consecutive years beginning on the date that is 30 days after publication in the Federal Register of the notice of intent described in paragraph (1).

''(B) DURATION.—For each vessel described in subparagraph (A), a permit to lade or unlade passengers or merchandise may not be issued for a period of 4 years after the date of delivery of the vessel.

''(c) DETERMINATION TO IMPOSE COUNTERMEASURES; ORDER.—

''(1) GENERAL RULE.—The administering authority shall, within the time specified in paragraph (2), issue a determination and order imposing countermeasures.

''(2) TIME FOR DETERMINATION.—The determination shall be issued within 90 days after

the date on which the notice of intent to impose countermeasures under subsection (b) is published in the Federal Register. The administering authority shall publish the determination, and the order described in paragraph (4), in the Federal Register within 7 days after issuing the final determination, and shall provide a copy of the determination and order to the Customs Service.

''(3) CONTENT OF THE DETERMINATION.—In the determination imposing countermeasures, the administering authority shall determine whether, in light of all of the circumstances, an interested party has demonstrated that the scope or duration of the countermeasures described in subsection (b)(2) should be narrower or shorter than the scope or duration set forth in the notice of intent to impose countermeasures.

''(4) ORDER.—At the same time it issues its determination, the administering authority shall issue an order imposing countermeasures, consistent with its determination under paragraph (1).

''(d) ADMINISTRATIVE REVIEW OF DETERMINATION TO IMPOSE COUNTERMEASURES.—

''(1) REQUEST FOR REVIEW.—Each year, in the anniversary month of the issuance of the order imposing countermeasures under subsection (c), the administering authority shall publish in the Federal Register a notice providing that interested parties may request—

''(A) a review of the scope or duration of the countermeasures determined under subsection (c)(3), and

''(B) a hearing in connection with such a review.

''(2) REVIEW.—If a proper request has been received under paragraph (1), the administering authority shall—

''(A) publish notice of initiation of a review in the Federal Register not later than 15 days after the end of the anniversary month of the issuance of the order imposing countermeasures, and

''(B) review and determine whether the requesting party has demonstrated that the scope or duration of the countermeasures is excessive in light of all of the circumstances.

''(3) TIME FOR REVIEW.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of the review is published. If the determination under paragraph (2)(B) is affirmative, the administering authority shall amend the order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service. In extraordinary circumstances, the administering authority may extend the time for its determination under paragraph (2)(B) to not later than 150 days after the date on which the notice of initiation of the review is published.

''(e) EXTENSION OF COUNTERMEASURES.—

''(1) REQUEST FOR EXTENSION.—Within the time described in paragraph (2), an interested party may file with the administering authority a request that the scope or duration of countermeasures be extended.

''(2) DEADLINE FOR REQUEST FOR EXTENSION.—

''(A) REQUEST FOR EXTENSION BEYOND 4 YEARS.—If the request seeks an extension that would cause the scope or duration of countermeasures to exceed 4 years, including any prior extensions, the request for extension under paragraph (1) shall be filed not earlier than the date that is 15 months, and not later than the date that is 12 months, before the date that marks the end of the period that specifies the vessels that fall within the scope of the order by virtue of the establishment of material terms of sale within that period.

''(B) OTHER REQUESTS.—If the request seeks an extension under paragraph (1) other than one described in subparagraph (A), the request shall be filed not earlier than the date that is 6 months, and not later than a date that is 3 months, before the date that marks the end of the period referred to in subparagraph (A).

''(3) DETERMINATION.—

''(A) NOTICE OF REQUEST FOR EXTENSION.—If a proper request has been received under paragraph (1), the administering authority shall publish notice of initiation of an extension proceeding in the Federal Register not later than 15 days after the applicable deadline in paragraph (2) for requesting the extension.

''(B) PROCEDURES.—

''(i) REQUEST FOR EXTENSION BEYOND 4 YEARS.—If paragraph (2)(A) applies to the request, the administering authority shall consult with the Trade Representative under paragraph (4).

''(ii) OTHER REQUESTS.—If paragraph (2)(B) applies to the request, the administering authority shall determine, within 90 days after the date on which the notice of initiation of the proceeding is published, whether the requesting party has demonstrated that the scope or duration of the countermeasures is inadequate in light of all of the circumstances. If the administering authority determines that an extension is warranted, it shall amend the countermeasure order accordingly. The administering authority shall promptly publish the determination and any amendment to the order in the Federal Register, and shall provide a copy of any amended order to the Customs Service.

''(4) CONSULTATION WITH TRADE REPRESENTATIVE.—If paragraph (3)(B)(i) applies, the administering authority shall consult with the Trade Representative concerning whether it would be appropriate to request establishment of a dispute settlement panel under the Shipbuilding Agreement for the purpose of seeking authorization to extend the scope or duration of countermeasures for a period in excess of 4 years.

''(5) DECISION NOT TO REQUEST PANEL.—If, based on consultations under paragraph (4), the Trade Representative decides not to request establishment of a panel, the Trade Representative shall inform the party requesting the extension of the countermeasures of the reasons for its decision in writing. The decision shall not be subject to judicial review.

''(6) PANEL PROCEEDINGS.—If, based on consultations under paragraph (4), the Trade Representative requests the establishment of a panel under the Shipbuilding Agreement to authorize an extension of the period of countermeasures, and the panel authorizes such an extension, the administering authority shall promptly amend the countermeasure order. The administering authority shall publish notice of the amendment in the Federal Register.

''(f) LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

''(1) GENERAL RULE.—At least once during each 12-month period beginning on the anniversary date of a determination to impose countermeasures under this section, the administering authority shall publish in the Federal Register a list of all delivered vessels subject to countermeasures under the determination.

''(2) CONTENT OF LIST.—The list under paragraph (1) shall include the following information for each vessel, to the extent the information is available:

''(A) The name and general description of the vessel.

''(B) The vessel identification number.

''(C) The shipyard where the vessel was constructed.

''(D) The last-known registry of the vessel.

''(E) The name and address of the last-known owner of the vessel.

''(F) The delivery date of the vessel.

''(G) The remaining duration of countermeasures on the vessel.

''(H) Any other identifying information available.

''(3) AMENDMENT OF LIST.—The administering authority may amend the list from time to time to reflect new information that comes to its attention and shall publish any amendments in the Federal Register.

''(4) SERVICE OF LIST AND AMENDMENTS.—

''(A) SERVICE OF LIST.—The administering authority shall serve a copy of the list described in paragraph (1) on—

''(i) the petitioner under section 802(b),

''(ii) the United States Customs Service,

''(iii) the Secretariat of the Organization for Economic cooperation and Development,

''(iv) the owners of vessels on the list,

''(v) the shipyards on the list, and.

''(vi) the government of the country in which a shipyard on the list is located.

''(B) SERVICE OF AMENDMENTS.—The administering authority shall serve a copy of any amendments to the list under paragraph (3) or subsection (g)(3) on—

''(i) the parties listed in clauses (i), (ii), and (iii) of subparagraph (A), and

''(ii) if the amendment affects their interests, the parties listed in clauses (iv), (v), and (vi) of subparagraph (A).

''(g) ADMINISTRATIVE REVIEW OF LIST OF VESSELS SUBJECT TO COUNTERMEASURES.—

''(1) REQUEST FOR REVIEW.—

''(A) IN GENERAL.—An interested party may request in writing a review of the list described in subsection (f)(1), including any amendments thereto, to determine whether—

''(i) a vessel included in the list does not fall within the scope of the applicable countermeasure order and should be deleted, or

''(ii) a vessel not included in the list falls within the scope of the applicable countermeasure order and should be added.

''(B) TIME FOR MAKING REQUEST.—Any request seeking a determination described in subparagraph (A)(i) shall be made within 90 days after the date of publication of the applicable list.

''(2) REVIEW.—If a proper request for review has been received, the administering authority shall—

''(A) publish notice of initiation of a review in the Federal Register—

''(i) not later than 15 days after the request is received, or

''(ii) if the request seeks a determination described in paragraph (1)(A)(i), not later than 15 days after the deadline described in paragraph (1)(B), and

''(B) review and determine whether the requesting party has demonstrated that—

''(i) a vessel included in the list does not qualify for such inclusion, or

''(ii) a vessel not included in the list qualifies for inclusion.

''(3) TIME FOR DETERMINATION.—The administering authority shall make its determination under paragraph (2)(B) within 90 days after the date on which the notice of initiation of such review is published. If the administering authority determines that a vessel should be added or deleted from the list, the administering authority shall amend the list accordingly. The administering authority shall promptly publish in the Federal Register the determination and any such amendment to the list.

''(h) EXPIRATION OF COUNTERMEASURES.—Upon expiration of a countermeasure order imposed under this section, the administering authority shall promptly publish a notice of the expiration in the Federal Register.

''(i) SUPENSION OR TERMINATION OF PROCEEDINGS OR COUNTERMEASURES; TEMPORARY REDUCTION OF COUNTERMEASURES.—

''(1) IF INJURIOUS PRICING ORDER REVOKED OR SUSPENDED.—If an injurious pricing order had been revoked or suspended under section 806(d) or (e), the administering authority shall, as appropriate, suspend or terminate proceedings under this section with respect to that order, or suspend or revoke a countermeasure order issued with respect to that injurious pricing order.

''(2) IF PAYMENT DATE AMENDED.—

''(A) SUSPENSION OF MODIFICATION OF DEADLINE.—Subject to subparagraph (C), if the payment date under an injurious pricing order is amended under section 845, the administering authority shall, as appropriate, suspend proceedings or modify deadlines under this section, or suspend or amend a countermeasure order issued with respect to that injurious pricing order.

''(B) DATE FOR APPLICATION OF COUNTERMEASURE.—In taking action under subparagraph (A), the administering authority shall ensure that countermeasures are not applied before the date that is 30 days after publication in the Federal Register of the amended payment date.

''(C) REINSTITUTION OF PROCEEDINGS.—If—

''(i) a countermeasure order is issued under subsection (c) before an amendment is made under section 845 to the payment date of the injurious pricing order to which the countermeasure order applies, and

''(ii) the administering authority determines that the period of time between the original payment date and the amended payment date is significant for purposes of determining the appropriate scope or duration of countermeasures,

the administering authority may, in lieu of acting under subparagraph (A), reinstitute proceedings under subsection (c) for purposes of issuing new determination under that subsection.

''(j) COMMENT AND HEARING.—In the course of any proceeding under subsection (c), (d), (e), or (g), the administering authority—

''(1) shall solicit comments from interested parties, and

''(2)(A) in a preceding under subsection (c), (d), or (e), upon the request of an interested party, shall hold a hearing in accordance with section 841(b) in connection with that proceeding, or

''(B) in a proceeding under subsection (g), upon the request of an interested party, may hold a hearing in accordance with section 841(b) in connection with that proceeding.

**"SEC. 808. INJURIOUS PRICING PETITIONS BY THIRD COUNTRIES.**

''(a) FILING OF PETITION.—The government of a Shipbuilding Agreement Party may file with the Trade Representative a petition requesting that an investigation be conducted to determine if—

''(1) a vessel from another Shipbuilding Agreement Party has been sold directly or indirectly to one or more United States buyers at less than fair value, and

''(2) an industry, in the petitioning country, producing or capable of producing a like vessel is materially injured by reason of such sale.

''(b) INITIATION.—The Trade Representative, after consultation with the administering authority and the Commission and obtaining the approval of the Parties Group under the Shipbuilding Agreement, shall determine whether to initiate an investigation described in subsection (a).

''(c) DETERMINATIONS.—Upon initiation of an investigation under subsection (a), the Trade Representative shall request the following determinations be made in accordance with substantive and procedural requirements by the Trade Representative, notwithstanding any other provision of this title:

''(1) SALE AT LESS THAN FAIR VALUE.—The administering authority shall determine whether the subject vessel has been sold at less than fair value.

''(2) INJURY TO INDUSTRY.—The Commission shall determine whether an industry in the petitioning country is or has been materially injured by reason of the sale of the subject vessel in the United States.

''(d) PUBLIC COMMENT.—An opportunity for public comment shall be provided, as appropriate—

''(1) by the Trade Representative, in making the determinations required by subsection (b), and

''(2) by the administering authority and the Commission, in making the determination required by subsection (c).

''(e) ISSUANCE OF ORDER.—If the administering authority makes an affirmative determination under paragraph (1) of subsection (c) and the Commission makes an affirmative determination under paragraph (2) of subsection (c), the administering authority shall—

''(1) order an injurious pricing charge in accordance with section 806, and

''(2) make such determinations and take such other actions as are required by sections 806 and 807, as if affirmative determinations had been made under subsections (a) and (b) of section 805.

''(f) REVIEWS OF DETERMINATIONS.—For purposes of review under section 516B, if an order is issued under subsection (e)—

''(1) the final determinations of the administering authority and the Commission under subsection (c) shall be treated as final determinations made under section 805, and

''(2) determinations of the administering authority under subsection (e)(2) shall be treated as determinations made under section 806 and 807, as the case may be.

''(g) ACCESS TO INFORMATION.—Section 843 shall apply to investigations under this section, to the extent specified by the Trade Representative, after consultation with the administering authority and the Commission.

**"SEC. 809. THIRD COUNTRY INJURIOUS PRICING.**

''(a) PETITION BY DOMESTIC INDUSTRY.—

''(1) With respect to the sale of a vessel to a buyer in a Shipbuilding Agreement Party, any interested party who would be eligible to file a petition under section 802(b)(1) with respect to the sale if it had been to a United States buyer, if it has reason to believe that—

''(A) the vessel has been sold at less than fair value; and

''(B) an industry in the United States is or has been materially injured, or is threatened with material injury by reason of the sale of the vessel;

may submit a petition to the Trade Representative that alleges the elements referred to in subparagraphs (A) and (B) and requests the Trade Representative to take action under subsection (b) of this section on behalf of the domestic industry.

''(2) A petition submitted under paragraph (1) shall contain such detailed information as the Trade Representative may require in support of the allegations in the petition.

''(b) APPLICATION FOR INJURIOUS PRICING ACTION ON BEHALF OF THE DOMESTIC INDUSTRY.—

''(1) If the Trade Representative, on the basis of the information contained in a petition submitted under subsection (a), determines that there is a reasonable basis for the allegations in the petition, the Trade Representative shall submit to the appropriate authority of the Shipbuilding Agreement Party where the alleged injurious pricing is occurring an application pursuant to Article 10 of Annex II to the Shipbuilding Agreement which requests that appropriate injurious pricing action under the law of that country be taken, on behalf of the United States, with respect to the sale of the vessel.

''(2) At the request of the Trade Representative, the appropriate officers of the Department of Commerce and the United States International Trade Commission shall assist the Trade Representative in preparing the application under paragraph (1).

''(c) CONSULTATION AFTER SUBMISSION OF APPLICATION.—After submitting an application under subsection (b)(1), the Trade Representative shall seek consultations with the appropriate authority of the Shipbuilding Agreement Party regarding the request for injurious pricing action.

''(d) ACTION UPON REFUSAL OF SHIPBUILDING AGREEMENT PARTY TO ACT.—If the appropriate authority of the Shipbuilding Agreement Party refuses to undertake injurious pricing measures in response to a request made therefor by the Trade Representative under subsection (b) of this section, the Trade Representative promptly shall consult with the domestic industry on whether action under any other law of the United States is appropriate.

**"Subtitle B—Special Rules**

**"SEC. 821. EXPORT PRICE.**

''(a) EXPORT PRICE.—For purposes of this title, the term 'export price' means the price at which the subject vessel is first sold (or agreed to be sold) by or for the account of the foreign producer of the subject vessel to an unaffiliated United States buyer. The term 'sold (or agreed to be sold) by or for the account of the foreign producer' includes any transfer of an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, to a United States buyer.

''(b) ADJUSTMENTS TO EXPORT PRICE.—The price used to establish export price shall be—

''(1) increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject vessel, and

''(2) reduced by—

''(A) the amount, if any, included in such price, attributable to any additional costs, charges, or expenses which are incident to bringing the subject vessel from the shipyard in the exporting country to the place of delivery,

''(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject vessel, and

''(C) all other expenses incidental to placing the vessel in condition for delivery to the buyer.

**"SEC. 822. NORMAL VALUE.**

''(a) DETERMINATION.—In determining under this title whether a subject vessel has been sold at less than fair value, a fair comparison shall be made between the export price and normal value of the subject vessel. In order to achieve a fair comparison with the export price, normal value shall be determined as follows:

''(1) DETERMINATION OF NORMAL VALUE.—

''(A) IN GENERAL.—The normal value of the subject vessel shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price under section 821(a).

''(B) PRICE.—The price referred to in subparagraph (A) is—

''(i) the price at which a foreign like vessel is first sold in the exporting country, in the ordinary course of trade and, to the extent practicable, at the same level of trade, or

''(ii) in a case to which subparagraph (C) applies, the price at which a foreign like vessel is so sold for consumption in a country other than the exporting country or the United States, if—

''(I) such price is representative, and

''(II) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price.

''(C) THIRD COUNTRY SALES.—This subparagraph applies when—

''(i) a foreign like vessel is not sold in the exporting country as described in subparagraph (B)(i), or

''(ii) the particular market situation in the exporting country does not permit a proper comparison with the export price.

''(D) CONTEMPORANEOUS SALE.—For purposes of subparagraph (A), 'a time reasonably corresponding to the time of the sale' means within 3 months before or after the sale of the subject vessel or, in the absence of such sales, such longer period as the administering authority determines would be appropriate.

''(2) FICTITIOUS MARKETS.—No pretended sale, and no sale intended to establish a fictitious market, shall be taken into account in determining normal value.

''(3) USE OF CONSTRUCTED VALUE.—If the administering authority determines that the normal value of the subject vessel cannot be determined under paragraph (1)(B) or (1)(C), then the normal value of the subject vessel shall be the constructed value of that vessel, as determined under subsection (e).

''(4) INDIRECT SALES.—If a foreign like vessel is sold through an affiliated party, the price at which the foreign like vessel is sold by such affiliated party may be used in determining normal value.

''(5) ADJUSTMENTS.—The price described in paragraph (1)(B) shall be—

''(A) reduced by—

''(i) the amount, if any, included in the price described in paragraph (1)(B), attributable to any costs, charges, and expenses incident to bringing the foreign like vessel from the shipyard to the place of delivery to the purchaser,

''(ii) the amount of any taxes imposed directly upon the foreign like vessel or components thereof which have been rebated, or which have not been collected, on the subject vessel, but only to the extent that such taxes are added to or included in the price of the foreign like vessel, and

''(iii) the amount of all other expenses incidental to placing the foreign like vessel in condition for delivery to the buyer, and

''(B) increased or decreased by the amount of any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to—

''(i) physical differences between the subject vessel and the vessel used in determining normal value, or

''(ii) other differences in the circumstances of sale.

''(6) ADJUSTMENTS FOR LEVEL OF TRADE.—The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of trade between the export price and normal value, if the difference in level of trade—

''(A) involves the performance of different selling activities, and

''(B) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

''(7) ADJUSTMENTS TO CONSTRUCTED VALUE.—Constructed value as determined under subsection (e) may be adjusted, as appropriate, pursuant to this subsection.

''(b) SALES AT LESS THAN COST OF PRODUCTION.—

''(1) DETERMINATION; SALES DISREGARDED.—Whenever the administering authority has reasonable grounds to believe or suspect that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the foreign like vessel, the administering authority shall determine whether, in fact, such sale was made at less than the cost of production. If the administering authority determines that the sale was made at less than the cost of production and was not at a price which permits recovery of all costs within 5 years, such sale may be disregarded in the determination of normal value. Whereas such a sale is disregarded, normal value shall be based on another sale of a foreign like vessel in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the subject vessel.

''(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection:

''(A) REASONABLE GROUNDS TO BELIEVE OR SUSPECT.—There are reasonable grounds to believe or suspect that the sale of a foreign like vessel was made at a price that is less than the cost of production of the vessel, if an interested party described in subparagraph (C), (D), (E), or (F) of section 861(17) provides information, based upon observed prices or constructed prices or costs, that the sale of the foreign like vessel under consideration for the determination of normal value has been made at a price which represents less than the cost of production of the vessel.

''(B) RECOVERY OF COSTS.—If the price is below the cost of production at the time of sale but is above the weighted average cost of production for the period of investigation, such price shall be considered to provide for recovery of costs within 5 years.

''(3) CALCULATION OF COST OF PRODUCTION.—For purposes of this section, the cost of production shall be an amount equal to the sum of—

''(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like vessel, during a period which would ordinarily permit the production of that vessel in the ordinary course of business, and

''(B) an amount for selling, general, and administrative expenses based on actual data pertaining to the production and sale of the foreign like vessel by the producer in question.

For purposes of subparagraph (A), if the normal value is based on the price of the foreign like vessel sold in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or on their disposition which are remitted or refunded upon exportation.

''(c) NONMARKET ECONOMY COUNTRIES.—

''(1) IN GENERAL.—If—

''(A) the subject vessel is produced in a nonmarket economy country, and

''(B) the administering authority finds that available information does not permit the normal value of the subject vessel to be determined under subsection (a),

the administering authority shall determine the normal value of the subject vessel on the basis of the value of the factors of production utilized in producing the vessel and to which shall be added an amount for general expenses and profit plus the cost of expenses incidental to placing the vessel in a condition for delivery to the buyer. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

''(2) EXCEPTION.—If the administering authority finds that the available information is inadequate for purposes of determining the normal value of the subject vessel under paragraph (1), the administering authority shall determined the normal value on the basis of the price at which a vessel that is—

''(A) comparable to the subject vessel, and

''(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, is sold in other countries, including the United States.

''(3) FACTORS OF PRODUCTION.—For purposes of paragraph (1), the factors of production utilized in producing the vessel include, but are not limited to—

''(A) hours of labor required,

''(B) quantities of raw materials employed,

''(C) amounts of energy and other utilities consumed, and

''(D) representative capital cost, including depreciation.

''(4) VALUATION OF FACTORS OF PRODUCTION.—The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—

''(A) at a level of economic development comparable to that of the nonmarket economy country, and

''(B) significant producers of comparable vessels.

''(d) SPECIAL RULE FOR CERTAIN MULTINATIONAL CORPORATIONS.—Whenever, in the course of an investigation under this title, the administering authority determines that—

''(1) the subject vessel was produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of a foreign like vessel which are located in another country or countries,

''(2) subsection (a)(1)(C) applies, and

''(3) the normal value of a foreign like vessel produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like vessel produced in the facilities located in the exporting country,

the administering authority shall determined the normal value of the subject vessel by reference to the normal value at which a foreign like vessel is sold from one or more facilities outside the exporting country. The administering authority, in making any determination under this subsection, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of the foreign like vessel produced in facilities outside the exporting country and costs of production of the foreign like vessel produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction.

''(e) CONSTRUCTED VALUE.—

''(1) IN GENERAL.—For purposes of this title, the constructed value of a subject vessel shall be an amount equal to the sum of—

''(A) the cost of materials and fabrication or other processing of any kind employed in producing the subject vessel, during a period which would ordinarily permit the production of the vessel in the ordinary course of business, and

''(B)(i) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market of the country of origin of the subject vessel, or

''(ii) if actual data are not available with respect to the amounts described in clause (i), then—

''(I) the actual amounts incurred and realized by the foreign producer of the subject vessel for selling, general, and administrative expenses, and for profits, in connection with the production and sale of the same general category of vessel in the domestic market of the country of origin of the subject vessel,

''(II) the weighted average of the actual amounts incurred and realized by producers in the country of origin of the subject vessel (other than the producer of the subject vessel) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like vessel, in the ordinary course of trade, in the domestic market, or

''(III) if data are not available under subclause (I) or (II), the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by foreign producers (other than the producer of the subject vessel) in connection with the sale of vessels in the same general category of vessel as the subject vessel in the domestic market of the country of origin of the subject vessel.

For purposes of this paragraph, the profit shall be based on the average profit realized over a reasonable period of time before and after the sale of the subject vessel and shall reflect a reasonable profit at the time of such sale. For purposes of the preceding sentence, a 'reasonable period of time' shall not, except where otherwise appropriate, exceed 6 months before, or 6 months after, the sale of the subject vessel. In calculating profit under this paragraph, any distortion which would result in other than a profit which is reasonable at the time of the sale shall be eliminated.

''(2) COSTS AND PROFITS BASED ON OTHER REASONABLE METHODS.—When costs and profits are determined under paragraph (1)(B)(ii)(III), such determination shall, except where otherwise appropriate, be based on appropriate export sales by the producer of the subject vessel or, absent such sales, to export sales by other producers of a foreign like vessel or the same general category of vessel as the subject vessel in the country of origin of the subject vessel.

''(3) COSTS OF MATERIALS.—For purposes of paragraph (1)(A), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject vessel produced from such materials.

''(f) SPECIAL RULES FOR CALCULATION OF COST OF PRODUCTION AND FOR CALCULATION OF CONSTRUCTED VALUE.—For purposes of subsections (b) and (e)—

''(1) COSTS.—

''(A) IN GENERAL.—Costs shall normally be calculated based on the records of the foreign producer of the subject vessel, if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the vessel. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the foreign producer on a timely basis, if such allocations have been historically used by the foreign producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

''(B) NONRECURRING COSTS.—Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

''(C) STARTUP COSTS.—

''(i) IN GENERAL.—Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation are affected by startup operations.

''(ii) STARTUP OPERATIONS.—Adjustments shall be made for startup operations only where—

''(I) a producer is using new production facilities or producing a new type of vessel that requires substantial additional investment, and

''(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as demand, seasonality, or business cycles.

''(iii) ADJUSTMENT FOR STARTUP OPERATIONS.—The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the vessel at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation under this title, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation.

For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the vessel, the producer, or the industry is achieved.

''(D) COSTS DUE TO EXTRAORDINARY CIRCUMSTANCES NOT INCLUDED.—Costs shall not include actual costs which are due to extraordinary circumstances (including, but not limited to, labor disputes, fire, and natural disasters) and which are significantly over the cost increase which the shipbuilder could have reasonably anticipated and taken into account at the time of sale.

''(2) TRANSACTIONS DISREGARDED.—A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of a like vessel in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

''(3) MAJOR INPUT RULE.—If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the subject vessel, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

**''SEC. 823. CURRENCY CONVERSION.**

''(a) IN GENERAL.—In an injurious pricing proceeding under this title, the administering authority shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject vessel, except that if it is established that a currency transaction on forward markets is directly linked to a sale under consideration, the exchange rate specified with respect to such foreign currency in the forward sale agreement shall be used to convert the foreign currency.

''(b) DATE OF SALE.—For purposes of this section, 'date of sale' means the date of the contract of sale or, where appropriate, the date on which the material terms of sale are otherwise established. If the material terms of sale are significantly changed after such date, the date of sale is the date of such change. In the case of such a change in the date of sale, the administering authority shall make appropriate adjustments to take into account any unreasonable effect on the injurious pricing margin due only to fluctuations in the exchange rate between the original date of sale and the new date of sale.

**''Subtitle C—Procedures**

**''SEC. 841. HEARINGS.**

''(a) UPON REQUEST.—The administering authority and the Commission shall each hold a hearing in the course of an investigation under this title, upon the request of any party to the investigation, before making a final determination under section 805.

''(b) PROCEDURES.—Any hearing required or permitted under this title shall be conducted after notice published in the Federal Register, and a transcript of the hearing shall be prepared and made available to the public. The hearing shall not be subject to the provisions of subchapter II of chapter 5 of title 5, United States Code, or to section 702 of such title.

**''SEC. 842. DETERMINATIONS ON THE BASIS OF THE FACTS AVAILABLE.**

''(a) IN GENERAL.—

''(1) necessary information is not available on the record, or

''(2) an interested party or any other person—

''(A) withholds information that has been requested by the administering authority or the Commission under this title,

''(B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (b)(1) and (d) of section 844,

''(C) significantly impedes a proceeding under this title, or

''(D) provides such information but the information cannot be verified as provided in section 844(g),

the administering authority and the Commission shall, subject to section 844(c), use the facts otherwise available in reaching the applicable determination under this title.

''(b) ADVERSE INFERENCES.—If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not acting to the

best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Such adverse inference may include reliance on information derived from—

''(1) the petition, or

''(2) any other information placed on the record.

''(c) CORROBORATION OF SECONDARY INFORMATION.—When the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation under this title, the administering authority and the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

**''SEC. 843. ACCESS TO INFORMATION.**

''(a) INFORMATION GENERALLY MADE AVAILABLE.—

''(1) PROGRESS OF INVESTIGATION REPORTS.—The administering authority and the Commission shall, from time to time upon request, inform the parties to an investigation under this title of the progress of that investigation.

''(2) EX PARTE MEETINGS.—the administering authority and the Commission shall maintain a record of any ex parte meeting between—

''(A) interested parties or other persons providing factual information in connection with a proceeding under this title, and

''(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding, if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

''(3) SUMMARIES; NONPROPRIETARY SUBMISSIONS.—The administering authority and the Commission shall disclose—

''(A) any proprietary information received in the course of a proceeding under this title if it is disclosed in a form which cannot be associated with, or otherwise be used to identify, operations of a particular person, and

''(B) any information submitted in connection with a proceeding which is not designated as proprietary by the person submitting it.

''(4) MAINTENANCE OF PUBLIC RECORD.—The administering authority and the Commission shall maintain and make available for public inspection and copying a record of all information which is obtained by the administering authority or the Commission, as the case may be, in a proceeding under this title to the extent that public disclosure of the information is not prohibited under this chapter or exempt from disclosure under section 552 of title 5, United States Code.

''(b) PROPRIETARY INFORMATION.—

''(1) PROPRIETARY STATUS MAINTAINED.—

''(A) IN GENERAL.—Except as provided in subsection (a)(4) and subsection (c), information submitted to the administering authority or the Commission which is designated as proprietary by the person submitting the information shall not be disclosed to any person without the consent of the person submitting the information, other than—

''(i) to an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted or any other proceeding under this title covering the same subject vessel, or

''(ii) to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this title.

''(B) ADDITIONAL REQUIREMENTS.—The administering authority and the Commission shall require that information for which proprietary treatment is requested be accompanied by—

''(i) either—

''(I) a nonproprietary summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

''(II) a statement that the information is not susceptible to summary, accompanied by a statement of the reasons in support of the contention, and

''(ii) either—

''(I) a statement which permits the administering authority or the Commission to release under administrative protective order, in accordance with subsection (c), the information submitted in confidence, or

''(II) a statement to the administering authority or the Commission that the business proprietary information is of a type that should not be released under administrative protective order.

''(2) UNWARRANTED DESIGNATION.—If the administering authority or the Commission determines, on the basis of the nature and extent of the information or its availability from public sources, that designation of any information as proprietary is unwarranted, then it shall notify the person who submitted it and ask for an explanation of the reasons for the designation. Unless that person persuades the administering authority or the Commission that the designation is warranted, or withdraws the designation, the administering authority or the Commission, as the case may be, shall return it to the party submitting it. In a case in which the administering authority or the Commission returns the information to the person submitting it, the person may thereafter submit other material concerning the subject matter of the returned information if the submission is made within the time otherwise provided for submitting such material.

''(c) LIMITED DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION UNDER PROTECTIVE ORDER.—

''(1) DISCLOSURE BY ADMINISTERING AUTHORITY OR COMMISSION.—

''(A) IN GENERAL.—Upon receipt of an application (before or after receipt of the information requested) which describes in general terms the information requested and sets forth the reasons for the request, the administering authority or the Commission shall make all business proprietary information presented to, or obtained by it, during a proceeding under this title (except privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure) available to all interested parties who are parties to the proceeding under a protective order described in subparagraph (B), regardless of when the information is submitted during the proceeding. Customer names (other than the name of the United States buyer of the subject vessel) obtained during any investigation which requires a determination under section 805(b) may not be disclosed by the administering authority under protective order until either an order is published under section 806(a) as a result of the investigation or the investigation is suspended or terminated. The Commission may delay disclosure of customer names (other than the name of the United States buyer of the subject vessel) under protective order during any such investigation until a reasonable time before any hearing provided under section 841 is held.

''(B) PROTECTIVE ORDER.—The protective order under which information is made available shall contain such requirements as the administering authority or the Commission may determine by regulation to be appropriate. The administering authority and the Commission shall provide by regulation for such sanctions as the administering authority and the Commission determine to be appropriate, including disbarment from practice before the agency.

''(C) TIME LIMITATIONS ON DETERMINATIONS.—The administering authority or the Commission, as the case may be, shall determine whether to make information available under this paragraph—

''(i) not later than 14 days (7 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted, or

''(ii) if—

''(I) the person that submitted the information raises objection to its release, or

''(II) the information is unusually voluminous or complex,

not later than 30 days (10 days if the submission pertains to a proceeding under section 803(a)) after the date on which the information is submitted.

''(D) AVAILABILITY AFTER DETERMINATION.—If the determination under subparagraph (C) is affirmative, then—

''(i) the business proprietary information submitted to the administering authority or the Commission on or before the date of the determination shall be made available, subject to the terms and conditions of the protective order, on such date, and

''(ii) the business proprietary information submitted to the administering authority or the Commission after the date of the determination shall be served as required by subsection (d).

''(E) FAILURE TO DISCLOSE.—If a person submitting information to the administering authority refuses to disclose business proprietary information which the administering authority determines should be released under a protective order described in subparagraph (B), the administering authority shall return the information, and any nonconfidential summary thereof, to the person submitting the information and summary and shall not consider either.

''(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority or the Commission denies a request for information under paragraph (1), then application may be made to the United States Court of International Trade for an order directing the administering authority or the Commission, as the case may be, to make the information available. After notification of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

''(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

''(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

''(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.

''(d) SERVICE.—Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order. The administering authority or the Commission shall not accept any such information that is not accompanied by a certificate of service and a copy of the protective order version of the document containing the information. Business proprietary information shall only be served upon interested parties who are parties to the proceeding that are subject to protective order, except that a nonconfidential summary thereof shall be served upon all other interested parties who are parties to the proceeding.

''(e) INFORMATION RELATING TO VIOLATIONS OF PROTECTIVE ORDERS AND SANCTIONS.—The administering authority and the Commission may withhold from disclosure any correspondence, private letters of reprimand, settlement agreements, and documents and files compiled in relation to investigations and actions involving a violation or possible violation of a protective order issued under subsection (c), and such information shall be treated as information described in section 552(b)(3) of title 5, United States Code.

''(f) OPPORTUNITY FOR COMMENT BY VESSEL BUYERS.—The administering authority and the Commission shall provide an opportunity for buyers of subject vessels to submit relevant information to the administering authority concerning a sale at less than fair value or countermeasures, and to the Commission concerning material injury by reason of the sale of a vessel at less than fair value.

''(g) PUBLICATION OF DETERMINATIONS; REQUIREMENTS FOR FINAL DETERMINATIONS.—

''(1) IN GENERAL.—Whenever the administering authority makes a determination under section 802 whether to initiate an investigation, or the administering authority or the Commission makes a preliminary determination under section 803, a final determination under section 805, a determination under subsection (b), (c), (d), (e)(3)(B)(ii), (g), or (i) of section 807, or a determination to suspend an investigation under this title, the administering authority or the Commission, as the case may be, shall publish the facts and conclusions supporting that determination, and shall publish notice of that determination in the Federal Register.

''(2) CONTENTS OF NOTICE OR DETERMINATION.—The notice or determination published under paragraph (1) shall include, to the extent applicable—

''(A) in the case of a determination of the administering authority—

''(i) the names of the United States buyer and the foreign producer, and the country of origin of the subject vessel,

''(ii) a description sufficient to identify the subject vessel (including type, purpose, and size),

''(iii) with respect to an injurious pricing charge, the injurious pricing margin established and a full explanation of the methodology used in establishing such margin,

''(iv) with respect to countermeasures, the scope and duration of countermeasures and, if applicable, any changes thereto, and

''(v) the primary reasons for the determination, and

''(B) in the case of a determination of the Commission—

''(i) considerations relevant to the determination of injury, and

''(ii) the primary reasons for the determination.

''(3) ADDITIONAL REQUIREMENTS FOR FINAL DETERMINATIONS.—In addition to the requirements set forth in paragraph (2)—

''(A) the administering authority shall include in a final determination under section 805 or 807(c) an explanation of the basis for its determination that addresses relevant arguments, made by interested parties who are parties to the investigation, concerning the establishment of the injurious pricing charge with respect to which the determination is made, and

''(B) the Commission shall include in a final determination of injury an explanation of the basis for its determination that addresses relevant arguments that are made by interested parties who are parties to the investigation concerning the effects and impact on the industry of the sale of the subject vessel.

**''SEC. 844. CONDUCT OF INVESTIGATIONS.**

''(a) CERTIFICATION OF SUBMISSIONS.—Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this title on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

''(b) DIFFICULTIES IN MEETING REQUIREMENTS.—

''(1) NOTIFICATION BY INTERESTED PARTY.—If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

''(2) ASSISTANCE TO INTERESTED PARTIES.—The administering authority and the Commission shall take into account any difficulties experience by interested parties, particularly small companies, in supplying information requested by the administering authority or the Commission in connection with investigations under this title, and shall provide to such interested parties any assistance that is practicable in supplying such information.

''(c) DEFICIENT SUBMISSIONS.—If the administering authority or the Commission determines that a response to a request for information under this title does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title. If that person submits further information in response to such deficiency and either—

''(1) the administering authority or the Commission (as the case may be ) finds that such response is not satisfactory, or

''(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (d), disregard all or part of the original and subsequent responses.

''(d) USE OF CERTAIN INFORMATION.—In reaching a determination under section 803, 805, or 807, the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission if—

''(1) the information is submitted by the deadline established for its submission,

''(2) the information can be verified,

''(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

''(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and

''(5) the information can be used without undue difficulties.

''(e) NONACCEPTANCE OF SUBMISSIONS.—If the administering authority or the Commission declines to accept into the record any information submitted in an investigation under this title, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

''(f) PUBLIC COMMENT ON INFORMATION.—Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this title shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 805 or 807, shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

''(g) VERIFICATION.—The administering authority shall verify all information relied upon in making a final determination under section 805.

**''SEC. 845. ADMINISTRATIVE ACTION FOLLOWING SHIPBUILDING AGREEMENT PANEL REPORTS.**

''(a) ACTION BY UNITED STATES INTERNATIONAL TRADE COMMISSION.—

''(1) ADVISORY REPORT.—If a dispute settlement panel under the Shipbuilding Agreement finds in a report that an action by the Commission in connection with a particular proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement, the Trade Representative may request the Commission to issue an advisory report on whether this title permits the Commission to take steps in connection with the particular proceeding that would render its action not inconsistent with the findings of the panel concerning those obligations. The Trade Representative shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate of such request.

''(2) TIME LIMITS FOR REPORT.—The Commission shall transmit its report under paragraph (1) to the Trade Representative within 30 calendar days after the Trade Representative requests the report.

''(3) CONSULTATIONS ON REQUEST FOR COMMISSION DETERMINATION.—If a majority of the

Commissioners issues an affirmative report under paragraph (1), the Trade Representatives shall consult with the congressional committees listed in paragraph (1) concerning the matter.

''(4) COMMISSION DETERMINATION.—Notwithstanding any other provision of this title, if a majority of the Commissioners issues an affirmative report under paragraph (1), the Commission, upon the written request of the Trade Representative, shall issue a determination in connection with the particular proceeding that would render the Commission's action described in paragraph (1) not inconsistent with the findings of the panel. The Commission shall issue its determination not later than 120 calendar days after the request from the Trade Representative is made.

''(5) CONSULTATIONS ON IMPLEMENTATION OF COMMISSION DETERMINATION.—The Trade Representative shall consult with the congressional committees listed in paragraph (1) before the Commission's determination under paragraph (4) is implemented.

''(6) REVOCATION OF ORDER.—If, by virtue of the Commission's determination under paragraph (4), an injurious pricing order is no longer supported by an affirmative Commission determination under this title, the Trade Representative may, after consulting with the congressional committees under paragraph (5), direct the administering authority to revoke the injurious pricing order.

''(b) ACTION BY ADMINISTERING AUTHORITY.—

''(1) CONSULTATIONS WITH ADMINISTERING AUTHORITY AND CONGRESSIONAL COMMITTEES.—Promptly after a report or other determination by a dispute settlement panel under the Shipbuilding Agreement is issued that contains findings that—

''(A) an action by the administering authority in a proceeding under this title is not in conformity with the obligations of the United States under the Shipbuilding Agreement,

''(B) the due date for payment of an injurious pricing charge contained in an order issued under section 806 should be amended,

''(C) countermeasures provided for in an order issued under section 807 should be provisionally suspended or reduced pending the final decision of the panel, or

''(D) the scope or duration of countermeasures imposed under section 807 should be narrowed or shortened,

the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) on the matter.

''(2) DETERMINATION BY ADMINISTERING AUTHORITY.—Notwithstanding any other provision of this title, the administering authority shall, in response to a written request from the Trade Representative, issue a determination, or an amendment to or suspension of an injurious pricing or countermeasure order, as the case may be, in connection with the particular proceeding that would render the administering authority's action described in paragraph (1) not inconsistent with the findings of the panel.

''(3) TIME LIMITS FOR DETERMINATIONS.—The administering authority shall issue its determination, amendment, or suspension under paragraph (2)—

''(A) with respect to a matter described in subparagraph (A) of paragraph (1), within 180 calendar days after the request from the Trade Representative is made, and

''(B) with respect to a matter described in subparagraph (B), (C), or (D) or paragraph (1), within 15 calendar days after the request from the Trade Representative is made.

''(4) CONSULTATIONS BEFORE IMPLEMENTATION.—Before the administering authority implements any determination, amendment, or suspension under paragraph (2), the Trade Representative shall consult with the administering authority and the congressional committees listed in subsection (a)(1) with respect to such determination, amendment, or suspension.

''(5) IMPLEMENTATION OF DETERMINATION.—The Trade Representative may, after consulting with the administering authority and the congressional committees under paragraph (4), direct the administering authority to implement, in whole or in part, the determination, amendment, or suspension made under paragraph (2). The administering authority shall publish notice of such implementation in the Federal Register.

''(c) OPPORTUNITY FOR COMMENT BY INTERESTED PARTIES.—Before issuing a determination, amendment, or suspension, the administering authority, in a matter described in subsection (b)(1)(A), or the Commission, in a matter described in subsection (a)(1), as the case may be, shall provide interested parties with an opportunity to submit written comments and, in appropriate cases, may hold a hearing, with respect to the determination.

''Subtitle D—Definitions

**''SEC. 861. DEFINITIONS.**

''For purposes of this subtitle:

''(1) ADMINISTERING AUTHORITY.—The term 'administering authority' means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this title are transferred by law.

''(2) COMMISSION.—The term 'Commission' means the United States International Trade Commission.

''(3) COUNTRY.—The term 'country' means a foreign country, a political subdivision, dependent territory, or possession of a foreign country and, except as provided in paragraph (16)(E)(iii), may not include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

''(4) INDUSTRY.—

''(A) IN GENERAL.—Except as used in section 808, the term 'industry' means the producers as a whole of a domestic like vessel, or those producers whose collective capability to produce a domestic like vessel constitutes a major proportion of the total domestic capability to produce a domestic like vessel.

''(B) PRODUCER.—A 'producer' of a domestic like vessel includes an entity that is producing the domestic like vessel and an entity with the capability to produce the domestic like vessel.

''(C) CAPABILITY TO PRODUCE A DOMESTIC LIKE VESSEL.—A producer has the 'capability to produce a domestic like vessel' if it is capable of producing a domestic like vessel with its present facilities or could adapt its facilities in a timely manner to produce a domestic like vessel.

''(D) RELATED PARTIES.—(i) In an investigation under this title, if a producer of a domestic like vessel and the foreign producer, seller (other than the foreign producer), or United States buyer of the subject vessel are related parties, or if a producer of a domestic like vessel is also a United States buyer of the subject vessel, the domestic producer may, in appropriate circumstances, be excluded from the industry.

''(ii) For purposes of clause (i), a domestic producer and the foreign producer, seller, or United States buyer shall be considered to be related parties, if—

''(I) the domestic producer directly or indirectly controls the foreign producer, seller, or United States buyer,

''(II) the foreign producer, seller, or United States buyer directly or indirectly controls the domestic producer,

''(III) a third party directly or indirectly controls the domestic producer and the foreign producer, seller, or United States buyer, or

''(IV) the domestic producer and the foreign producer, seller, or United States buyer directly or indirectly control a third party and there is reason to believe that the relationship causes the domestic producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

''(E) PRODUCT LINES.—In an investigation under this title, the effect of the sale of the subject vessel shall be assessed in relation to the United States production (or production capability) of a domestic like vessel if available data permit the separate identification of production (or production capability) in terms of such criteria as the production process or the producer's profits. If the domestic production (or production capability) of a domestic like vessel has no separate identity in terms of such criteria, then the effect of the sale of the subject vessel shall be assessed by the examination of the production (or production capability) of the narrowest group or range of vessels, which includes a domestic like vessel, for which the necessary information can be provided.

''(5) BUYER.—The term 'buyer' means any person who acquires an ownership interest in a vessel, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the producer, either directly or indirectly, including an individual or company which owns or controls a buyer. There may be more than one buyer of any one vessel.

''(6) UNITED STATES BUYER.—The term 'United States buyer' means a buyer that is any of the following:

''(A) A United States citizen.

''(B) A juridical entity, including any corporation, company, association, or other organization, that is legally constituted under the laws and regulations of the United States or a political subdivision thereof, regardless of whether the entity is organized for pecuniary gain, privately or government owned, or organized with limited or unlimited liability.

''(C) A juridical entity that is owned or controlled by nationals or entities described in subparagraphs (A) and (B). For the purposes of this subparagraph—

''(i) the term 'own' means having more than a 50 percent interest, and

''(ii) the term 'control' means the actual ability to have substantial influence on corporate behavior, and control is presumed to exist where there is at least a 25 percent interest.

If ownership of a company is established under clause (i), other control is presumed not to exist unless it is otherwise established.

''(7) OWNERSHIP INTEREST.—An 'ownership interest' in a vessel includes any contractual or proprietary interest which allows the beneficiary or beneficiaries of such interest to take advantage of the operation of the vessel in a manner substantially comparable to the way in which an owner may benefit from the operation of the vessel. In determining whether such substantial comparability exists, the administering authority shall consider—

''(A) the terms and circumstances of the transaction which conveys the interest,

''(B) commercial practice within the industry,

''(C) whether the vessel subject to the transaction is integrated into the operations of the beneficiary or beneficiaries, and

''(D) whether in practice there is a likelihood that the beneficiary or beneficiaries of such interests will take advantage of and the risk for the operation of the vessel for a significant part of the life-time of the vessel.

''(8) VESSEL.—

''(A) IN GENERAL.—Except as otherwise specifically provided under international agreements, the term 'vessel' means—

''(i) a self-propelled seagoing vessel of 100 gross tons or more used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredgers), and

''(ii) a tug of 365 kilowatts or more,

that is produced in a Shipbuilding Agreement Party or a country that is not a Shipbuilding Agreement Party and not a WTO member.

''(B) EXCLUSIONS.—The term 'vessel' does not include—

''(i) any fishing vessel destined for the fishing fleet of the country in which the vessel is built,

''(ii) any military vessel (including any military reserve vessel), and

''(iii) any vessel sold before the date that the Shipbuilding Agreement enters into force with respect to the United States, except that any vessel sold after December 21, 1994, for delivery more than 5 years after the date of the contract of sale shall be a 'vessel' for purposes of this title unless the shipbuilder demonstrates to the administering authority that the extended delivery date was for normal commercial reasons and not to avoid applicability of this title.

''(C) SELF-PROPELLED SEAGOING VESSEL.—A vessel is 'self-propelled seagoing' if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.

''(D) MILITARY VESSEL.—A 'military vessel' is a vessel which, according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes.

''(E) MILITARY RESERVE VESSEL.—A 'military reserve vessel' is a military vessel constructed under any of the programs enumerated in section 120 of the OECD Shipbuilding Agreement Act.

''(9) LIKE VESSEL.—The term 'like vessel' means a vessel of the same type, same purpose, and approximate size as the subject vessel and possessing characteristics closely resembling those of the subject vessel.

''(10) DOMESTIC LIKE VESSEL.—The term 'domestic like vessel' means a like vessel produced in the United States.

''(11) FOREIGN LIKE VESSEL.—Except as used in section 822(e)(1)(B)(ii)(II), the term 'foreign like vessel' means a like vessel produced by the foreign producer of the subject vessel for sale in the producer's domestic market or in a third country.

''(12) SAME GENERAL CATEGORY OF VESSEL.—The term 'same general category of vessel' means a vessel of the same type and purpose as the subject vessel, but of a significantly different size.

''(13) SUBJECT VESSEL.—The term 'subject vessel' means a vessel subject to investigation under section 801 or 808.

''(14) FOREIGN PRODUCER.—The term 'foreign producer' means the producer or producers of the subject vessel.

''(15) EXPORTING COUNTRY.—The term 'exporting country' means the country in which the subject vessel was built.

''(16) MATERIAL INJURY.—

''(A) IN GENERAL.—The term 'material injury' means harm which is not inconsequential, immaterial, or unimportant.

''(B) SALE AND CONSEQUENT IMPACT.—In making determinations under sections 803(a) and 805(b), the Commission in each case—

''(i) shall consider—

''(I) the sale of the subject vessel,

''(II) the effect of the sale of the subject vessel on prices in the United States for a domestic like vessel, and

''(III) the impact of the sale of the subject vessel on domestic producers of a domestic like vessel, but only in the context of production operations within the United States, and

''(ii) may consider such other economic factors as are relevant to the determination regarding whether there is or has been material injury by reason of the sale of the subject vessel.

In the notification required under section 805(d), the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

''(C) EVALUATION OF RELEVANT FACTORS.—For purposes of subparagraph (B)—

''(i) SALE OF THE SUBJECT VESSEL.—In evaluating the sale of the subject vessel, the Commission shall consider whether the sale, either in absolute terms or relative to production or demand in the United States, in terms of either volume or value, is or has been significant.

''(ii) PRICE.—In evaluating the effect of the sale of the subject vessel on prices, the Commission shall consider whether—

''(I) there has been significant price underselling of the subject vessel as compared with the price of a domestic like vessel, and

''(II) the effect of the sale of the subject vessel otherwise depresses or has depressed prices to a significant degree or prevents or has prevented price increases, which otherwise would have occurred, to a significant degree.

''(iii) IMPACT ON AFFECTED DOMESTIC INDUSTRY.—In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to—

''(I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity,

''(II) factors affecting domestic prices, including with regard to sales,

''(III) actual and potential negative effects on cash flow, employment, wages, growth, ability to raise capital, and investment,

''(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and

''(V) the magnitude of the injurious pricing margin.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and conditions of competition that are distinctive to the affected industry.

''(D) STANDARD FOR DETERMINATION.—The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

''(E) THREAT OF MATERIAL INJURY.—

''(i) IN GENERAL.—In determining whether an industry in the United States is threatened with material injury by reason of the sale of the subject vessel, the Commission shall consider, among other relevant economic factors—

''(I) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased sales of a foreign like vessel to United States buyers, taking into account the availability of other export markets to absorb any additional exports,

''(II) whether the sale of a foreign like vessel or other factors indicate the likelihood of significant additional sales to United States buyers,

''(III) whether sale of the subject vessel or sale of a foreign like vessel by the foreign producer are at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further sales,

''(IV) the potential for product-shifting if production facilities in the exporting country, which can presently be used to produce a foreign like vessel or could be adapted in a timely manner to produce a foreign like vessel, are currently being used to produce other types of vessels,

''(V) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of a domestic like vessel, and

''(VI) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of the sale of the subject vessel.

''(ii) BASIS FOR DETERMINATION.—The Commission shall consider the factors set forth in clause (i) as a whole. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

''(iii) EFFECT OF INJURIOUS PRICING IN THIRD-COUNTRY MARKETS.—

''(I) IN GENERAL.—The Commission shall consider whether injurious pricing in the markets of foreign countries (as evidenced by injurious pricing findings or injurious pricing remedies of other Shipbuilding Agreement Parties, or antidumping determinations of, or measures imposed by, other countries, against a like vessel produced by the producer under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign producer or United States buyer concerning this issue.

''(II) EUROPEAN COMMUNITIES.—For purposes of the clause, the European Communities as a whole shall be treated as a single foreign country.

''(F) CUMULATION FOR DETERMINING MATERIAL INJURY.—

''(i) IN GENERAL.—For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii) of this subparagraph, the Commission shall cumulatively assess the effects of sales of foreign like vessels from all foreign producers with respect to which—

''(I) petitions were filed under section 802(b) on the same day,

''(II) investigations were initiated under section 802(a) on the same day, or

''(III) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,

if, with respect to such vessels, to foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

''(ii) EXCEPTIONS.—The Commission shall not cumulatively assess the effects of sales under clause (i)

''(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering

authority subsequently made a final affirmative determination with respect to those sales before the Commission's final determination is made, or

''(II) from any producer with respect to which the investigation has been terminated.

''(iii) RECORDS IN FINAL INVESTIGATIONS.—In each final determination in which it cumulatively assesses the effects of sales under clause (i), the Commission may make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination is a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

''(G) CUMULATION FOR DETERMINING THREAT OF MATERIAL INJURY.—To the extent practicable and subject to subparagraph (F)(ii), for purposes of clause (i) (II) and (III) of subparagraph (E), the Commission may cumulatively assess the effects of sales of like vessels from all countries with respect to which—

''(i) petitions were filed under section 802(b) on the same day,

''(ii) investigations were initiated under section 802(a) on the same day, or

''(iii) petitions were filed under section 802(b) and investigations were initiated under section 802(a) on the same day,

if, with respect to such vessels, the foreign producers compete with each other and with producers of a domestic like vessel in the United States market.

''(17) INTERESTED PARTY.—the term 'interested party' means, in a proceeding under this title—

''(A)(i) the foreign producer, seller (other than the foreign producer), and the United States buyer of the subject vessel, or

''(ii) a trade or business association a majority of the members of which are the foreign producer, seller, or United States buyer of the subject vessel,

''(B) the government of the country in which the subject vessel is produced or manufactured,

''(C) a producer that is a member of an industry,

''(D) a certified union or recognized union or group of workers which is representative of an industry,

''(E) a trade or business association a majority of whose members are producers in an industry,

''(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E), and

''(G) for purposes of section 807, a purchaser who, after the effective date of an order issued under that section, entered into a contract of sale with the foreign producer that is subject to the order.

''(18) AFFIRMATIVE DETERMINATIONS BY DIVIDED COMMISSION.—If the Commissioners voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is or has been—

''(A) material injury to an industry in the United States,

''(B) threat of material injury to such an industry, or

''(C) material retardation of the establishment of an industry in the United States,

by reason of the sale of the subject vessel, an affirmative vote on any of the issues shall be treated as a vote that the determination should be affirmative.

''(19) ORDINARY COURSE OF TRADE.—The term 'ordinary course of trade' means the conditions and practices which, for a reasonable time before the sale of the subject vessel, have been normal in the shipbuilding industry with respect to a like vessel. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

''(A) Sales disregarded under section 822(b)(1).

''(B) Transactions disregarded under section 822(f)(2).

''(20) NONMARKET ECONOMY COUNTRY.—

''(A) IN GENERAL.—the term 'nonmarket economy country' means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of vessels in such country do not reflect the fair value of the vessels.

''(B) FACTORS TO BE CONSIDERED.—In making determinations under subparagraph (A) the administering authority shall take into account—

''(i) the extent to which the currency of the foreign country is convertible into the currency of other countries,

''(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management,

''(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

''(iv) the extent of government ownership or control of the means of production,

''(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

''(vi) such other factors as the administering authority considers appropriate.

''(C) DETERMINATION IN EFFECT.—

''(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

''(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

''(D) DETERMINATIONS NOT IN ISSUE.—Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under subtitle A.

''(21) SHIPBUILDING AGREEMENT.—The term 'Shipbuilding Agreement' means The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, resulting from negotiations under the auspices of the Organization for Economic Cooperation and Development, and entered into on December 21, 1994.

''(22) SHIPBUILDING AGREEMENT PARTY.—The term 'Shipbuilding Agreement Party' means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

''(23) WTO AGREEMENT.—The term 'WTO Agreement' means the Agreement defined in section 2(9) of the Uruguay Round Agreements Act.

''(24) WTO MEMBER.—The term 'WTO member' means a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

''(25) TRADE REPRESENTATIVE.—The term 'Trade Representative' means the United States Trade Representative.

''(26) AFFILIATED PERSONS.—The following persons shall be considered to be 'affiliated' or 'affiliated persons':

''(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

''(B) Any officer or director of an organization and such organization.

''(C) Partners.

''(D) Employer and employee.

''(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization, and such organization.

''(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

''(G) Any person who controls any other person, and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

''(27) INJURIOUS PRICING.—The term 'injurious pricing' refers to the sale of a vessel at less than fair value.

''(28) INJURIOUS PRICING MARGIN.—

''(A) IN GENERAL.—The term 'injurious pricing margin' means the amount by which the normal value exceeds the export price of the subject vessel.

''(B) MAGNITUDE OF THE INJURIOUS PRICING MARGIN.—The magnitude of the injurious pricing margin used by the Commission shall be—

''(i) in making a preliminary determination under section 803(a) in an investigation (including any investigation in which the Commission cumulatively assesses the effect of sales under paragraph (16)(F)(i)), the injurious pricing margin or margins published by the administering authority in its notice of initiation of the investigation; and

''(ii) in making a final determination under section 805(b), the injurious pricing margin or margins most recently published by the administering authority before the closing of the Commission's administrative record.

''(29) COMMERCIAL INTEREST REFERENCE RATE.—The term 'Commercial Interest Reference Rate' or 'CIRR' means an interest rate that the administering authority determines to be consistent with Annex III, and appendices and notes thereto, of the Understanding on Export Credits for Ships, resulting from negotiations under the auspices of the Organization for Economic Cooperation, and entered into on December 21, 1994.

''(30) ANTIDUMPING.—

''(A) WTO MEMBERS.—In the case of a WTO member, the term 'antidumping' refers to action taken pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

''(B) OTHER CASES.—In the case of any country that is not a WTO member, the term 'antidumping' refers to action taken by the country against the sale of a vessel at less than fair value that is comparable to action described in subparagraph (A).

''(31) BROAD MULTIPLE BID.—The term 'broad multiple bid' means a bid in which the proposed buyer extends an invitation to bid to at least all the producers in the industry known by the buyer to be capable of building the subject vessel.''.

**SEC. 104. ENFORCEMENT OF COUNTERMEASURES.**

Part II of title IV of the Tariff Act of 1930 is amended by adding at the end the following:

**''SEC. 468. SHIPBUILDING AGREEMENT COUNTERMEASURES.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, upon receiving from

the Secretary of Commerce a list of vessels subject to countermeasures under section 807, the Customs Service shall deny any request for a permit to lade or unlade passengers, merchandise, or baggage from or onto those vessels so listed.

''(b) EXCEPTIONS.—Subsection (a) shall not be applied to deny a permit for the following:

''(1) To unlade any United States citizen or permanent legal resident alien from a vessel included in the list described in subsection (a), or to unlade any refugee or any alien who would otherwise be eligible to apply for asylum and withholding of deportation under the Immigration and Nationality Act.

''(2) To lade or unlade any crewmember of such vessel.

''(3) To lade or unlade coal and other fuel supplies (for the operation of the listed vessel), ships' stores, sea stores, and the legitimate equipment of such vessel.

''(4) To lade or unlade supplies for the use or sale on such vessel.

''(5) To lade or unlade such other merchandise, baggage, or passenger as the Customs Service shall determine necessary to protect the immediate health, safety, or welfare of a human being.

''(c) CORRECTION OF MINISTERIAL OR CLERICAL ERRORS.—

''(1) PETITION FOR CORRECTION.—If the master of any vessel whose application for a permit to lade or unlade has been denied under this section believes that such denial resulted from a ministerial or clerical error, no amounting to a mistake of law, committed by any Customs officer, the master may petition the Customs Service for correction of such error, as provided by regulation.

''(2) INAPPLICABILITY OF SECTIONS 514 AND 520.—Notwithstanding paragraph (1), imposition of countermeasures under this section shall not be deemed an exclusion or other protestable decision under section 514, and shall not be subject to correction under section 520.

''(3) PETITIONS SEEKING ADMINISTRATIVE REVIEW.—Any petition seeking administrative review of any matter regarding the Secretary of Commerce's decision to list a vessel under section 807 mut be brought under that section.

''(d) PENALTIES.—In addition to any other provision of law, the Customs Service may impose a civil penalty of not to exceed $10,000 against the master of any vessel—

''(1) who submits false information in requesting any permit to lade or unlade; or

''(2) who attempts to, or actually does, lade or unlade in violation of any denial of such permit under this section.''.

**SEC. 105. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.**

(a) JUDICIAL REVIEW.—Part III of title IV of the Tariff Act of 1930 is amended by inserting after section 516A the following:

**''SEC. 516B. JUDICIAL REVIEW IN INJURIOUS PRICING AND COUNTERMEASURE PROCEEDINGS.**

''(a) REVIEW OF DETERMINATION.—

''(1) IN GENERAL.—Within 30 days after the date of publication in the Federal Register of—

''(A)(i) a determination by the administering authority under section 802(c) not to initiate an investigation,

''(ii) a negative determination by the Commission under section 803(a) as to whether there is or has been reasonable indication of material injury, threat of material injury, or material retardation,

''(iii) a determination by the administering authority to suspend or revoke an injurious pricing order under section 806 (d) or (e),

''(iv) a determination by the administering authority under section 807(c),

''(v) a determination by the administering authority in a review under section 807(d),

''(vi) a determination by the administering authority concerning whether to extend the scope or duration of a countermeasure order under section 807(e)(3)(B)(ii),

''(vii) a determination by the administering authority to amend a countermeasure order under section 807(e)(6),

''(viii) a determination by the administering authority in a review under section 807(g),

''(ix) a determination by the administering authority under section 807(i) to terminate proceedings, or to amend or revoke a countermeasure order,

''(x) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(D) of that section, or

''(B)(i) an injurious pricing order based on a determination described in subparagraph (A) of paragraph (2),

''(ii) notice of a determination described in subparagraph (B) of paragraph (2),

''(iii) notice of implementation of a determination described in subparagraph (c) of paragraph (2), or

''(iv) notice of revocation of an injurious pricing order based on a determination described in subparagraph (D) of paragraph (2),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

''(2) REVIEWABLE DETERMINATIONS.—The determinations referred to in paragraph (1)(B) are—

''(A) a final affirmative determination by the administering authority or by the Commission under section 805, including any negative part of such a determination (other than a part referred to in subparagraph (B)),

''(B) a final negative determination by the administering authority or the Commission under section 805,

''(C) a determination by the administering authority under section 845(b), with respect to a matter described in paragraph (1)(A) of that section, and

''(D) a determination by the Commission under section 845(a) that results in the revocation of an injurious pricing order.

''(3) EXCEPTION.—Notwithstanding the 30-day limitation imposed by paragraph (1) with regard to an order described in paragraph (1)(B)(i), a final affirmative determination by the administering authority under section 805 may be contested by commencing an action, in accordance with the provisions of paragraph (1), within 30 days after the date of publication in the Federal Register of a final negative determination by the Commission under section 805.

''(4) PROCEDURES AND FEES.—The procedures and fees set forth in chapter 169 of title 28, United States Code, apply to an action under this section.

''(b) STANDARDS OF REVIEW.—

''(1) REMEDY.—The court shall hold unlawful any determination, finding, or conclusion found—

''(A) in an action brought under subparagraph (A) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

''(B) in an action brought under subparagraph (B) of subsection (a)(1), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law.

''(2) RECORD FOR REVIEW.—

''(A) IN GENERAL.—For purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of—

''(i) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceeding, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 843(a)(2); and

''(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

''(B) CONFIDENTIAL OR PRIVILEGED MATERIAL.—The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

''(c) STANDING.—Any interested party who was a party to the proceeding under title VIII shall have the right to appear and be heard as a party in interest before the United States Court of International Trade in an action under this section. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, and within the time prescribed by rules of the court.

''(d) DEFINITIONS.—For purposes of this section:

''(1) ADMINISTERING AUTHORITY.—The term 'administering authority' has the meaning given that term in section 861(1).

''(2) COMMISSION.—The term 'Commission' means the United States International Trade Commission.

''(3) INTERESTED PARTY.—The term 'interested party' means any person described in section 861(17).''.

(b) CONFORMING AMENDMENTS.—

(1) JURISDICTION OF THE COURT.—Section 1581(c) of title 28, United States Code, is amended by inserting ''or 516B'' after ''section 516A''.

(2) RELIEF.—Section 2643 of title 28, United States Code, is amended—

(A) in subsection (c)(1) by striking ''and (5)'' and inserting ''(5), and (6)''; and

(B) in subsection (c) by adding at the end the following new paragraph:

''(6) In any civil action under section 516B of the Tariff Act of 1930, the Court of International Trade may not issue injunctions or any other form of equitable relief, except with regard to implementation of a countermeasure order under section 468 of that Act, upon a proper showing that such relief is warranted.''.

PART 2—OTHER PROVISIONS

**SEC. 111. EQUIPMENT AND REPAIR OF VESSELS.**

Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466), is amended by adding at the end the following new subsection:

''(i) The duty imposed by subsection (a) shall not apply with respect to activities occurring in a Shipbuilding Agreement Party, as defined in section 861(22), with respect to—

''(1) self-propelled seagoing vessels of 100 gross tons or more that are used for transportation of goods or persons or for performance of a specialized service (including, but not limited to, ice breakers and dredges), and

''(2) tugs of 365 kilowatts or more.

A vessel shall be considered 'self-propelled seagoing' if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas.''.

**SEC. 112. EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.**

No person other than the United States—

(1) shall have any cause of action or defense under the Shipbuilding Agreement or by virtue of congressional approval of the agreement, or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, the District of Columbia, any State, any political subdivision of a State, or any territory or possession of the United States on the ground that such action or inaction is inconsistent with such agreement.

**SEC. 113. IMPLEMENTING REGULATIONS.**

After the date of the enactment of this Act, the heads of agencies with functions under this Act and the amendments made by this Act may issue such regulations as may be necessary to ensure that this Act is appropriately implemented on the date the Shipbuilding Agreement enters into force with respect to the United States.

**SEC. 114. AMENDMENTS TO THE MERCHANT MARINE ACT, 1936.**

The Merchant Marine Act, 1936, is amended as follows:

(1) Section 511(a)(2) (46 App. U.S.C. 1161(a)(2)) is amended by inserting after ''1939,'' the following: ''or, if the vessel is a Shipbuilding Agreement vessel, constructed in a Shipbuilding Agreement Party, but only with regard to moneys deposited, on or after the date on which the Shipbuilding Trade Agreement Act takes effect, into a construction reserve fund established under subsection (b)''.

(2) Section 601(a) (46 App. U.S.C. 1171(a)) is amended by striking'', and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date;'' and inserting ''and that such vessel or vessels were built in the United States, or, if the vessel or vessels are Shipbuilding Agreement vessels, in a Shipbuilding Agreement Party;''.

(3) Section 606(6) (46 App. U.S.C. 1176(6)) is amended by inserting ''or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party or in the United States,'' before '', except in an emergency.''.

(4) Section 607 (46 App. U.S.C. 1177) is amended as follows:

(A) Subsection (a) is amended by inserting ''or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,'' after ''built in the United States''.

(B) Subsection (k) is amended as follows:

(i) Paragraph (1) is amended by striking subparagraph (A) and inserting the following:

''(A)(i) constructed in the United States and, if reconstructed, reconstructed in the United States or in a Shipbuilding Agreement Party, or

''(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States,''.

(ii) Paragraph (2)(A) is amended to read as follows:

''(A)(i) constructed in the United States and, if reconstructed, reconstructed in the United States or in a Shipbuilding Agreement Party, or

''(ii) that is a Shipbuilding Agreement vessel and is constructed in a Shipbuilding Agreement Party and, if reconstructed, is reconstructed in a Shipbuilding Agreement Party or in the United States, but only with regard to moneys deposited into the fund on or after the data on which the Shipbuilding Trade Agreement Act takes effect.''.

(5) Section 610 (46 App. U.S.C. 1180) is amended by striking ''shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date,'' and inserting ''shall be built in the United States or, if the vessel is a Shipbuilding Agreement vessel, in a Shipbuilding Agreement Party,''.

(6) Section 901(b)(1) (46 App. U.S.C. 1241(b)(1)) is amended by striking the third sentence and inserting the following:

''For purposes of this section, the term 'privately owned United States-flag commercial vessels' shall be deemed to include—

''(A) any privately owned United States-flag commercial vessel constructed in the United States, and if rebuilt, rebuilt in the United States or in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Trade Agreement Act takes effect, and

''(B) any privately owned vessel constructed in a Shipbuilding Agreement Party on or after the date on which the Shipbuilding Agreement Act takes effect, and if rebuilt, rebuilt in a Shipbuilding Agreement party or in the United States, that is documented pursuant to chapter 121 of title 46, United States Code.

The term 'privately owned United States-flag commercial vessels' shall also be deemed to include any cargo vessel that so qualified pursuant to section 615 of this Act or this paragraph before the date on which the Shipbuilding Trade Agreement Act takes effect. The term 'privately owned United States-flag commercial vessels' shall not be deemed to include any liquid bulk cargo vessel that does not meet the requirements of section 3703a of title 46, United States Code.''.

(7) Section 905 (46 App. U.S.C. 1244) is amended by adding at the end the following:

''(h) The term 'Shipbuilding Agreement' means the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development, and was entered into on December 21, 1994.

''(i) The term 'Shipbuilding Agreement Party' means a state or separate customs territory that is a Party to the Shipbuilding Agreement, and with respect to which the United States applies the Shipbuilding Agreement.

''(j) The term 'Shipbuilding Agreement vessel' means a vessel to which the Secretary determines Article 2.1 of the Shipbuilding Agreement applies.

''(k) The term 'Export Credit Understanding' means the Understanding on Export Credits for Ships which resulted from negotiations under the auspices of the Organization for Economic Cooperation and Development and was entered into on December 21, 1994.

''(l) The term 'Export Credit Understanding vessel' means a vessel to which the Secretary determines the Export Credit Understanding applies.''.

(8) Section 1104A (46 App. U.S.C. 1274) is amended as follows:

(A) Paragraph (5) of subsection (b) is amended to read as follows:

''(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such percent per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary, except that, with respect to Export Credit Understanding vessels, and Shipbuilding Agreement vessels, the obligations shall bear interest at a rate the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be;''.

(B) Subsection (i) is amended to read as follows:

''(i)(1) Except as provided in paragraph (2), the Secretary may not, with respect to—

''(A) the general 75 percent or less limitation contained in subsection (b)(2),

''(B) the 87½ percent or less limitation contained in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or in section 1112(b), or

''(C) the 80 percent or less limitation in the 3rd proviso to such subsection, establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

''(2) With respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.''.

(C) Section 1104B(b) (46 App. U.S.C. 1274a(b)) is amended by striking the period at the end and inserting the following:

'', except that, with respect to Export Credit Understanding vessels and Shipbuilding Agreement vessels, the Secretary may establish by rule, regulation, or procedure a uniform percentage that the Secretary determines to be consistent with obligations of the United States under the Export Credit Understanding or the Shipbuilding Agreement, as the case may be.''.

**SEC. 115. APPLICABILITY OF TITLE XI AMENDMENTS**

(a) EFFECTIVE DATE.—

(1) IN GENERAL.—Notwithstanding any provision of the Shipbuilding Agreement or the Export Credit Understanding, the amendments made by paragraph (8) of section 114 shall not apply with respect to any commitment to guarantee made under title XI of the Merchant Marine Act, 1936, before January 1, 1999, with respect to a vessel delivered:

(A) before January 1, 2002, or

(B) in the case of ''unusual circumstances'' to which paragraph (2) applies, as soon after January 1, 2002, as is practicable.

(2) UNUSUAL CIRCUMSTANCES.—This paragraph applies in a case in which unusual circumstances beyond the control of the parties concerned prevent the delivery of a vessel by January 1, 2002. As used in this paragraph, the term ''unusual circumstances'' means acts of God (other than ordinary storms or inclement weather conditions) labor strikes, acts of sabotage, explosions, fires, or vandalism, and similar circumstances.

(b) MATCHING COMPETITION BY NON-MEMBERS.—Section 114 does not prevent the Secretary of Transportation from exercising his full discretion and authority under title XI of the Merchant Marine Act, 1936, consistent with clause 8 and Annex III of the Export Credit Understanding, to assist United States shipyards in meeting unfairly subsidized bids by foreign yards in countries not covered by the disciplines of the OECD Shipbuilding Agreement.

**SEC. 116. WITHDRAWAL FROM AGREEMENT.**

(a) WITHDRAWAL.—

(1) NOTICE.—The President shall give notice, under Article 14 of the Shipbuilding Agreement, of intent of the United States to withdraw from the Shipbuilding Agreement, as soon as is practicable after one or more Shipbuilding Agreement Parties give notice, under such Article, of intent to withdraw from the Shipbuilding Agreement, if paragraph (2) applies.

(2) TONNAGE OF NEW CONSTRUCTION IN WITHDRAWING PARTIES.—This paragraph applies if the combined gross tonnage of new Shipbuilding Agreement vessels that were constructed in all Shipbuilding Agreement Parties who have given notice to withdraw from the Shipbuilding Agreement, and that were delivered in the calendar year preceding the calendar year in which the notice is given, is 15 percent or more of the gross tonnage of new Shipbuilding Agreement vessels that were constructed in all Shipbuilding Agreement Parties and were delivered in the calendar year preceding the calendar year in which the notice is given.

(3) TERMINATION OF WITHDRAWAL.—If a Shipbuilding Agreement Party described in paragraph (2) takes action to terminate its withdrawal from the Shipbuilding Agreement, so that paragraph (2) would not apply if that Party had not given the notice to withdraw, the President may take the necessary steps to terminate the notice of withdrawal of the United States from the Shipbuilding Agreement.

(b) REINSTATEMENT OF LAWS.—If the United States withdraws from the Shipbuilding Agreement, on the date on which the withdrawal becomes effective, the amendments made by section 114 cease to have effect, and the provisions of law amended by section 114 shall be effective, on and after such date, as if this Act had not been enacted.

**SEC. 117. MONITORING AND ENFORCEMENT.**

(a) IN GENERAL.—The United States Trade Representative shall establish a program to monitor the compliance of Shipbuilding Agreement Parties with their obligations under the Shipbuilding Agreement. This program should include—

(1) the establishment of a task force composed of representatives of the Departments of Commerce, Labor, State, Transportation, and other appropriate agencies;

(2) coordination of gathering and analysis of relevant information;

(3) consultation with United States embassies located in countries that are Shipbuilding Agreement Parties to assist in obtaining information on policies and practices that is publicly available in those countries;

(4) regular consultations with representatives of industry, labor, and other interested parties regarding policies and practices of Shipbuilding Agreement Parties and of other countries with significant commercial shipbuilding industries;

(5) annual publication of a notice in the Federal Register affording an opportunity for interested parties to comment on the implementation of the Agreement; and

(6) the taking of any other appropriate action to monitor compliance of Shipbuilding Agreement Parties.

(b) REPORT TO CONGRESS.—Before the end of each twelve-month period in which the United States is a Party to the Agreement, the United States Trade Representative shall report to the Congress on:

(1) the activities undertaken as part of its monitoring program;

(2) the results of its consultations under subsection (a)(4) above; and

(3) compliance with the provisions of the Shipbuilding Agreement.

(c) ACTION IF VIOLATION.—If the United States Trade Representative receives information provided by representatives of industry, labor, and other interested parties, indicating that a Shipbuilding Agreement Party is in material violation of the Shipbuilding Agreement in a manner that is detrimental to the interests of the United States, the United States Trade Representative should use vigorously the consultation and, if the matter is not otherwise resolved, the dispute settlement procedures provided for under the Shipbuilding Agreement to redress the situation.

**SEC. 118. JONES ACT AND RELATED LAWS NOT AFFECTED.**

(a) IN GENERAL.—Nothing in the Shipbuilding Agreement shall be construed to amend, alter, or modify in any manner the Merchant Marine Act, 1920 (46 App. U.S.C. 861 et seq.), the Act of June 19, 1886 (46 App. U.S.C. 289), or any other provision of law set forth in Accompanying Note 2 to Annex II to the Shipbuilding Agreement; nor shall the Shipbuilding Agreement undermine the operation or administration of these statutes or prevent them from achieving their objectives.

(b) WITHDRAWAL OF GATT CONCESSIONS.—The Shipbuilding Agreement shall not provide any mechanism for withdrawal of concessions under GATT 1994 because of the maintenance or operation of the coastwise trade laws of the United States.

(c) ANNUAL REVIEW.—The Secretary of Transportation shall review annually the impact, if any, of the Agreement on the operation or implementation of the statutes identified in subsection (a), shall consult with the United States Trade Representative, Department of Defense, U.S. industry and labor, and other interested parties, and shall report to the President. If the President determines that the implementation of the Agreement is significantly undermining the administration or operation of these statutes or significantly impeding them from achieving their objectives, the President shall give notice of intent to withdraw from the Agreement pursuant to Article 14 of the Agreement. The authorization and implementation of responsive measures, under the provisions of paragraph 2.e of Annex II B of the Agreement by any Shipbuilding Agreement Party shall be taken into account in making this determination.

**SEC. 119. EXPANDING MEMBERSHIP IN THE SHIPBUILDING AGREEMENT.**

The United States Trade Representative shall monitor the impact of the policies and practices pursued by countries that are not Shipbuilding Agreement Parties, and shall seek the prompt accession to the Shipbuilding Agreement of countries that have significant commercial shipbuilding and repair industries, including, but not limited to Australia, the People's Republic of China, Poland, Romania, the Russian Federation, and Ukraine. The United States Trade Representative shall report to Congress annually on any impact and on the success of efforts to expand the membership of the Agreement. When it is determined that the continuing failure of a country to adopt the disciplines of the Agreement is undermining the effectiveness of the Agreement and placing U.S. shipyards at a competitive disadvantage, the United States Trade Representative shall act vigorously to redress this situation, making appropriate use of the mechanisms at its disposal under United States trade laws as well as the opportunities for consultations and dispute settlement action under any appropriate international organization, both bilaterally and in concert with other Shipbuilding Agreement Parties.

**SEC. 120. PROTECTION OF UNITED STATES SECURITY INTERESTS.**

(a) IN GENERAL.—Nothing in the Shipbuilding Agreement shall be construed to prevent the United States from taking any action which the United States considers necessary for the protection of essential security interests.

(b) MILITARY VESSELS AND REQUIREMENTS.—Nothing in the Agreement and in this Act shall be construed to amend or modify any laws or programs relating to U.S. military vessels (including military reserve vessels) or the military requirements of the United States. As used in this section—

(1) MILITARY VESSEL.—A ''military vessel'' is a vessel which, according to its basic structural characteristics and ability, is intended to be used exclusively for military purposes;

(2) MILITARY RESERVE VESSELS.—''Military reserve vessels'' are military vessels, as defined in paragraph (1), that are either owned directly by the Department of Defense or leased or chartered by the Department of Defense for military use, including for the purpose of supporting the United States Armed Forces in a contingency. Military Reserve Vessels include:

(A) ''Prepositioned Vessels'', which are vessels equipped with military features and strategically located throughout the world for utilization when needed;

(B) ''Surge (Phase) Vessels'', which are vessels equipped with military features or which meet military specifications, and which are dedicated to the provision of logistical support for the Armed Forces on a contingency, including ''Fast Sealift Ships'' (FSS), ''Ready Reserve Force'' (RRF) vessels, and ''Large Medium Speed Roll-on/roll-off'' (LMSR) vessels; and

(C) ''Sustainment (Phase) Vessels'', which are privately owned merchant marine vessels and are chartered on a long-term basis by the Department of Defense for the purpose of carrying military cargo or personnel including the ''Military Sealift Command Controlled Fleet''; and

(3) MILITARY REQUIREMENTS.—''Laws or programs relating to the military requirements of the United States'' include any program which, consistent with Article 2(2) of the Agreement, provides for modifications made or features added to vessels to make them more capable of carrying military equipment in a contingency provided that the vessels constructed or modified by such programs are under long-term contractual arrangement with the Department of Defense for their call up in the event of contingency.

**SEC. 121. DEFINITIONS.**

Except as otherwise provided, as used in this part—

(1) the terms ''Shipbuilding Agreement'', ''Shipbuilding Agreement Party'', ''Shipbuilding Agreement Vessels'', and ''Export Credit Understanding'' have the meanings given those terms in subsections (h), (i), (j), and (k), respectively, of section 905 of the Merchant Marine Act, 1936, as added by section 114(7) of this Act; and

(2) the term ''GATT 1994'' has the meaning given that term in section 2 of the Uruguay Round Agreements Act.

PART 3—EFFECTIVE DATE

**SEC. 131. EFFECTIVE DATE.**

Except as otherwise provided, this Act takes effect on the date that the Shipbuilding Agreement enters into force with respect to the United States.

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By Mr. BYRD:

S. 630. A bill to amend the Internal Revenue Code of 1986 to deposit in the highway trust fund the receipts of the 4.3-cent increase in the fuel tax rates enacted by the Omnibus Budget Reconciliation Act of 1993; to the Committee on Finance.

FEDERAL HIGHWAY TRUST FUND LEGISLATION

Mr. BYRD. Mr. President, I rise to introduce a bill today to ensure that adequate resources are available to reverse the very destructive trend of Federal disinvestment in our Nation's critical infrastructure of highways and bridges. The bill that I introduce would place into the highway trust fund the 4.3-

cents-per-gallon gas tax that is currently used for our deficit reduction.

Senators will recall that back in May and June of last year, there was much debate on this 4.3-cent gas tax, which was first imposed by the Omnibus Budget Reconciliation Act of 1993.

During this past summer, I deferred offering this bill as an amendment to two separate tax bills, and I did so at the request of both the majority and the minority leaders. But unfortunately, another opportunity to offer the amendment to a tax bill did not arise.

By depositing this additional 4.3-cents per gallon gas tax into the highway trust fund, Congress will have the resources to better meet the true needs of our Nation's transportation infrastructure.

Our Federal investment in infrastructure as a percentage of the total Federal budget has declined significantly since 1980. Few economics would disagree that adequate long-term investment in infrastructure is critical to a nation's economic well-being. Only through investment here at home, only through investment to maintain and renew our own physical plant, can our economy grow and generate good wages for our citizens.

Even so, our Nation's investment in infrastructure as a percentage of our gross domestic product has almost been cut in half since 1980. As a nation, we invest a considerably smaller percentage of our gross domestic product in infrastructure than our economic competitors invest in economic infrastructure in Europe and in Asia.

Nowhere do we pay a greater price for inadequate infrastructure investment than in our Nation's highways. Our National Highway System carries nearly 80 percent of U.S. interstate commerce and nearly 80 percent of intercity passenger and tourist traffic. Yet, we have allowed segments of our National Highway System to fall into disrepair.

The Department of Transportation recently released its latest report on the condition of the Nation's highways. Its findings are even more disturbing than earlier reports. The Department of Transportation currently classified less than half of the mileage on our interstate system as being in good condition and only 39 percent of our entire National Highway System is rated in good condition. Fully 61 percent of our Nation's highways are rated in either fair condition or in poor condition. Almost one in four of our Nation's highway bridges are now categorized as either structurally deficient or functionally obsolete.

According to the Department of Transportation, investment in our Nation's highways is a full $15 billion short each year just to maintain these current inadequate conditions—just to maintain them. Put another way, we would have to increase our national highway investment by more than $15 billion a year just to avoid further deterioration of our national highway network.

It should be noted that, while our highway infrastructure continue to deteriorate, highway use is on the rise. Indeed, it is growing at a very rapid pace. The number of vehicle miles traveled has grown by roughly 40 percent in just the last decade. As a result, we are witnessing new highs in the levels of highway congestion, causing delays in the movement of goods and people that costs our national economy more than $40 billion a year.

So, Mr. President, it is clear that the requirement that we place on our National Highway System are growing while our investment continues to decline. We are simply digging ourselves a deeper and deeper hole. Six years ago, in 1991, it was estimated that an investment of $47.5 billion would be necessary on an annual basis to ensure that highway conditions would not deteriorate any further than existed in that year—that it would not get any worse. By 1993, that figure grew to $51.6 billion. And 2 years ago, that figure grew to $54.8 billion. Ergo, the longer we delay increasing Federal highway spending, the more expensive it will be to reverse this destructive trend, which costs our Nation dearly.

Productivity improvements are the key to global competitiveness, rising standards of living and economic growth. Investments in highways result in significant, nationwide improvements in productivity. According to the Federal Highway Administration, every $1 billion invested in highways creates and sustains over 40,000 full-time jobs. Furthermore, the very same $1 billion also results in a $240 million reduction in overall production costs for American manufacturers.

While we can easily see the economic impact of disinvestment in our Nation's highways, we must not lose sight of the fact that deteriorating highways have a direct relationship to safety as well. We may be talking about your life. We may be talking about your life. And we are. Almost 42,000 people died on our Nation's highways in 1996. That equates to having a mid-sized passenger aircraft crash every day, killing all of its occupants. The National Highway Traffic Safety Administration counts poor road conditions as a contributing factor in a large percentage of these fatal accidents, as well as those in which there are serious injuries. The economic impact of these highway accidents cost our Nation $150 billion a year, and that figure is growing. More importantly, this wasteful carnage brings incredible sorrow to affected families and friends, and the Nation loses the skills, the talents, and the contributions of the victims.

The Senate will soon take up legislation to reauthorize the Intermodal Surface Transportation Efficiency Act, or ISTEA. This bill will be one of the most important pieces of legislation that we consider this session. Many Members, including myself, have introduced legislation to address specific transportation needs in their States and regions. Also, many Members have spoken of the need for formula changes to bring about what they perceive to be a more equitable distribution of funds from the highway program.

However, we must face the fact that, absent a substantial increase in the current level of spending on our highway program, we will not have the resources available to address the many important, but often competing, needs for our Nation's highway requirements in all regions of the country.

So in the coming weeks, Mr. President, I look forward to working with all of my colleagues toward the enactment of substantially increased authorizations and appropriations for our Nation's highway system. And the bill that I have introduced today will provide a very helpful tool with which to do that.

## ADDITIONAL COSPONSORS

S. 28

At the request of Mr. THURMOND, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 194

At the request of Mr. CHAFEE, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 194, a bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly-traded stock to certain private foundations and for other purposes.

S. 224

At the request of Mr. WARNER, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 224, a bill to amend title 10, United States Code, to permit covered beneficiaries under the military health care system who are also entitled to Medicare to enroll in the Federal Employees Health Benefits program, and for other purposes.

S. 278

At the request of Mr. GRAMM, the name of the Senator from Montana [Mr. BURNS] was added as a cosponsor of S. 278, a bill to guarantee the right of all active duty military personnel, merchant mariners, and their dependents to vote in Federal, State, and local elections.

S. 370

At the request of Mr. GRASSLEY, the names of the Senator from New York [Mr. D'AMATO] and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 370, a bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 371

At the request of Mr. GRASSLEY, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 371, a bill to amend title XVIII of the Social Security Act to provide for increased Medicare reimbursement for physician assistants, to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 375

At the request of Mr. MCCAIN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 375, a bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test.

S. 419

At the request of Mr. BOND, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 419, a bill to provide surveillance, research, and services aimed at prevention of birth defects, and for other purposes.

S. 479

At the request of Mr. GRASSLEY, the names of the Senator from Missouri [Mr. BOND] and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of S. 479, a bill to amend the Internal Revenue Code of 1986 to provide estate tax relief, and for other purposes.

S. 489

At the request of Mr. KYL, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 489, a bill to improve the criminal law relating to fraud against consumers.

S. 493

At the request of Mr. KYL, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 493, a bill to amend section 1029 of title 18, United States Code, with respect to cellular telephone cloning paraphernalia.

S. 497

At the request of Mr. COVERDELL, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 497, a bill to amend the National Labor Relations Act and the Railway Labor Act to repeal the provisions of the Acts that require employees to pay union dues or fees as a condition of employment.

S. 529

At the request of Mr. GRASSLEY, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Nebraska [Mr. HAGEL], and the Senator from Kansas [Mr. BROWNBACK] were added as cosponsors of S. 529, a bill to amend the Internal Revenue Code of 1986 to exclude certain farm rental income from net earnings from self-employment if the taxpayer enters into a lease agreement relating to such income.

S. 532

At the request of Mr. BAUCUS, the name of the Senator from Nebraska [Mr. HAGEL] was added as a cosponsor of S. 532, a bill to authorize funds to further the strong Federal interest in the improvement of highways and transportation, and for other purposes.

S. 535

At the request of Mr. MCCAIN, the names of the Senator from Delaware [Mr. BIDEN] and the Senator from Illinois [Ms. MOSELEY-BRAUN] were added as cosponsors of S. 535, a bill to amend the Public Health Service Act to provide for the establishment of a program for research and training with respect to Parkinson's disease.

S. 536

At the request of Mr. GRASSLEY, the names of the Senator from Indiana [Mr. LUGAR] and the Senator from Alabama [Mr. SESSIONS] were added as cosponsors of S. 536, a bill to amend the National Narcotics Leadership Act of 1988 to establish a program to support and encourage local communities that first demonstrate a comprehensive, long-term commitment to reduce substance abuse among youth, and for other purposes.

S. 543

At the request of Mr. COVERDELL, the names of the Senator from Arkansas [Mr. HUTCHINSON] and the Senator from Arizona [Mr. KYL] were added as cosponsors of S. 543, a bill to provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

S. 544

At the request of Mr. COVERDELL, the names of the Senator from Arkansas [Mr. HUTCHINSON] and the Senator from Arizona [Mr. KYL] were added as cosponsors of S. 544, a bill to provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

S. 562

At the request of Mr. D'AMATO, the names of the Senator from Florida [Mr. MACK], the Senator from Missouri [Mr. BOND], the Senator from Delaware [Mr. ROTH], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of S. 562, a bill to amend section 255 of the National Housing Act to prevent the funding of unnecessary or excessive costs for obtaining a home equity conversion mortgage.

S. 570

At the request of Mr. NICKLES, the names of the Senator from Missouri [Mr. ASHCROFT] and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 570, a bill to amend the Internal Revenue Code of 1986 to exempt certain small businesses from the mandatory electronic fund transfer system.

S. 575

At the request of Mr. DURBIN, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of S. 575, a bill to amend the Internal Revenue Code of 1986 to increase the deduction for health insurance costs of self-employed individuals.

At the request of Mr. HAGEL, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 575, supra.

S. 583

At the request of Mr. GREGG, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 583, a bill to change the date on which individual Federal income tax returns must be filed to the Nation's Tax Freedom Day, the day on which the country's citizens no longer work to pay taxes, and for other purposes.

S. 606

At the request of Mr. HUTCHINSON, the names of the Senator from Ohio [Mr. DEWINE] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 606, a bill to prohibit discrimination in contracting on federally funded projects on the basis of certain labor policies of potential contractors.

S. 620

At the request of Mr. GREGG, the name of the Senator from Arkansas [Mr. HUTCHINSON] was added as a cosponsor of S. 620, a bill to amend the Internal Revenue Code of 1986 to provide greater equity in savings opportunities for families with children, and for other purposes.

SENATE JOINT RESOLUTION 6

At the request of Mr. KYL, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of Senate Joint Resolution 6, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

SENATE RESOLUTION 51

At the request of Mrs. FEINSTEIN, the names of the Senator from Hawaii [Mr. AKAKA], the Senator from Montana [Mr. BAUCUS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Alaska [Mr. MURKOWSKI], the Senator from Oregon [Mr. SMITH], and the Senator from New Jersey [Mr. TORRICELLI] were added as cosponsors of Senate Resolution 51, a resolution to express the sense of the Senate regarding the outstanding achievements of NetDay.

SENATE RESOLUTION 64

At the request of Mr. ROBB, the names of the Senator from Delaware [Mr. BIDEN], the Senator from Arkansas [Mr. BUMPERS], the Senator from Mississippi [Mr. COCHRAN], the Senator from Idaho [Mr. CRAIG], the Senator from Ohio [Mr. DEWINE], the Senator from Ohio [Mr. GLENN], the Senator from Indiana [Mr. LUGAR], the Senator

from New York [Mr. MOYNIHAN], the Senator from South Carolina [Mr. THURMOND], and the Senator from Oregon [Mr. WYDEN] were added as cosponsors of Senate Resolution 64, a resolution to designate the week of May 4, 1997, as ''National Correctional Officers and Employees Week.''

## SENATE RESOLUTION 76—PROCLAIMING A NATIONWIDE MOMENT OF REMEMBRANCE

Mr. THURMOND submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 76

Whereas the preservation of basic freedoms and world peace has always been a valued objective of this great country;

Whereas thousands of American men and women have selflessly given their lives in service as peacemakers and peacekeepers;

Whereas greater strides should be made to demonstrate the appreciation and gratitude these loyal Americans deserve and to commemorate the ultimate sacrifice they made;

Whereas Memorial Day is the day of the year for the Nation to appropriately remember American heroes by inviting the citizens of this Nation to respectfully honor them at a designated time; and

Whereas the playing of ''Taps'' symbolizes the solemn and patriotic recognition of those Americans who died in service to our Country: Now, therefore, be it

*Resolved,* That the Senate requests that—

(1) a nationwide moment of remembrance be observed on Memorial Day, May 26, 1997, by the simultaneous pausing of all citizens to acknowledge the playing of ''Taps'' at 3:00 p.m. (Eastern Standard Time) in honor of the Americans that gave their lives in the pursuit of freedom and peace; and

(2) the President issue a proclamation calling upon the departments and agencies of the United States and interested organizations, groups, and individuals to participate in and promote this nationwide tribute to the dedicated American men and women who died in the pursuit of freedom and peace.

Mr. THURMOND. Mr. President, I rise today to submit a resolution proclaiming a nationwide moment of remembrance, to be observed on Memorial Day, May 26, 1997, in order to appropriately honor American patriots lost in the pursuit of peace and liberty around the world.

This year, the nonprofit organization, No Greater Love, which assists the families of Americans who died in service to their country or in terrorist acts, is launching the first annual ''Proud to Remember'' campaign. The goal of this campaign is to make certain that those who have died in service to our country will be appropriately honored in a patriotic and personal way on this special day of remembrance. In other words, they seek to put ''memorial'' back into Memorial Day.

Pursuant to this resolution, on Memorial Day, Monday, May 26, 1997, the entire Nation will be asked to observe a moment of remembrance at 3:00 p.m., Eastern Standard Time, in honor of those who have sacrificed their lives for us. ''Taps'' will be played at this time across the country to honor our fallen heroes.

It is our hope that this moment of remembrance will bring all Americans together in a spirit of respect, patriotism, and gratitude, and also help restore the recognition our veterans deserve for the sacrifices they have made on behalf of our great Nation.

## SENATE RESOLUTION 77—TO AUTHORIZE REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 77

Whereas, in the case of *William L. Singer* v. *Office of Senate Fair Employment Practices,* No. 97–6000, pending in the United States Court of Appeals for the Federal Circuit, petitioner William L. Singer has sought review of a final decision of the Select Committee on Ethics which has been entered, pursuant to section 308 of the Government Employee Rights Act of 1991, 2 U.S.C. §1208 (1994), in the records of the Office of Senate Fair Employment Practices;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1)(1994), the Senate may direct its counsel to defend committees of the Senate in civil actions relating to their official responsibilities;

Whereas, pursuant to section 303(f) of the Government Employee Rights Act of 1991, 2 U.S.C. §1203(f)(1994), for purposes of representatives by the Senate Legal Counsel, the Office of Senate Fair Employment Practices, the respondent in this proceeding, is deemed a committee within the meaning of sections 703(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a), 288c(a)(1)(1994): Now, therefore, be it

*Resolved,* That the Senate Legal Counsel is directed to represent the Office of Senate Fair Employment Practices in the case of *William L. Singer* v. *Office of Senate Fair Employment Practices.*

## NOTICES OF HEARINGS

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a hearing of the Senate Committee on Labor and Human Resources will be held on Wednesday, April 23, 1997, 9:30 a.m., in SD–430 of the Senate Dirksen Building. The subject of the hearing is reauthorization of the Higher Education Act.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. JEFFORDS. Mr. President, I would like to announce for information of the Senate and the public that a hearing of the Senate Committee on Labor and Human Resources will be held on Thursday, April 24, 1997, 10 a.m., in SD–430 of the Senate Dirksen Building. The subject of the hearing is overview of vocational education.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON INDIAN AFFAIRS

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Tuesday, April 22, 1997, at 9:30 a.m. in room 485 of the Russell Senate Building to conduct a hearing on S. 459, a bill to amend the Native American Programs Act of 1974 to extend certain program authorizations.

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

SUBCOMMITTEE ON ANTITRUST, BUSINESS RIGHTS, AND COMPETITION

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Subcommittee on Antitrust, Business Rights, and Competition, of the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, April 22, 1997, at 2 p.m. to hold a hearing on ''Antitrust Implications: The British Airways—American Airlines Alliance.''

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

SUBCOMMITTEE ON SEAPOWER

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Subcommittee on Seapower of the Committee on Armed Services be authorized to meet at 2:30 p.m. on Tuesday, April 22, 1997, in open session, to receive testimony regarding the Department of the Navy's shipbuilding development and procurement programs in review of S. 450, the national defense authorization bill for fiscal years 1998 and 1999.

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

## ADDITIONAL STATEMENTS

### COUNCIL OF THE NATION'S CAPITOL GIRL SCOUT GOLD AWARD RECIPIENTS

• Ms. MIKULSKI. Mr. President, each year an elite group of young women rise above the ranks of their peers and confront the challenge of attaining the Girl Scouts of the United States of America's highest rank in scouting, the Girl Scout Gold Award.

It is with great pleasure that I recognize and applaud young women from the State of Maryland who are this year's recipients of this most prestigious and time honored award.

These outstanding young women are to be commended on their extraordinary commitment and dedication to their families, their friends, their communities, and to the Girl Scouts of the United States of America.

The qualities of character, perseverence, and leadership which enabled them to reach this goal will also help them to meet the challenges of the future. They are our inspiration for today and our promise for tomorrow.

I am honored to ask my colleagues to join me in congratulating the recipients of this award from the State of Maryland. They are the best and the brightest and serve as an example of character and moral strength for us all to imitate and follow.

Finally, I wish to salute the families, scout leaders, and the Girl Scout Council of the Nation's Capital who have provided these young women with continued support and encouragement.

It is with great pride that I submit a list of this year's Girl Scout Gold Award recipients from the State of Maryland, and I ask that the list be printed in the RECORD.

The material follows:

GIRL SCOUT COUNCIL OF THE NATION'S CAPITAL

Breton Aulick, Rebecca Bensur, Jacquelyn Blaser, Brianna Blaser, Kristen Bowen, Arianne Boylan, Christine Chase, Heather Ann Church, Kimberly Crowder, Margaret Eaton-Sainers, Carlita Fletcher, Jessica Gaines, Brianna Gibson, Kathleen Henley, Kishuana Jarmon, Gretchen Kallemyn. Lyndsay Madden, Grace McCann, Jennifer McKelvey, Jennifer Miller, Laura Murray, Linda Jean Rinko, Janis Sanders, Alea Lu Schroeder, Jana Siskind, Kelsi Stembel, Andrea Stuart, Tanya Wessells, Denise White.●

## WE THE PEOPLE . . . THE CITIZENS AND THE CONSTITUTION

● Mr. CHAFEE. Mr. President, I want to commend 25 outstanding students from West Warwick High School in West Warwick, RI, who will be visiting Washington later this month to compete in the national finals of the ''We The People . . . The Citizens And The Constitution'' program.

For those of my colleagues who are not familiar with it, the ''We The People . . . The Citizens And The Constitution'' program is among the most extensive educational programs in the country, developed to educate young people about the Constitution and the Bill of Rights. The three-day national competition simulates a congressional hearing in which students' oral presentations are judged on the basis of their knowledge of constitutional principles and their ability to apply these principals to contemporary situations.

Administered by the Center for Civic Education, the ''We The People . . . The Citizens And The Constitution'' program provides an excellent opportunity for students to gain an informed perspective on the significance of the U.S. Constitution and its place in our history. We hear so much these days about growing apathy and ignorance among young people about our history and governmental traditions. In my view, programs such as this can go a long way to combat these ills. It is heartening to see young Rhode Islanders taking such an active and participatory interest in public affairs.

Mr. President, you may be interested to know that West Warwick High School has an outstanding track record in the ''We The People . . . The Citizens And The Constitution'' program. The West Warwick team has won the Rhode Island State competition for 7 of the past 10 years.

I am very proud of Jamie Amaral, Mary Asselin, Jonathan Bassi, Justin Broz, John Caressimo, Brian Carr, Andrew Constanza, Krystle Couto, Bethany DeBlois, Candice Felske, John Johnson, Jonathan Juneau, Jamie Kullberg, Kristin Larocque, Gina Musto, Meghan O'Brien, Ryan O'Grady, Stephanie Paquet, Erica Ricci, Hillary Sisson, Derek Tevyaw, Kevin Willette, Kristen Wolslegel, Man Yu, and Debra Zenofsky for making it to the national finals. I applaud this terrific group of young men and women for their hard work and perseverance. Also, Mr, President, I want to congratulate Michael Trofi, a fine teacher who deserves so much credit for guiding the West Warwick High School team to the national finals.

As Mr. Trofi and this fine group of West Warwick High School students prepare for their trip to Washington to compete in the national finals on April 26–28, I want to congratulate them for what they have already achieved and wish them the best of luck in the final competition. These students, with the guidance of Mr. Trofi, have learned what our Nation is all about and what countless men and women have fought and died to protect. No matter what the outcome of the contest is, they have each earned the greatest prize of all: Knowledge.●

## SUPPORTING NETDAY

● Mrs. FEINSTEIN. Mr. President, I rise today to alert this body to a very special event, which took place this past weekend, called NetDay. NetDay, which began in 1996, is a unique partnership between the public, private and educational communities with the common goal of fitting K–12 classrooms with the technological infrastructure needed for the 21st century.

In the beginning of this year, on behalf of myself, Senator JOHN WARNER, Senator CONRAD BURNS, Senator CHARLES ROBB, Senator PATTY MURRAY, and Senator BARBARA BOXER, I introduced Sense of the Senate Resolution 51, celebrating the success of NetDay activities and encouraging all schools to participate in 1997 NetDay activities, including the projects which took place this past weekend. As I did in February of this year, when I introduced the NetDay resolution, I would like to again commend the organizers and volunteers of NetDay, an excellent example of individuals creating a stronger community with the goal of increasing the quality of their schools.

The success of this weekend was impressive. Although it is still too early to cite official statistics of Saturday's event, NetDay organizers have stated that ''schools up and down the State, in isolated towns in the north, farming towns in the central valley, and hundreds in urban communities all participated in NetDay.'' In addition, the 38 empowerment zone schools of the Los Angeles Unified School District were involved in NetDay activities and future planning. Last year alone, NetDay was successful in bringing out more than 100,000 Americans, including 50,000 Californians to volunteer in their neighborhood schools. These students, teachers, parents, and friends of the schools, came to wire classrooms and school libraries throughout the Nation. Thousands of individuals accomplished their goal to install communications cables, connect wires and switches to upgrading their schools for the 21st century.

The success of NetDay is significant. Last year, over 25,000 elementary, junior and senior high schools were wired. I expect these numbers to dramatically increase as NetDay organizer compile results from Saturday's activities. Throughout the United States, volunteers climbed ladders and got on their hands and knees to install the wiring infrastructure needed to connect thousands of elementary and secondary school classrooms with contemporary technology.

As I have mentioned in earlier floor speeches, NetDay began in California on March 9, 1996. The term was coined by cofounders John Gage of Sun Microsystems, one of the Nation's leading technology companies and Michael Kaufman of KQED, a California public broadcasting station. Mr. Gage and Mr. Kaufman saw this initiative as a day where hundreds of Californians came out to an ''old fashioned barn raising for the modern technology age.''

Just as volunteers would gather in the Nation's early years, with neighbor helping neighbor, to build homes, barns or community buildings, California's NetDay volunteers gather in support of neighborhood schools. Amazingly, and to their surprise, NetDay succeeded in one year in wiring 3,500 schools efficiently and cost-effectively, establishing and improving our classroom information infrastructure up and down the State.

However, as our classrooms continue to modernize and improve their technological infrastructure there is much work to be accomplished, both in California and throughout the Nation. Consider the following:

According to the Department of Education half of our K–12 schools lack full access to advance technology in the classroom.

Ninety-five percent of those K–12 schools who want to but are not yet wired, do not have the needed budgetary resources or organized volunteer base to wire their schools.

Rural areas and regions with high poverty continue to have less access to advanced educational technology compared to their suburban and urban counterparts.

These few points illustrate that there is still much to be done in our children's classrooms. NetDay organizers are committed to working with under served neighborhoods and ensuring that the appropriate resources, both in volunteers and computer wiring kits, are channels to these communities. In addition, this year's NetDay will focus on communities that did not fully benefit from last years initial set of

projects and activities. In all, NetDay continues to save schools and taxpayers millions of dollars in educational technology startup costs, while training and equipping teachers with the knowledge needed to be a successful and integral part of the technical educational experience.

According to NetDay organizers, this year's relationship between private business, the labor community, and neighborhood schools is stronger than ever. Business sponsors and corporate volunteers will be instrumental in making NetDay a successful reality. The small, and large, companies continue to supply the project the needed computer and wiring equipment, and have also encouraged their employees to work with their children's or neighborhood schools. In addition, the labor community will continue to go into schools across America, where they are committed to work with private partners in ensuring that their local schools have the educational infrastructure needed for a well trained work force for the 21st century. The most valuable asset of NetDay continues to be the commitment of thousands of volunteers who will work in their community schools.

As the communities throughout America celebrate their NetDay accomplishments and prepare for future activities for this year and beyond, it is my honor to once again, recognize the NetDay cofounders, Michael Kaufman and John Gage, and organizers, Ann Murphy and Teresa Wann, and the dozens of corporate sponsors and business partners, and the thousands of students, teachers, parents, and school administrators for their achievement. The success and commitment they have shown to America and my State of California should be applauded.

My colleague and cochair on the U.S. Senate information technology caucus, Senator JOHN WARNER, Senator CONRAD BURNS of Montana, Senator CHARLES ROBB of Virginia, Senator PATTY MURRAY from Washington, and my California colleague Senator BARBARA BOXER join me in supporting the advancement of educational technology by sponsoring this resolution. Together, we urge our Senate colleagues to affirm congressional support for preparing U.S. classrooms with the needed technological infrastructure for the 21st century.

I invite my Senate colleagues to join this public-private partnership effort and I congratulate all the volunteers who participated in NetDay 1997 and encourage them to keep up the commendable and exemplary work.●

## ASSOCIATION OF CHINESE-AMERICANS, INC.

● Mr. LEVIN. Mr. President, I rise today to pay tribute to a remarkable organization in my home State of Michigan, the Association of Chinese Americans, Inc. The ACA, which promotes the presence of and provides services to Chinese Americans in the Greater Detroit area, is celebrating its 25th anniversary on April 26, 1997.

In 1972, Michigan residents of Chinese descent formed the Association of Chinese Americans with the motto ''Embracing the hopes and dreams of Chinese in the United States.'' The ACA became the first chapter of the Organization of Chinese Americans, a national group which helps Chinese-Americans preserve and promote their cultural heritage in the United States.

Many people in metropolitan Detroit have benefited from the ACA's activities, which includes physical and mental health services and legal counseling for people in need. The ACA also sponsors social and educational activities for Chinese-American youth, such as dance troupes, camping trips, and college scholarships.

The ACA plays an important role in preserving and promoting elements of Chinese culture in the United States, helping to keep Chinese art, language, and traditions alive within the Chinese-American community. One of America's great strengths is its diversity, and the ACA helps to remind us all of the valuable additions Chinese-Americans have made to American culture.

The ACA has encouraged Chinese-Americans to participate in the electoral process, and has helped give Chinese-Americans a strong voice in our political system. Members of the ACA frequently share their opinions, insights, and knowledge of issues which affect the Chinese-American community with elected officials at all levels of government.

The Association of Chinese-Americans has been effective in furthering the hopes and dreams of Chinese-Americans. I am proud to have such a vibrant and important organization in Michigan, and I invite my colleagues to join me in offering congratulations to the men and women of the ACA on the occasion of its 25th anniversary.●

[At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.]

## HONORING THE LIFE OF LYMAN SPITZER, JR

●Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to an outstanding scientist and visionary, Mr. Lyman Spitzer Jr., who recently died in Princeton, NJ at the age of 82. Mr. Spitzer was one of those rare individuals who not only made history, he actually changed history.

Spitzer was a theoretician of astrophysics and plasma physics who inspired the Hubble Space telescope and a myriad of orbiting observatories. His scientific contributions began decades ago, when he played a leading role in the development of sonar during World War II.

After World War II, Spitzer's attention turned to what would become his lifelong dream and his lifelong work, the Hubble telescope. The most complex undertaking in unmanned space study, the telescope can peer into the deepest reaches of space. And it was only Lyman Spitzer's vision, advocacy and tenacity which made this dream a reality. He shepherded the project from, as the New York Times noted, ''a glimpse in his own eye in 1947,'' to its liftoff in 1990.

Mr. President, Mr. Spitzer's interests included all aspects of astronautics. He was the catalyst of the Copernicus Orbiting Astronomical Observatory, an ultraviolet predecessor of Hubble that NASA launched in 1972. He was also a pioneer of the effort to use nuclear fusion as a clean and limitless source of energy. And Spitzer was the founding director of the Princeton Plasma Physics Laboratory, where he worked until the day he died.

Lyman Spitzer enhanced our vision of the universe, increased our knowledge of the stars and expanded our own horizons. He is an outstanding example of the difference a single individual can make. Others may continue his work in Princeton, but no one will ever be able to replace him.●

## CENTRAL MARYLAND GIRL SCOUT GOLD AWARD RECIPIENTS

● Ms. MIKULSKI. Mr. President, each year an elite group of young women rise above the ranks of their peers and confront the challenge of attaining the Girl Scouts of the United States of America's highest rank in scouting, the Girl Scout Gold Award.

It is with great pleasure that I recognize and applaud young women from the State of Maryland who are this year's recipients of this most prestigious and time honored award.

These outstanding young women are to be commended on their extraordinary commitment and dedication to their families, their friends, their communities, and to the Girl Scouts of the United States of America.

The qualities of character, perseverence, and leadership which enabled them to reach this goal will also help them to meet the challenges of the future. They are our inspiration for today and our promise for tomorrow.

I am honored to ask my colleagues to join me in congratulating the recipients of this award from the State of Maryland. They are the best and the brightest and serve as an example of character and moral strength for us all to imitate and follow.

Finally, I wish to salute the families, scout leaders, and the Girl Scouts of Central Maryland who have provided these young women with continued support and encouragement.

It is with great pride that I submit a list of this year's Girl Scout Gold Award recipients from the State of Maryland, and I ask that the list be printed in the RECORD.

The material follows:

GIRL SCOUTS OF CENTRAL MARYLAND

Claire Adams, Laurie Lee Albright, Lisa Birkenheuer, Lyndsay Braswell, Jennifer

Breighner, Joanna Buckley, Clair Cozad, Melissa Daniels, Sarah Vezzetti, Emily Wilson, Melissa Wittnebel, Marla Conley, Allison Mays, Penelope McLaughlin, Sheri Scoville, Kathryn Fryer, Sarah Gibbons.

Jessica Hamman, Diana Maddox, Sarah Magliano, Jillian McFarland, Michelle Middleton, Erin Owen, Elizabeth Ruifrok, Amanda Sadeghin, Christina Santoni, Jonette G. Shaffer, Stephanie G. Zonak, Jamila Howard, Janelle Milam, Elizabeth Disharoon, Anne Fowler, Keri Jamison, Courtney McDevitt.

Brighid Tewey, Emily Wright, Katherine Barrow, Diana Constantinides, Mary Hood, Shannon Lawson, Abigail Link, Christina Miller, Chris Mullinix, Trisha Sater, Julie Day, Kathleen Hall, Kristin Heisey, Jennifer Lewis, Julie Petr, Lisa Philipose.●

## THE 100TH ANNIVERSARY OF OSTEOPATHIC MEDICINE IN MICHIGAN

● Mr. LEVIN. Mr. President, I would like to make my colleagues aware of an important anniversary in the history of health care in Michigan. Precisely 100 years ago today, osteopathic physicians became licensed to practice medicine in Michigan.

Michigan was the fourth State to legalize the practice of osteopathy and, according to the Michigan Association of Osteopathic Physicians and Surgeons, today has the largest number of osteopathic practitioners in the Nation. For the past 100 years, osteopathic physicians have served the people of Michigan by developing therapeutic and diagnostic methods of treating disease to accompany traditional medical procedures.

The philosophy of osteopathy was first articulated by Dr. Andrew Taylor Still, a physician from the State of Missouri. Dr. Still's teachings guide today's osteopathic physicians as they integrate standard medical practices with the body's natural systems for regulating and healing itself, especially the largest of these, the musculoskeletal system.

People from every corner of Michigan have benefited from the care of osteopathic physicians, who can be found in disciplines ranging from family practice to surgery. We are truly grateful for the commitment to quality care made by these doctors—the members of the Michigan Association of Osteopathic Physicians and Surgeons, the Michigan Osteopathic Hospital Association, the Michigan Women's Osteopathic Auxiliary, the Michigan Osteopathic Medical Assistance Association, and the Michigan Osteopathic Guild Association.

I know my colleagues join me in offering best wishes and congratulations to the osteopathic physicians of Michigan, who have served the community with dedication and compassion for the past 100 years.●

## THE GOVERNMENT SHUTDOWN PREVENTION ACT

● Mr. BURNS. Mr. President, today I rise in support of S. 228, the Government Shutdown Prevention Act. I commend Senator MCCAIN for his leadership in drafting this important legislation.

We all lose when the Government shuts down. In Montana, as well as across the Nation, Federal workers were furloughed and national parks were closed; businesses and families were negatively affected when the Government shut down in December 1995 and January 1996. Consequently, millions of dollars were lost.

President Clinton put Congress between a rock and a hard place in that he knew that we did not want to risk another Government shutdown. We were forced to pass a budget that added $6 billion back into Clinton's pet programs. The President was more interested in playing politics than he was in balancing the budget.

Montanans are tired of political games. We can not let the administration replay its efforts to force Congress to spend billions of dollars just to avoid the threat of a shutdown because of gridlock. It is the responsibility of the Government to work for the people—not against them.

Senator MCCAIN's bill provides a safeguard against Government shutdowns. It establishes an automatic continuing resolution to provide the lowest spending levels for Federal agencies and programs in the event that the annual appropriations bills are not enacted by the start of the fiscal year. This provides an incentive to pass appropriations bills in a timely manner.

This bill also addresses the concerns of those on Medicare, Medicaid, and Social Security as it specifically states that entitlements will be paid regardless of what appropriations are passed.

I feel that the Government Shutdown Prevention Act protects Montanans. No longer will Montana's elderly and disabled have to fear not being able to pay medical bills because of a Government shutdown. Welfare recipients will not have to worry about going hungry because of the President's political gameplaying. Finally, Montana communities like West Yellowstone, Gardiner, and Columbia Falls—which serve as gateways to Yellowstone and Glacier National Parks—will not suffer because gridlock has forced the closure of national monuments and parks. The Government Prevention Shutdown Act ensures that the Government is working for the benefit of Montana. This is why I am proud to be a cosponsor of this bill.●

## HEALTH VOLUNTEERS OVERSEAS—UGANDA WAR VICTIMS PROJECT

● Mr. LEAHY. Mr. President, we hear people complain about how foreign aid is a waste of money, and there are certainly examples of it. The United States poured countless millions of dollars into the pockets of President Mobutu, and one need only observe the chaos and suffering in Zaire today to understand what a terrible mistake that was. Many of us said so at the time, but we were ignored. During that same period, the United States propped up General Noriega in Panama, until he was no longer useful to us.

But you do not hear very much about the good uses of foreign aid, and how it makes a difference between life and death, or hope and misery, for millions of people around the world. In fact, there are far more examples of those good uses, than of the scandals that attract the attention of the media.

One example is the War Victims Fund project in Uganda. This project began in 1989, and it is now coming to an end. I think Members of Congress and the public should know about it, because it is a remarkable example of what the U.S. Government, a private voluntary organization, the good will and hard work of American volunteers, and the support of the Government of Uganda, have done for the benefit of thousands of wounded and severely disabled people in that country.

Uganda, a once productive country that boasted the finest medical school in sub-Saharan Africa, was virtually destroyed by the disastrous Idi Amin and Obote regimes. The medical school was destroyed, its faculty members killed or run out of the country. Years of civil war left thousands of casualties, including many victims of landmines.

In 1989, the year the Leahy War Victims Fund was established, USAID began a project in Uganda. It was implemented by Health Volunteers Overseas, a Washington, DC-based organization that sends volunteer doctors, nurses, and other medical professionals to train people in poor countries.

Health Volunteers Overseas did an extraordinary job in Uganda during the 7-year life of this project. There were tremendous achievements, and one terrible tragedy when Dr. Rodney Belcher, the Virginia orthopedic surgeon without whom the project would not have accomplished nearly so much, was gunned down in a robbery. His loss was felt throughout Uganda, because so many people knew of his selflessness, and that he had literally given his life for them and future generations in that country. His legacy is the scores of Ugandan health professionals he trained who are carrying on his work today.

Mr. President, HVO's final report on the Uganda project should be read by all. Its staff and volunteers deserve our sincere thanks, and our continued support. USAID, and President Museveni and his Health Ministry, also deserve credit. I ask that excerpts of the report be printed in the RECORD.

The excerpts of the report follow:

EXCERPTS OF FINAL REPORT—UGANDA ORTHOPAEDICS AND PHYSICAL THERAPY FOR THE DISABLED PROJECT

INTRODUCTION

In August of 1989, Health Volunteers Overseas (HVO) entered into a three year grant agreement with the U.S. Agency for International Development (USAID) Mission in

Uganda to ''improve the provision of orthopaedic, prosthetic, orthotic and physical therapy services for Uganda's thousands of children and adults who have lost upper and lower limbs, been crippled through the paralytic residual of poliomyelitis or otherwise become immobilized, especially those persons whose disabilities resulted from civil strife''.

This grant concluded on December 31, 1996.

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ACCOMPLISHMENTS

*Facilities*

HVO renovated and furnished the Polio Clinic at Old Mulago Hospital to serve as the site for the Department of Orthopaedics. The renovated building included space for departmental offices, weekly clinics, library, storage, seminar/classroom, and the HVO offices.

HVO renovated and equipped the operating room suite at Ward 7 at Old Mulago, creating two ''clean'' theaters for non-septic cases. These rooms were opened in March of 1991 and according to a report dated January 31, 1995, ''the well trained nursing and theater staff [are] working smoothly to assist the surgical teams in performing an average of 20 surgical operations weekly for conditions including polio, trauma, fractures, spinal and hip injuries, tuberculosis, cerebral palsy, bone tumors, club feet and a variety of severe and late burns of hands and limbs''.

HVO rebuilt and equipped the Mbale Workshop which had been destroyed in a fire in March of 1990.

HVO renovated and furnished a guest house on the hospital grounds to serve as housing for volunteers.

HVO built a new, larger sterile store room adjacent to the OR suite in the fall of 1996. This was funded by a private donation to HVO, not with grant monies.

*Training and Education*

HVO established a M.Med. (Orthopaedics) postgraduate degree at Makerere University and Mulago Hospital. The goal of this program is to train a corps of Ugandan orthopaedic surgeons who will be qualified to continue the teaching program in orthopaedic surgery and trauma management after the end of this grant. The curriculum for this four year degree was approved by the University Senate and accepted by the School of Postgraduate Studies in 1995. The authors of the curriculum included Drs. Belcher and Lawrence Gordon. In the fall of 1995, three young Ugandan physicians were formally enrolled in the program as the first residents.

Over the life of this grant, various cadres of personnel were taught the principles of orthopaedic surgery and trauma management. According to a summary provided by Dr. Belcher in 1995, over 450 medical students, 45 physicians and surgeons, 36 orthopaedic assistant paramedical officers, 16 physical therapists and 40 nurses had been exposed to training and education related to orthopaedic surgery.

Considerable effort was also devoted to training the OR personnel and surgical nursing staff in operating theater sterile techniques and surgical procedures. When the operating theaters at Ward 6 were nearing completion, HVO sent an experienced OR nurse, Theresa McInerney, to Kampala for a 6 month tour. Her job was to get the newly renovated OR suite functioning. This included organizing donations received from the United States, determining what additional items needed to be procured from the United States or could be made locally, and developing procedures to ensure that sterile technique was maintained. She also initiated a series of classes for the OR personnel in OR technique with a special emphasis on asepsis and the importance of productivity.

This training continued under the direction of another OR nurse, Wilma Ostrander, who served several tours in Uganda. She focused her efforts on improving the efficiency and effectiveness of the OR nursing and paramedical staff through a series of lectures and demonstrations. She also participated in the development of infection control programs designed to improve the safety of the environment in the operating rooms resulting in lower post-operative infections and complications.

On return visits, she also assisted the department in the development of a computerized inventory system to track the utilization of supplies and equipment. This has facilitated the development of a departmental system to reorder supplies as needed, a critical function for the department. As part of this process, she has introduced the utilization of patient records and patient supply lists so that there is a record available tracing the items used and to facilitate stock orders.

As the OR became functional, it also became clear that there was not an adequate number of trained technicians at the hospital who could handle the maintenance and servicing of the medical equipment needed for surgery. This was particularly evident in the lengthy process required for the commissioning of the autoclave purchased for the Ward 7 OR suite. Once commissioned, Dr. Belcher learned that there was no one on the staff of the hospital who could maintain this autoclave, despite the fact that it was similar to others at New Mulago Hospital.

As a result, HVO entered into a collaborative relationship with the American Medical Resources Foundation (AMRF), a Boston-based NGO, to design and deliver a series of workshops to teach Ugandan technicians at both Old and New Mulago Hospitals how to repair, maintain and service medical equipment. A total of three workshops were held in 1996 focusing on the repair of cardiology, radiology, anesthesia, respiratory and OR equipment. The first workshop was attended by 30 hospital engineers and technicians from Mulago, Mengo, Rubago and Nsambya Hospitals. Although there was significant interest in the other two workshops, HVO and AMRF decided to limit the number of participants to 15 in order to ensure adequate time for hands-on work in diagnosing and repairing equipment.

HVO also sent a resident to Hong Kong for 2.5 months of post-graduate training at the University of Hong Kong under the direction of Professor John C.Y. Leong. This training not only served as an opportunity to see how services are delivered in another country, but also fostered the development of professional contacts outside of Uganda.

*Extension of Services*

The scope of this project was national. HVO, under the direction of Dr. Belcher, focused considerable effort on expanding the delivery of services to hospitals outside Kampala and developing an effective orthopaedic referral system for the up-country regions of Uganda.

For the first three years of the project, regular visits to various up-country facilities were undertaken by members of the Department of Orthopaedics, usually accompanied by a volunteer. Patients would be examined and the difficult cases referred to Mulago for surgery. Others would be measured and fitted with calipers or, if feasible, taken into surgery.

These visits ceased when travel funds for department personnel were no longer forthcoming from the Ministry of Health. However, Dr. Belcher planned an ambitious program of up-country visits starting again in 1996.

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The goal of these trips outside of Kampala was to increase the visibility of the services available for the disabled, to identify patients in need of services and to successfully enroll them in treatment programs.

With the end of the grant, this aspect of the project is perhaps the least likely to continue, although the need for this type of outreach is critical. Funds are needed for transportation, as well as food and housing for the team members. It is unlikely that the Ministry of Health will be able to fund as many trips as originally planned on an annual basis.

*Other Accomplishments*

HVO was able, with funds from the grant, to identify and procure essential educational materials, including books, journals, slide sets, and videos. HVO also purchased items necessary for the viewing and development of educational materials. For example, HVO procured overhead and slide projectors, a television and video machine, computers with CD–ROM capabilities, and a photocopier. Access to this equipment is essential as members of the department or volunteers seek to organize lectures and teaching materials for students.

More than 5,000 books and journals were shipped to Uganda under the auspices of this grant. Most of these were donated by members of HVO. HVO, based on input and recommendations of the senior members of the Department of Orthopaedics, also procured a set of current reference texts in medicine, rehabilitation, and orthopaedics for the departmental library. This order filled many gaps that existed in the library and will serve the educational needs of the department for many years to come.

One of HVO's educational objectives at the Medical School and Mulago Hospital was to develop better interaction and communication between the various departments involved in patient services and teaching. This was accomplished through the development of a weekly joint conference with the Radiology Department where orthopaedic surgeons and radiologists reviewed patient x-rays and learn from one another. Similar conferences were established with a joint pathology, radiology, orthopaedic, and oncology conference held monthly. Other joint conferences were established with the Neurosurgical and Pediatric Departments.

In addition, HVO, with the assistance of Dr. Belcher, was able to develop links with other departments. HVO initiated volunteer-staffed teaching programs with the departments of anesthesia, medicine and pediatrics. Strengthening the capacity of these departments to treat patients and to teach future generations of Ugandan medical providers is critical to the overall improvement of health care in Uganda.

When it became evident that HVO volunteers would not be able to have an active role assisting AVSI in the School for Physical Therapists, HVO recruited several PT volunteers to work primarily with the Departments of Physical Therapy. Donna Tinsley, a PT who spent 6 months in Kampala with the project, taught PT students during bedside ward rounds on Ward 7 as well as in the amputee, cerebral palsy and polio clinics.

PROBLEMS ENCOUNTERED

Some of the problems encountered in the course of implementing this project are inherent in the way international assistance is designed. The original grant was for a period of three years, an extremely short period of time in which to ''improve the provision of orthopaedic, prosthetic, orthotic and physical therapy services . . .'' for a country such as Uganda. Extensions were forthcoming but only for 12 to 18 months at a time. This

short-term focus prevented HVO from developing longer range plans that might have been more effective.

The logistical problems involved in renovating and equipping the departmental offices and OR suites on Ward 7 were, at times, monumental. Dealing with local contractors was very difficult. Materials were often delayed or ''went missing''. Workers might not show up on time or even at all. These problems contributed to a substantial delay in the project which was compensated for by a one-year extension.

Communications between the field office and HVO's Washington office were hampered by frequent power outages and missing faxes. This situation, however, improved over the life of the project, especially with the introduction of e-mail.

As was mentioned above, there were recurring problems with the maintenance of equipment, including, but not limited to, medical equipment. Due to power surges, office equipment frequently was damaged, often beyond repair. The problems associated with the commissioning of the autoclave might well serve as a case study in the difficulties in merging a highly sophisticated piece of equipment into a facility which cannot provide adequate supplies of water and electricity. Despite considerable research and investigation as to which autoclave would be best suited to the department's needs and building's capacity, this autoclave was inoperable for several years. When finally commissioned, its maintenance was a recurring problem.

PROJECT SUSTAINABILITY

The death on March 11, 1996, of Dr. Rodney Belcher was a tremendous loss for all involved in this project. Dr. Belcher was murdered in front of the HVO office on the hospital grounds in the course of a carjacking attempt that was ultimately unsuccessful.

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Given the unexpected and tragic turn of events in 1996, what are the chances that activities undertaken to date will continue and that the impact of these many years of hard work will be sustained over time?

On a positive note, the senior members of the department immediately took charge upon Dr. Belcher's death and appropriately divided the departmental workload. The department has continued to function with weekly clinics, twice weekly operating schedules, ward rounds, seminars, etc. Through the end of 1996, thanks to funding available from HVO, up-country outreach clinics were conducted. Dr. Naddumba has been elected Head of the Department and has earned high marks for his administrative and political skills.

Health Volunteers Overseas will continue to send volunteers to share their technical expertise with members of the Department of Orthopaedics. HVO will also send volunteers to work with faculty and students in the Departments of Medicine, Pediatrics, and Anesthesia.

In addition, Dr. Norgrove Penny, a Canadian orthopaedic surgeon and member of Orthopaedics Overseas, accepted a four year contract in Kampala with the Christoffel Blindenmission (CBM) beginning in August of 1996. He is working in conjunction with the Uganda Society for Disabled Children and the Leonard Cheshire Homes of Uganda, both British based charities working in community based projects. His job includes developing services to up-country district hospitals who at present have no orthopaedic services.

There have been discussions between members of the Department of Orthopaedics at Mulago Hospital and Dr. Penny regarding the possibility of working together. There certainly appears to be an overlap of mutual interests and HVO/Washington has strongly supported this possibility.

However, * * * without a certain level of ongoing financial support there will be some serious problems ahead for the department and for the delivery of orthopaedic and rehabilitation services to the population at large in Uganda.

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SUMMARY

This project began in the fall of 1989 in the midst of great anticipation and hope. Uganda was recovering from a long period of intense civil strife marked by intense fighting, brutality and bloodshed. HVO had an opportunity to participate in a program that would help rehabilitate the lives of thousands touched in one way or another by the breakdown of society during this period.

Now, seven years later, we can say that this project has done much to ''improve the provision of orthopaedic, prosthetic, orthotic and physical therapy services for Uganda's thousands of children and adults who have lost upper and lower limbs, been crippled through the paralytic residual of poliomyelitis or otherwise become immobilized, especially those persons whose disabilities resulted from civil strife''.

The death of Dr. Rodney Belcher was a devastating even. His death, however, serves as a beacon for members of the department and HVO who are determined not to allow this event to diminish the accomplishments of his many years of dedication and hard work.●

[At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.]

## HONORING THE MOST WORSHIPFUL GRAND LODGE'S SCHOLARSHIP WINNERS

● Mr. LAUTENBERG. Mr. President, the Most Worshipful Grand Lodge, Masonic Architects of the Universe, Inc., Ancient Free and Accepted Masons, Electa Grand Chapter, Order of the Eastern Star of Newark, NJ, will be awarding scholarships to at least 16 deserving students at its second annual Scholarship Banquet on May 18. Young people from New York; Connecticut; Washington, DC; and Essex and Hudson counties in New Jersey will be recognized during the evening's ceremonies. I congratulate all the scholarship recipients, and I encourage them to always strive for academic excellence. In the words of poet Muriel Ruyskier, I urge them to ''reach the limits of themselves, to reach beyond themselves.''

Mr. President, education is the key that unlocks the door to the future. By the year 2000, 60 percent of all new jobs in America will require advanced technology skills. Anyone who does not have the required education will not be able to compete. Education isn't a luxury, it's a necessity.

I know that the scholarships awarded by the Most Worshipful Grand Lodge will help the recipients face tomorrow's challenges. But I also hope that these awards will instill in the winners a love for education. In the 19th century Jewish ghettos of Eastern Europe, mothers used to pour a little honey on a book, in order to demonstrate to their children the sweetness of learning. And learning is sweet, because it enriches our lives; it opens our minds to new possibilities, and it allows us to fully enjoy the wonders of the universe.

Mr. President, as we honor this year's scholarship winners, I also want to commend the Most Worshipful Grand Lodge for its outstanding community work, particularly in the area of education. Through its actions, the Grand Lodge demonstrates that not only does it take an entire village to raise a child, it takes an entire community to educate a child.

I again congratulate all of the scholarship winners, and I wish them continued success as they continue on the path of knowledge and the path of life.●

## AMENDMENTS TO THE COMMITTEE RULES OF PROCEDURE IN THE CONGRESSIONAL RECORD

● Mr. SMITH of New Hampshire. Mr. President, Senator REID joins me to ask that changes to the Rules of Procedure for the Select Committee on Ethics, which were adopted February 23, 1978, and amended by the full committee on March 18, 1997, be printed in the CONGRESSIONAL RECORD. The material follows:

Rule 9, Procedures for Handling Committee Sensitive and Classified Materials, and Rule 14, Procedures for Waivers, of the Supplementary Procedural Rules are amended as follows:

Rule 9:

(c) Procedures for Handling Committee Sensitive and Classified Documents:

(1) Committee Sensitive documents and materials shall be stored in the Committee's offices, with appropriate safeguards for maintaining the security of such documents or materials. Classified documents and materials shall be further segregated in the Committee's offices in secure filing safes. Removal from the Committee's offices of such documents or materials is prohibited, except as necessary for use in, or preparation for, interviews or Committee meetings, including the taking of testimony, or as otherwise specifically approved by the staff director or by outside counsel designated by the Chairman and Vice Chairman.

(2) Each member of the Committee shall have access to all materials in the Committee's possession. The staffs of members shall not have access to Committee Sensitive or classified documents and materials without the specific approval in each instance of the Chairman and Vice Chairman, acting jointly. Members of the Committee may examine such materials in the Committee's offices. If necessary, requested materials may be hand-delivered by a member of the Committee staff to a member of the Committee, or to a staff person specifically designated by the member, for the member's or designated staff person's examination. A member of the Committee who has possession of Committee Sensitive documents or materials shall take appropriate safeguards for maintaining the security of such documents or materials in the possession of the member or his or her designated staff person.

(3) Committee Sensitive documents that are provided to a Member of the Senate in connection with a complaint that has been filed against the Member shall be hand-delivered to the Member or to the Member's Chief

of Staff or Administrative Assistant. Committee Sensitive documents that are provided to a Member of the Senate who is the subject of a preliminary inquiry, an initial review, or an investigation, shall be hand delivered to the Member or to his or her specifically designated representative.

(4) Any Member of the Senate who is not a member of the Committee and who seeks access to any Committee Sensitive or classified documents or materials, other than documents or materials which are matters of public record, shall request access in writing. The Committee shall decide by majority vote whether to make documents or materials available. If access is granted, the Member shall not disclose the information except as authorized by the Committee.

(5) Whenever the Committee makes Committee Sensitive or classified documents or materials available to any Member of the Senate who is not a member of the Committee, or to a staff person of a Committee member in response to a specific request to the Chairman and Vice Chairman, a written record shall be made identifying the Member of the Senate requesting such documents or materials and describing what was made available and to whom.

Rule 14:

(c) Ruling: The Committee shall rule on a waiver request by recorded vote, with a majority of those voting affirming the decision. With respect to an individual's request for a waiver in connection with the acceptance or reporting the value of gifts on the occasion of the individual's marriage, however, the Chairman and the Vice Chairman, acting jointly, may rule on the waiver request.●

## TRIBUTE TO DR. ANITA JONES

● Mr. ROBB. Mr. President, I rise today to recognize the professional dedication, vision and public service of Dr. Anita K. Jones who is completing her appointment, after 4 years, as the Director of Defense Research and Engineering [DDR&E]. A native of Texas, and longtime Virginia resident, Dr. Jones is one of this country's preeminent information technology experts and a pioneer for women in science and engineering career fields everywhere. Prior to coming to the Department of Defense, she was the chair of the department of computer science at the University of Virginia. As DDR&E, she serves in one of the Nation's top technical positions and oversees the largest defense research and development organization in the world.

Her strong support for, and oversight of, the multibillion-dollar Defense Science and Technology [S&T] Program dramatically improved the warfighting capabilities and readiness of our Nation's military forces both today and well into the future. Dr. Jones spearheaded the implementation of a new structured planning process which aligns technology research and development more directly with critical warfighting and national security priorities. Through strong leadership, she brought the technology and operational military communities together to design detailed plans to sustain U.S. dominance on the battlefield into the next century.

In addition, Dr. Jones focused the Department of Defense S&T Program to ensure military and national preeminence in several strategic technologies with both military and commercial application such as information technology, high-performance computing, advanced electronics, materials and modeling and simulation. Her active outreach within the Department of Defense expanded greatly the scope of the Defense S&T Program and the speed and ease at which technology is developed and transitioned into our warfighting arsenal and support infrastructure. Furthermore, her direct support of pervasive technologies such as high end computing and semiconductors resulted in breakthroughs across a wide spectrum of applications, both military and civilian, such as modeling of geophysical phenomenon, aerodynamics and process flow, which contributed directly to our Nation's ability to execute a record number of peacekeeping and military operations without the loss of a single life due to combat.

Dr. Jones' awards include the Department of Defense Award for Distinguished Public Service and the Meritorious Civilian Service Award. She has served on several Government advisory boards and scientific review panels such as the Defense Science Board, Air Force Scientific Advisory Board, the National Research Council, and the National Science Foundation. She is a member of the National Academy of Engineers and is a fellow of the Association of Computing Machinery and the Institute of Electrical and Electronics Engineers.

I know that Dr. Jones' husband, William A. Wulf, and her daughters, Karin and Ellen, are proud of her many accomplishments, and so is the Nation. Her distinguished service will be genuinely missed in the Department of Defense, and all of us who know her wish her every success as she returns to the University of Virginia.●

## LOAN INTEREST FORGIVENESS FOR EDUCATION ACT

● Mr. BURNS. Mr. President, it was with great pleasure that on April 15, Tax Day, I joined with Senators GRASSLEY and MOSELEY-BRAUN in cosponsoring the Loan Interest Forgiveness for Education Act, S. 573.

With Americans scrambling last week to get their tax returns filed, this bill offers a bit of relief for students who rely on loans to pay their higher education bills. This legislation will restore the tax deduction for student loan interest, with eligibility for the deduction phased out for taxpayers with incomes between $65,000 and $85,000 (single returns) and $85,000 and $105,000 (joint returns). This modest step will take some of the sting out of repaying student loans.

A college degree is more important in today's job market than it has ever been. At the same time, education costs continue to rise and the average debt of graduates is at record levels. On top of that, the tax burden has increased, putting a serious strain on college graduates as they work to pay off their loans and interest and still get ahead in the job market.

Let us give student loan recipients a tax break. Let us send a message about the importance of student loans and higher education. This is a sound investment in our Nation's future.●

## HONORING FRED VANDERVEEN OF SALISBURY, MD

● Ms. MIKULSKI. Mr. President, I rise today to pay tribute to a very special American, Mr. Fred Vanderveen, of Salisbury, MD. I am proud to say that Mr. Vanderveen is the 1997 winner of the National Heroes Award from the Sporting Goods Manufacturer's Association. This prestigious award is given each year to three individuals who make outstanding and unique humanitarian contributions to local sports programs throughout the Nation.

Fred Vanderveen is a full-time high school biology teacher. But the classroom is only one area where Mr. Vanderveen is preparing our children for the future. He knows that developing the health and fitness of our children's bodies is as important as developing their minds. He also knows that kids need a safe place to go where they can have positive experiences, where they will be among friends, and where they will feel important. So he invested his life's savings in a sports and training facility called Youth Exercise Services. His facility is designed to meet the needs of mentally and physically handicapped athletes, at-risk youths, and anyone who will say no to drugs and yes to exercise.

Mr. Vanderveen takes to his playing field at Youth Exercise Services the same way I take to the Senate floor: mission-driven, determined, and unwilling to lose. Through his dedication and hard work, the kids he touches learn that they don't have to lose either. Whether they are handicapped, at-risk, or just looking for a positive after school environment, they've got the chance to come out winners because Fred Vanderveen cares about each and every one of them.

Mr. President, I want to give my warmest congratulations to Mr. Vanderveen, and to the kids whose lives he helps make better. His 1997 Heroes Award is richly deserved, and the State of Maryland is proud to call him one of our own.●

## TRIBUTE TO JANE McCAFFERY FOR WINNING THE CONTINENTAL CABLEVISION'S 1997 NATIONAL EDUCATOR AWARD

● Mr. SMITH of New Hampshire. Mr. President, I rise today to congratulate Jane McCaffery, a teacher at Lincoln Street School and Main Street School in Exeter, NH, on receiving the Continental Cablevision's 1997 National Educator Award.

As a former teacher myself, I commend her outstanding accomplishment and well-deserved honor.

Continental Cablevision designed the Educator Award program in 1989 to encourage teachers to use Cable in the Classroom, a cable industry initiative which provides schools with free cable connections and access to more than 500 hours of commercial-free educational programming each month. Jane was chosen for this distinguished honor from among educators in all of the communities that Continental Cablevision serves in New Hampshire.

Under the direction of Jane, Exeter elementary students, teachers and their work are showcased in ''Booktalk,'' an ambitious weekly cable TV program. The program encourages students to read and invites families to participate in activities related to their children's reading. It also raises community awareness about the elementary curriculum. Jane and an Australian crocodile puppet explore one curriculum theme each week and feature a reading by teachers, students or guests, ideas for families to further pursue the learning theme, and many creative presentations.

New Hampshire has always been fortunate to have many talented teachers, but Jane McCaffery is certainly a role model among the teachers of the Granite State. I am proud of her commitment to education and congratulate her superb achievement. It is an honor to represent her in the U.S. Senate.●

[At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.]

## SALEM COUNTY EDUCATION ANNIVERSARIES

● Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to the Salem County School District on a number of notable anniversaries. The year 1997 marks the 40th anniversary of the district, the 25th anniversary of the initiation of occupational, technical and vocational programs and services to secondary students and the 15th anniversary of the operation of the New Jersey Regional Day School at Mannington for the Department of Education.

Mr. President, these anniversaries are especially significant because education is the key that will open the door to the future for our children. By the year 2000, 60 percent of all new jobs in America will require advanced technical skills. The industrial age has given way to the information age and, more than ever before, students need a quality education if they are going to be able to compete.

But a quality education doesn't only benefit the individual, it also benefits our Nation. If our firms and factories are to find the educated workers they need, and if these same firms are to remain competitive in the global marketplace, then our students must receive the necessary training and skills. Our economic future depends on it.

Mr. President, 300 years ago this year, the colony of Massachusetts passed the very first American education law. It required that every town of at least 50 people hire a teacher of reading and writing. Those first colonists, huddled in their tiny villages along the Atlantic coast, understood the importance of education for their children and for their communities. And ever since, making ourselves the best educated Nation on Earth has always been the very essence of our American dream. The work of the Salem County School District, and the Salem County Vocational Technical Schools, is helping to ensure that this particular American dream remains an American reality.

To the students of Salem County, I say don't ever forget that there's always more to be learned, always more to be seen, always more to be explored. And to the Salem County Board of Education, the Salem County School District, and the Salem County Vocational Technical Schools, I say congratulations and continue your fine work.●

## CONGRESSIONAL PENSION DISCLOSURE ACT

● Mr. BURNS. Mr. President, I come to the floor today in order to offer my support for the Congressional Pension Disclosure Act of 1997.

This bill will require that detailed information about the pension of every Member of Congress be published twice a year. These facts—how much has been contributed to a pension plan, how much is to be received in retirement, and acquired Federal retirement benefits—should be public information.

Montanans, as well as those in every other State, deserve the right to know how public funds are being spent. The disclosure of pension contributions and benefits will allow Montanans to judge whether or not the amounts are fair and just. Taxpayers will be able to make fully informed decisions about the kind of job we representatives are doing in abiding the will of the people and keeping Government spending under control.

The Congressional Pension Disclosure Act will make facts readily available to anyone who wants them. Perception that Congress operates in secrecy would be eliminated and the people of Montana would know that their representatives have nothing to hide. Simply said, by disclosing the size of our pensions, we in Congress will make a step in the right direction toward restoring faith in government by the American people.

I commend Senator ABRAHAM for drafting this meaningful legislation, and I am proud to have signed on as a cosponsor of S. 269.●

## SANCTIONS AGAINST BURMA

● Mr. MOYNIHAN. I commend the President for his decision to invoke investment sanctions on Burma, in accordance with section 570 of Public Law 104–208. The President deserves praise for his action. Conditions in Burma remain grim and warrant this limited measure.

Perhaps no one is more deserving of praise than the Senator from Kentucky, Senator MCCONNELL. He and I have stood together in support of the people of Burma for many years now and I congratulate him for his steadfast efforts to assist in achieving a democratic transition in Burma.

Burma is a democracy denied. It is a country with a democratic past. With our help it can have a democratic future. We find ourselves at a point in history where numerous nations are struggling to build democratic governments. It is not always an easy process. Those who are involved in such transitions watch for America s response to situations such as we find in Burma, where a military junta prevents the implementation of a democratic election. Let us be clear. This is not only about human rights and trade. This is about our commitment to democracy.

There are those who argue that constructive engagement is the only way to effect change in a country. Constructive engagement is a euphemism for doing business with thugs. Foreign investment in Burma provides hard currency for the State Law and Order Restoration Council [SLORC]. Most U.S. companies refuse to support such a regime through foreign investment. Amoco, Levi Strauss, Liz Claiborne, Macy's, Eddie Bauer, Columbia Sportswear, Oshkosh B'Gosh, Pepsi, Apple Computer, and many other companies already have cut business ties with Burma. I commend the President for his action which supports the decisions of these responsible companies.

Finally, I would note that this is not an end to our efforts in Burma, but a beginning. Strong bilateral pressure needs to be supplemented with multilateral action. I call on other nations which share our concern for the people of Burma to join us. Most importantly, the SLORC should know that we will remain vigilant and continue to defend the rights of Burmese democracy leaders.●

## SLOVAKIAN HUMAN RIGHTS ISSUES

● Mr. D'AMATO. Mr. President, I rise today to call to my colleagues' attention human rights developments in Slovakia. These developments point Slovakia in the opposite direction from the road their neighbors have been traveling. Their neighbors accept western values and seek integration into western institutions, developments leading to individual freedom, political democracy, and economic prosperity in a free market system. In stark contrast, Slovakia is not in compliance with some important Helsinki process commitments and is showing signs of regression toward authoritarian, if not totalitarian relations between the state and its citizens.

This country, which showed so much promise upon gaining independence in 1993, has failed to press ahead with vitally needed democratic reforms, in contrast with so many other countries in the region, including other newly independent countries. While the Czech Republic, Hungary, and Poland have worked hard to qualify for EU membership and NATO accession, Slovakia has lagged behind. While states like Lithuania and Slovenia have emerged from repressive empires to bring prosperity and hope to their peoples, Slovakia has not. Even Romania, which has struggled profoundly with the transition from totalitarianism, has managed to undertake significant reforms in the past few months.

From the outset, members of the Helsinki Commission have supported the

democratic transformation in Slovakia. We believe that a strong, democratic Slovakia will enhance stability and security in Europe.

Unfortunately, human rights and democratization in Slovakia have taken a severe beating—both literally and figuratively—in recent months. The hopes raised by free and fair elections and by the passage of a democratic constitution have been dashed

Last month, I understand some officials in Bratislava criticized a congressional report on NATO enlargement and complained that the discussion of Slovakia's progress toward democracy was too superficial. Well, I will provide a little more detail for those who genuinely want to know what worries us here in Washington.

Parliamentary democracy in Slovakia took a bullet in late November, when parliamentarian Frantisek Gaulieder, after announcing his resignation from the ruling coalition's Movement for a Democratic Slovakia, was stripped of his parliamentary mandate through antidemocratic means that are unheard of anywhere else in Europe. His removal has been protested by the European Union and the United States at OSCE meetings in Vienna, but, so far, to no avail.

Even more outrageously, there was a bomb attack against Mr. Gaulieder's home, while he and his family were present. This is a tactic that reminds me of the Communists, fascists, and other similarly bloody and ruthless groups.

The 1995 kidnaping of President Kovac's son is not only still unsolved, but the manner in which this matter has been investigated has fueled speculation that the government's own security forces were directly involved in this crime. The murder last year of Robert Remias, who may have had key evidence in this case, and the ineffectual investigation of that case has deepened these suspicions.

Adding to this disturbing pattern, questions are already being raised about the official investigation of the December bomb attack on Frantisek Gaulieder's home: Mr. Gauliedier has reported that some of his testimony regarding the attack is missing from his police file, that the first investigator was removed after only 3 days on the case, and that the Slovak Minister of Interior has, shockingly, suggested that Mr. Gaulieder may have planted the bomb himself—the same ''he-did-it-himself'' story that no one believes regarding the kidnaping of Mr. Kovac, Jr.

I am now informed that this investigation, like the Kovac and Remias cases, has been ''closed for lack of evidence.'' For a country supposedly seriously committed through its OSCE obligations to the establishment of a ''rule of law'' state, this is a damagingly poor performance.

In addition to these acts of violence, it has been reported that the President, the President's son, and members of the Constitutional Court have been subjected to death threats. In fact, in early December the Association of Slovak Judges characterized the anonymous, threatening letters addressed to Milan Cic, the Chair of the Slovak Constitutional Court, as an attack against the court as a whole and a means of political intimidation.

It has also been reported that on February 24 an opposition political figure in Banska Bystrica, Miroslav Toman, was attacked by four assailants.

We see a country where politically motivated violence is on the increase, where public confidence in the government's intent to provide security for all Slovaks has plummeted, and where acts of violence and threats of violence have brought into question both the rule of law and the very foundations of democracy.

The ruling coalition has continued to pursue an openly hostile agenda toward a free and independent media and free speech in general. During the course of the past year, two newspapers—Slovenska Republika and Naroda Obroda—have seen a total of 21 editors quit over alleged political interference with their work. Defamation suits launched by public officials appear to be a common vehicle for harassing one's political opponents.

Most recently, on November 19, the government barred four journalists from attending a regular press conference after the weekly cabinet meeting because the journalists were believed to be unsympathetic to the government. Although this decision was ultimately rescinded after a public outcry—including a protest from the journalists' union—it was further evidence of the government's relentless efforts to curb any reporting it doesn't like.

In fact, in one of the more shocking episodes of the battle for free speech in Slovakia, it has been reported that Vladimir Meciar—the Prime Minister of the country and, not insignificantly, a former boxer—warned journalist Dusan Valko just a few weeks ago that ''I will punch you so that your own mother will not recognize you.'' So much for Mr. Meciar's tolerance for other points of view and nonviolence.

The Slovak Government continues to pursue a minorities policy that would be laughable if it were not so wrong and harmful. This policy has included everything from banning the playing of non-Slovak national anthems last year to the more recent decision to bar the issuance of report cards in the Hungarian language, reversing long-standing practices. Such petty gestures are beneath the dignity of the Slovak people, whose heritage has survived more than a thousand years of foreign—and often markedly repressive—rule. The Slovak language and culture, now protected in an independent Slovakia, are not so weak that they can only flourish at the expense of others.

More seriously, it should be noted that past repressive crackdowns on minorities—for example, in Cluj, Romania, and in Kosovo, Serbia—began by whittling away at the minority language opportunities that had traditionally been respected by the majority community. Accordingly, these seemingly small restrictions on the Hungarian minority in Slovakia may very well be the harbinger of more repressive tactics ahead.

With this in mind, the failure of the Slovak parliament to adopt a comprehensive minority language law, and the recommendation of the Ministry of Culture that such a law is not even necessary, defy common sense. Current laws on minority-language use in Slovakia do not provide adequate or satisfactory guidance regarding the use of Hungarian for official purposes, as the recent report-card flap shows. Much harm can be done until a minority language law is passed based on a genuine accommodation between the majority and minority communities.

Finally, recent reductions in government-provided cultural subsidies have had a disproportionately negative effect on the Hungarian community. The Slovak Government's defense, that all ethnic groups have been equally disadvantaged by these cut-backs, is unpersuasive in light of the Culture Minister Hudec's stated intent to ''revive'' Slovak culture in ethnically mixed areas and to make cultural subsidies reflect that goal.

While Hungarians suffer from a more direct form of government intolerance, other ethnic groups suffer more indirectly. Put another way, it is not so much government action which threatens Romani communities in Slovakia, it is government inaction.

According to the most recent State Department report on Slovakia, skinhead violence against Roma is a serious and growing problem; three Roma were murdered as a result of hate crimes last year, and others have been severely injured. Some Roma leaders, in response to their government's inability or unwillingness to protect them, have called for the formation of self-defense units. Obviously, the Slovak Government is just not doing enough to address the deadly threats they face.

Moreover, the repugnant anti-Roma statements that have repeatedly been made by Jan Slota, a member of the ruling coalition, have fostered this climate of hatred. The fact that the Czech Republic, Germany, and other European countries also confront skinhead movements in no way relieves Slovakia of its responsibility to combat racism, just as Slovakia's skinhead problem does not relieve the other countries of their responsibilities.

It is time and past time for Prime Minister Meciar to use his moral authority and political leadership to set Slovakia on the right course. He must make clear, once and for all, that Jan Slota—who also called the Hungarian minority ''barbarian Asiatic hordes''—is not his spokesman, and that the Slovak National Party's unreconstructed fascists do not represent the majority of the people of Slovakia.

Mr. President, the leadership of the Helsinki Commission, including my cochairman, Representative CHRISTOPHER H. SMITH, and ranking members Senator FRANK LAUTENBERG and Representative STENY HOYER, have raised our concern about developments in Slovakia with Slovak officials on a number of occasions. Unfortunately, all we hear from the Slovak leadership is one excuse after another, and all we see is a search for one scapegoat after another: it's the Hungarians, it's the Czechs, it's the Ukrainian mafia, it's the hostile international community seeking to destroy Slovakia's good name, it's a public relations problem abroad, not real problems back home—in short, there is always somebody else to blame besides the people that are, in fact, running the country.

I don't mean to suggest that there have been no positive developments in Slovakia over the past 4 years. In fact, I have been especially heartened by the

emergence of a genuine civil society that is increasingly willing to express its views on a broad range of issues. But positive initiatives by the Government have been too few and too far between.

I make this statement today in the hope that the leadership in Bratislava will start to make real reforms, like their colleagues in Romania, and begin to restore the promising future that the people of Slovakia deserve. Their present policies are leading down a path toward international isolation, increasing criticism, and economic deprivation for their people. One Belarus is enough.●

## ORDERS FOR WEDNESDAY, APRIL 23, 1997

Mr. CHAFEE. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10 a.m. on Wednesday, April 23. I further ask consent that on Wednesday, immediately following the prayer, the routine requests through the morning hour be granted, and the Senate immediately begin consideration of the Chemical Weapons Convention Treaty as under the previous order.

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

Mr. CHAFEE. I further ask unanimous consent that the Senate stand in recess from the hours of 12:30 to 2:15 for the weekly policy conferences to meet.

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

## PROGRAM

Mr. CHAFEE. Mr. President, for the information of all Senators, tomorrow at 10 a.m. the Senate will begin consideration of the Chemical Weapons Convention Treaty. Under the order, there will be 10 hours of debate to be equally divided between the chairman and ranking member, or their designees, and 1 hour under the control of Senator LEAHY.

Also, in accordance with the agreement, a limited number of amendments are in order to the resolution of ratification.

Therefore, Senators can anticipate rollcall votes late tomorrow afternoon and throughout Thursday's session of the Senate.

## AUTHORIZING SENATE LEGAL COUNSEL REPRESENTATION

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 77, submitted earlier today by Senators LOTT and DASCHLE.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 77) to authorize representation by the Senate legal counsel.

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

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

Mr. LOTT. Mr. President, as my colleagues are aware, the Congressional Accountability Act of 1995 created procedures for judicial review of employment discrimination claims throughout the Congress to govern cases arising after the requirements of the law took effect on January 23, 1996. The Senate's antecedent process for review of discrimination claims in Senate employment, which was created by the Government Employee Rights Act of 1991, continues to govern older cases. The case of William L. Singer versus Office of Senate Fair Employment Practices, now pending in the U.S. Court of Appeals for the Federal circuit, is a case initiated under the 1991 act.

The petitioner in this case, a former officer in the Capitol Police Department, seeks review of a ruling of the Select Committee on Ethics, which affirmed a decision of a hearing board appointed by the Director of the Office of Senate Fair Employment Practices. The hearing board decision rejected the officer's claim that his termination from the Capital Police violated the Americans With Disabilities Act and the Family and Medical Leave Act, as made applicable by the Government Employee Rights Act.

Under the Government Employee Rights Act, a final decision of the Ethics Committee is entered in the records of the Office of Senate Fair Employment Practices, which is then named as the respondent if the decision is challenged in the Federal circuit. As petitions for review in the Federal circuit challenges final decisions of a Senate adjudicatory process, under the Government Employee Rights Act the Senate legal counsel may be directed to defend those decisions through representation of the Office of Senate Fair Employment Practices in court.

Accordingly, this resolution directs the Senate legal counsel to represent the Office of Senate Fair Employment Practices, in the case of Singer versus Office of Senate Fair Employment Practices, in defense of the Ethics Committee's final decision.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, that any statements relating to the resolution appear in the RECORD.

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

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 77

Whereas, in the case of *William L. Singer* v. *Office of Senate Fair Employment Practices*, No. 97–6000, pending in the United States Court of Appeals for the Federal Circuit, petitioner William L. Singer has sought review of a final decision of the Select Committee on Ethics which had been entered, pursuant to section 308 of the Government Employee Rights Act of 1991, 2 U.S.C. §1208 (1994), in the records of the Office of Senate Fair Employment Practices;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1) (1994), the Senate may direct its counsel to defend committees of the Senate in civil actions relating to their official responsibilities;

Whereas, pursuant to section 303(f) of the Government Employee Rights Act of 1991, 2 U.S.C. §1203(f) (1994), for purposes of representation by the Senate Legal Counsel, the Office of Senate Fair Employment Practices, the respondent in this proceeding, is deemed a committee within the meaning of sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a), 288c(a)(1) (1994): Now, therefore, be it

*Resolved,* That the Senate Legal Counsel is directed to represent the Office of Senate Fair Employment Practices in the case of *William L. Singer* v. *Office of Senate Fair Employment Practices.*

## ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. CHAFEE. 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 3:53 p.m., adjourned until Wednesday, April 23, 1997, at 10 a.m.

## NOMINATIONS

Executive nominations received by the Secretary of the Senate April 18, 1997, under authority of the order of the Senate of January 7, 1997:

CENTRAL INTELLIGENCE

GEORGE JOHN TENET, OF MARYLAND, TO BE DIRECTOR OF CENTRAL INTELLIGENCE, VICE JOHN M. DEUTCH, RESIGNED.

Executive nominations received by the Senate April 22, 1997:

DEPARTMENT OF ENERGY

ELIZABETH ANNE MOLER, OF VIRGINIA, TO BE DEPUTY SECRETARY OF ENERGY, VICE CHARLES B. CURTIS, RESIGNED.

## WITHDRAWAL

Executive message transmitted by the President to the Senate on April 18, 1997, withdrawing from further Senate consideration the following nomination:

CENTRAL INTELLIGENCE

I WITHDRAW THE NOMINATION OF ANTHONY LAKE, OF MASSACHUSETTS, TO BE DIRECTOR OF CENTRAL INTELLIGENCE, VICE JOHN M. DEUTCH, RESIGNED, WHICH WAS SENT TO THE SENATE ON JANUARY 9, 1997.