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Senate

(Legislative day of Tuesday, January 10, 1995)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our opening prayer this morning will be delivered by the Reverend Mark Dever, pastor of the Capitol Hill Baptist Church.

PRAYER

The guest chaplain, the Reverend Mark E. Dever, offered the following prayer:

Let us pray:

Lord God, before the debates and disputes, the committees and compromises which may fill our day, we would stop and confess publicly that You are a good God. You have provided all we need, and so much more. We praise You for the freedom from want which marks off this land from so many others.

Thank You for the wise and just leaders who work in this place, and for the people who honor law and pray for our elected officials.

Thank You for all the good motives which move the hearts of those present to undertake these duties of governance. We ask that where their hearts are stubborn to You, You would subdue them, where they are mistaken, You would teach them, where they are discouraged, You would comfort and strengthen them.

Help them in their service to this Nation, to discern their service to You.

Lord God, bless America, we pray. Forgive us for our callousness to Your blessings. Forgive this Nation particularly we pray for the ways in which we abuse our leaders. Give this Nation a sense of the hope for justice and prosperity that America still is to many around the globe today. We ask that You would give us a renewed sense of Your bounty in this land, an appreciation of the wealth You have given us in the abundance of natural resources, in the hard work of so many people, in the stability of our society.

Give us a nation marked by gratitude for Your blessings, and stewardship of them in kindness and compassion and self-control. We pray that this Chamber would reflect Your character in this.

And along with a renewed sense of Your bounty, we pray for a renewed sense of our accountability. Remind all who work here, in massive buildings which seem so permanent, remind them of the brevity of life, and the certainty of judgment.

We ask this in the name of Jesus Christ. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, let me just indicate for our colleagues that there will be a period for the transaction of morning business throughout the day, with Senators permitted to speak for not to exceed 15 minutes each. And I remind Senators and members of their staff that under the unanimous-consent agreement entered last night, there will be no rollcall votes today and no rollcall votes on Monday, prior to 4 p.m.

Today Senators may discuss their amendments to S. 1 and have them printed in the RECORD in order to qualify them under the 3 p.m. Tuesday deadline. I do not know how many Senators wish to speak today, but we will be in for whatever period of time it may take.

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

The PRESIDENT pro tempore. The distinguished acting minority leader.

Mr. FORD. Mr. President, I think it might be appropriate, I say to my friend, that we review a little bit your understanding with our leader as to the offering of amendments so that we will not get into—it is a gentlemen's agreement, and we want to uphold our part of it. But I want to be sure everybody understands that, if you do not mind.

Mr. DOLE. Right. As I indicated, we entered into the agreement last night and we have listed in the RECORD all the amendments on both sides of the aisle. I think they total around 67 amendments. To offer the amendment, you simply have to send it to the desk. If there is an amendment pending, you have to, of course, set that amendment aside.

We also agreed that if for some unusual circumstance someone was prevented on either side of the aisle from offering their amendment before the 3 o'clock deadline, the two leaders could agree that one of our colleagues, or more, could then offer the amendment, or amendments, in any event.

The importance of the agreement is to get a finite list of the amendments. There are no time agreements on any of the amendments. I hope not all the amendments are offered. But even if all the amendments are offered—that means sent to the desk—they may not be called up. It is my hope we can complete action sometime maybe on Wednesday of next week. I suggest to my colleagues who have any other questions that in the Calendar of Business on pages 2 and 3, we have outlined the agreement.

I think the highlights are that we will start considering S. 1 again on Monday at 10 a.m., with no votes until 4 o'clock, if any votes are ordered. There will be no business today, except you can send your amendments to the desk.

Mr. FORD. May I further ask, one of the points the majority leader made last evening is the fact that an amendment may be filed but that is not sufficient to cover the unanimous-consent agreement. It must be offered. It can be set aside and that constitutes an offering and it can be taken up later but, nevertheless, a Senator must offer his amendment or by unanimous-consent one of the leaders or the floor manager can do that.

So there was concern last night, and I want to make that clear again this morning, that if an amendment has been filed for cloture, it is not sufficient to accommodate this unanimous-consent agreement.

Mr. DOLE. The Senator is correct. There are a number of amendments, I think 117 amendments were filed when we were getting into cloture. In order to qualify under this agreement—Senator BYRD from West Virginia made it clear—the Senator himself must offer the amendment, himself. I think we can accommodate everyone, but hopefully they will be able to accommodate us, too, and not offer all these amendments.

Mr. FORD. I have three on there that could go away. I thank the majority leader.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak therein for not to exceed 15 minutes each.

Mr. COCHRAN addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from Mississippi.

TRIBUTE TO RUBYE ELIZABETH STUTTS-LYELLS

Mr. COCHRAN. Mr. President, on December 22, Mississippi lost one of its most outstanding citizens when Mrs. Rubye Stutts-Lyells passed away. She was a personal friend of mine, but she was also a friend of many, and was one of the real leaders in our State in many areas of activity and interest. She took a very active role in helping to improve the opportunities for everyone in our State through her work in civic, cultural, religious, and political endeavors.

While I was not able to attend her funeral, which was described as ''The Celebration of Triumph,'' which was held in Jackson, MS, members of my staff did represent me on this occasion and sent me a copy of the program which contains a very fine and sensitive obituary.

In memory of Mrs. Lyells, I ask unanimous consent, Mr. President, that a copy of the obituary and the program, ''The Celebration of Triumph, Mrs. Rubye Elizabeth Stutts-Lyells,'' be printed in the RECORD.

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

THE CELEBRATION OF TRIUMPH—MRS. RUBYE ELIZABETH STUTTS-LYELLS

1:00 p.m.: Special Ceremonies conducted by Beta Delta Omega Chapter, Alpha Kappa Alpha Sorority, Inc., Mrs. H. Ann Jones, President.

PROGRAM

ORDER OF SERVICES

(Dr. Lelia Gaston Rhodes, Presiding)

Prelude

Processional

Scriptures: Old and New Testaments, The Reverend Dr. Leon Bell, Pastor, New Mt. Zion Baptist Church, Jackson, Mississippi.

Prayer.

Solo: Mr. L.L. Knowles.

Tributes:

Alcorn State University, Dr. Walter Washington, President Emeritus' Dr. R.E. Waters, Interim President.

''As a Friend and Physician,'' Robert Smith, M.D., Director and Chief of Staff, Mississippi Family Health Center.

Alpha Kappa Alpha Sorority, Inc., Mrs. Mildred B. Kelly, Beta Delta Omega Chapter.

Solo: Mrs. Rose Knowles White.

Acknowledgements: Ms. Renalda Jaynes.

Obituary, Interlude: Read Silently.

Solo: ''The Lord's Prayer,'' Mr. Jobie Martin.

The Christian Science Message: Mr. Harold Karyes, reader.

Funeral Directors of Peoples in Charge.

Recessional.

Postlude: Mrs. Princess B. Gwynn, organist.

ACKNOWLEDGEMENTS

The family of the late Mrs. Rubye E. Stutts-Lyells extends loving gratitude to all friends, neighbors, and church members who have provided ongoing comfort and have displayed innumerable acts of kindness during her illness and our bereavement. We thank you today, tomorrow and always. May God's richest blessings of good health, happiness and hope for 1995 be with you!

OBITUARY

Mississippi's claim to a segment of intellectual prominence, perhaps can be best described in the polished craftsmanship of some of the progenitors who suffered with dignity, with poise, with scholarship and a demeanor of elegance, the complexes, and atrocities of Mississippi's intricate maze of social classes, racial differences, poverty and ignorance.

So to chronicle the life of a scholar, par excellence, who was a major player in the saga of change in Mississippi, historians must thoroughly research data for future generations, the multifaceted experiences of the stature of Mrs. Rubye E. Stutts-Lyells. Mrs. Lyells was born Rubye Elizabeth to the late Tom and Rossie A. Cowan Stutts in Anding, a crossroad village in Yazoo County, Mississippi. Her parents had two sets of twins; one set of whom Mrs. Lyells was the older. All sisters preceded her in death. Mr. Tom Stutts was a prominent progressive farmer known throughout the deep South.

Mrs. Lyells' early education was begun at Utica Institute where in 1923 she completed both the eighth and ninth grades, and in 1924 completed the tenth and the eleventh grades. In 1925 she graduated as Valedictorian of her class.

During the fall semester of the same year Mrs. Lyells' parents enrolled her in the former Alcorn A&M College (now Alcorn State University) where she graduated in 1929 as Valedictorian of her class. Following graduation from Alcorn, she matriculated at Hampton Institute as a Julius Rosenwald Fellow and in 1930 was conferred the degree of Bachelor of Science in Library Science. She immediately returned to her Alama Mater as the first professionally trained African American Librarian in the State of Mississippi. Mrs. Lyells worked assiduously to bring the library in compliance with standards of professional accrediting agencies, both on the state and regional levels. Much of her work became a model for collection development in other Black Land Grant Colleges.

Mrs. Lyells has been at the forefront of almost every significant educational, social, and political advancement made in Mississippi during the past half century. To be on the cutting edge of advancements in the field of librarianship, she took a leave of absence from Alcorn to enroll in the Masters of Arts Library degree program at the University of Chicago where she graduated with distinction in 1942.

Mrs. Lyells' services, as the state's only African American librarian, were in great demand throughout the nation. However, her immediate decision was to stay in Mississippi to serve as a catalyst in helping to raise the standards of academic and public libraries. She served with distinction as head librarian at Jackson State University as the first African American Librarian to head a branch of the Jackson Municipal Library System; acting librarian at the Atlanta Public Library System and Special Assistant Librarian at the Iowa State University Library.

Mrs. Lyells' persistent pioneering efforts for professionalism among African American librarians and her emphasis on quality, available public library resources and facilities for all people were met with apathy, hostility and out-right resistance by those who viewed her ''call for change'' as threatening to their way of life—as recounted by Clarence Hunter and the editor of the Jackson Advocate, Mr. Tisdale—''Mississippi's Library Heritage—Rubye E. Stutts Lyells—A Woman For All Seasons'' She was adamant in her views that librarians should be treated as professionals; that if historically black colleges are to carry out their mission, they should by statutory mandate be funded at a level to acquire and maintain quality libraries.

As a world traveler, noteworthy among her distinguished affiliations were: Executive Director, Mississippi State Council on Human Rights; member of the Mississippi Women League of Voters, President, Mississippi Federated Clubs, President of Terrell Literary Club; a post president of Beta Delta Omega Chapter of Alpha Kappa Alpha Sorority, Inc.; Alcorn State University National Alumni Association, Inc. and the University of Chicago Alumni Association, Inc. She was the recipient of numerous citations and awards. Mrs. Lyells was a candidate for nomination to the Mississippi Senate in 1975; attended the Republican National Convention in 1952 and was invited to the Inauguration of President Dwight D. Eisenhower in 1953. In 1970 she served on the Advisory Committee of the Co-chairman of the Republican National Convention (In 1969 she was a delegate to the Southern Republican Conference in New Orleans). In 1979, Mrs. Lyells was appointed to the Mayor's Advisory Committee in Jackson.

She is listed in numerous scholarly publications which include Marquis Who's Who; The World Who's Who of Women, Cambridge, England, 1978, p. 724. She was a prolific writer. Many of her articles appeared in refereed journals.

Mrs. Lyells served on the Board of Trustees of Prentiss Institute. The Library is

named in her honor. The Doctor of Humanities (L.H.D.) degree was conferred on her from Prentiss Institute.

She was married to M. J. Lyells, a longtime professor at Alcorn A&M College and Lanier High School. She was a member of the Christian Science faith having joined the Mother Church in Boston, Massachusetts with local affiliation in Jackson.

Following an extended illness, Mrs. Lyells demise came Friday, December 22, 1994 at Englewood Manor Nursing Home. Survivors include a niece, Mrs. Rose Knowles White, Baton Rouge, LA; grand-nieces: Ms. Angela Denise White, San Francisco, CA, Ms. Ann Rossie White of Chicago, IL; one nephew, Mr. Leon Stutts Knowles, Los Angeles, CA (Dana); brother-in-law, Mr. L. L. Knowles; a special daughter-nieces, Mrs. Alice Stutts Jaynes, Jackson, MS; a special cousin, Mr. Renalda Jaynes of Jackson, MS and additional relatives and friends.

Mr. COCHRAN. Mr. President, in conclusion, let me simply say that one mark of the courage and interest in the political development of our State was illustrated by Mrs. Lyells' active and conspicuous participation in the development of the modern Republican Party in Mississippi.

As an African-American, she took a stand and defended it with grace and with dignity and with intelligence, in a way that reflected credit on many of us who were actively involved in trying to build a new political party as a vehicle for political expression for our State and the citizens of our State at the national level. For that, I also will be forever grateful to her and to her family.

Mr. President, I yield the floor.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. COVERDELL). The Chair would like to make an announcement.

On behalf of the Vice President, pursuant to the order of the Senate of January 24, 1901, appoints the Senator from Wyoming, [Mr. THOMAS], to read Washington's Farewell Address on February 22, 1995.

The Chair recognizes the Senator from Oklahoma.

Mr. INHOFE. Mr. President, I ask unanimous consent to address the Senate.

The PRESIDING OFFICER. The Senator has the right to address the Senate.

UNFUNDED MANDATES GRIDLOCK

Mr. INHOFE. Mr. President, in order to properly frame some observations that I made last night and at the risk of being redundant in some of the comments I made on this floor yesterday, let me just make some reflections as to my feelings on unfunded mandates that come from quite a few years back.

Back in 1967, one of my closest political allies and friends, who later became Senator David Boren, and I came to Washington from the State legislature to protest the mandates that came from Lady Bird's Highway Beautification Act of 1965. We made a list of what it would cost the private sector in terms of screening. We made a list of the violations, of what we perceived to be violations of the 14th amendment, property rights, people having their property taken away from them in such areas as outdoor advertising signs and others. But primarily because it was the cost to the municipalities.

The leverage they used at that time was that if you do not comply with the mandates of the Highway Beautification Act of 1965, we will withhold several million dollars of your Federal highway matching funds.

Now, keep in mind, these are funds that emanated originally from the State of Oklahoma, went to Washington and were coming back. Of course, Oklahoma, having been a donor State for quite a number of years, does not get as much money back as it sends to Washington. So I guess what they were saying to us from the Federal Government, in its infinite wisdom, was we have passed a law that says you in Oklahoma cannot have the money you sent to Washington unless you comply with these mandates.

That was my first exposure to mandates. I mentioned yesterday also that there are many fine Members of this honorable body who have differences of opinion philosophically and ideologically. Certainly the very distinguished Senator from California, [Mrs. FEINSTEIN], and I differ on many issues, but we have one thing in common in our background, and that is we were both mayors of major cities.

I remember when we were both serving on the U.S. Conference of Mayors Board of Directors our major concern at that time was unfunded mandates.

Whether it is in the State of Kentucky or the State of Georgia, regardless of who you go to, if you talk to your mayors and your county commissioners and your State legislators and the private sector, they will say the major problem we have is not necessarily crime; it is not welfare; it is unfunded mandates. Because while we are facing fiscal problems here in Washington, the problems are even more severe at the local level.

A lot of people do not realize the genesis of the problem that we have in these mandates. I think it goes back to the Great Society days when we decided Government was going to take on a role that perhaps was outside the boundaries of what our Founding Fathers thought the Government should be doing. At least if I have any understanding of the 10th amendment to the Constitution, it says that powers will be reserved to the States or to the people other than those specifically delegated to the Federal Government; that we have become very greedy at the Federal level, and that this greed emanates from the desire of politicians, an insatiable appetite to give things to people in return for their votes. And realizing that there is not an adequate amount of money there, they, of course, impose those financial hardships on political subdivisions below them. And that is where we have found ourselves today.

I hope that all of the American people were watching what was happening last night and what has happened over the past 6 days. I asked our staff to advise me as to how many hours have we been debating the unfunded mandates bill. According to their calculation, it is 47 hours—47 hours of debate on something that really is not that complicated.

Yes, we can get into the finer details and the amendments that perhaps might make it more workable, and I think our distinguished majority leader, Senator DOLE, has gone far beyond the expectations of the American people in being fair. Those of us who are freshmen—and I think I can speak in behalf of all 11 of us who are newly elected who just came off the campaign trail and listened to the people and were there on November 8 when the mandate came out—do not look at this Contract With America in the cute reference that many other people try to put it, in a demeaning sense. It is a very real thing. People are sick and tired of the games we are playing here in Washington, and for the last 6 days we have been playing games. We have not been legislating. We have been playing games.

I know that a lot of Americans out there are applauding at a statement like that because that is what is happening, and they are sick and tired of it. We have a man who ran for President of the United States, elected in 1992, who used throughout his campaign the word ''gridlock.'' We are going to come to Washington and we are going to change; we are going to eliminate gridlock.

We have created gridlock, Mr. President, in the last 6 days and we have done it willfully. We have created gridlock to stall an issue. And I am going to make a prediction in the Chamber of this Senate that is going to offend a lot of people, I am afraid, Mr. President, but it is something that I think has to be said. I believe that this issue has been stalled for a very good reason. First of all, why would they stall an issue on unfunded mandates? Who is opposed to unfunded mandates except for a few liberal people who want to keep the ability to pour money into social programs or other programs and then let the States and the cities and the counties and the people pick up the tab.

Now, that is a philosophy that is out there, and there are some of those who want to do that. But this is not a Republican or Democrat program; it is not a conservative or liberal program, because if you look at the Senator from California, as I mentioned, Mrs. FEINSTEIN, she is very supportive of this because she has sat in a mayor's seat and knows what it is like to have to pay for these mandates that come down.

Yesterday, in the Chamber, I outlined that in only three cities in Oklahoma the unfunded mandates exceeded $35 million, and this is over a period of time. It is just incredible that you could have this. It is not just in Broken Arrow and Tulsa, OK, and in San Francisco. It is throughout America. So it is something that everyone now wants to do something about. The liberals are for it. The conservatives are for it. Organizations like the U.S. Conference of Mayors are for it; the Municipal League is for it; the NFIB is for it. All organizations out there are for this. And yet it has been stalled and stalled and stalled and stalled. It is a bill, a resolution that could very well have been deliberated for 2 days and passed as everybody wants it.

The reason I do not believe it was passed is because there is a deliberate effort to stall the vote on this until after the State of the Union Message that will take place next Tuesday night. And when that happens, I predict in the Chamber of this Senate right now that the President will stand up, even though he may not like the idea of passing an unfunded mandates bill, which I personally do not think he really wants but he heard that the American people did want it on November 8, and he is going to say, ''And I am going to ask this Congress, I am going to ask this Senate to go back into session and pass the unfunded mandates bill.'' And we will. And it is a bill that we should have passed a week before.

Is this gridlock? Yes, it is gridlock. I think it is intentional gridlock. One time someone put the pencil to how much it costs us to keep this body in. I wish I could recall those figures right now, but it is very, very expensive. So there was a tremendous cost to the American people. There is a lot of inconvenience to a lot of people. There were late nights. There was a dialog. We talked on this floor about every conceivable subject that you could talk about and finally got around to making a few comments about unfunded mandates.

So I am saying, yes, it is going to happen, but it is not going to happen until after the State of the Union Message. I think that is a very sad thing.

Do you know where I got the idea of gridlock and where I am coming up with this? It came from someone who talks to a lot of people. It is my barber. A lot of times we have this beltway mentality here where we talk to bureaucrats and we talk to think tank people and we talk to each other and we forget that there is a real world out there with real people who are sick and tired of what is going on up here. I think we will all have learned a lesson as a result of this.

So, Mr. President, in conclusion, I say I hope the American people have been watching for the last couple of days, because what they saw is something we are going to bring to an end. I think I speak in behalf of certainly all 11 of the freshmen Members of this organization when I make this statement.

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

UNFUNDED MANDATES

Mr. FORD. Mr. President, I admire my new-made friend from Oklahoma. I, too, was Governor. I came to Washington about the so-called unfunded mandates. It was a little easier to take care of then than it is now because we had 12 years of Republicans who ran us from $900 million to over $4 trillion in debt in 12 years. It is a little tough for us now to carry that load.

Mr. INHOFE. Will the Senator yield?

Mr. FORD. Not now. I did not disturb the Senator when he was speaking.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. FORD. Then we hear something about gridlock. If the Senator had been here 2 years ago, you would have been part of gridlock—and I say ''the Senator'' rather than ''you''; I want to be careful of my language for the RECORD—because the Republican side would not let us go with pieces of legislation we thought were important. Now they have become part of the Contract With America. The same pieces of legislation, basically, that were filibustered in the last session of Congress are now in the Contract With America. Surprising, is it not? Surprising.

We stand here in the last few days, last couple of weeks, and act like the world has stopped.

We forgot aging in the bill that came out of committee. It would have gone on and we would have excluded aging in the amendment. And the manager of the bill from the Republican side, the majority side, was a cosponsor of that amendment when he found out about it. So we have made some contribution.

We had an amendment last night that was defeated, but utilities—and your State ought to be very interested in utilities—wanted that very badly, because the mandates to private enterprise stick and they do not stick on public entities under this legislation. So it is the business-oriented group here, I guess you would say, who have said to business: We are going to stick it to you. Because the mayors and commissioners out there are raising Cain, we are going to let them off the hook.

So we have incinerators: Private and public. The public does not have to take the mandate but private will, regardless of what it costs.

Landfills: Public and private. The private will have to get stuck with all that.

Schools—think about schools, the mandate on schools. Private will have to be stuck with it; public will not.

Hospitals; in my hometown we have two fine hospitals. Those fine hospitals want to come together—one is public and one is private—and come with an HMO, to merge and try to give better service at lower rates in my community. We better be careful because the private hospital might have to carry out some mandates that the public hospital will not have to.

Why jam this thing through when all those problems are there that should be worked out? We wake up: Oh, I did not know it was in the bill. I will guarantee not a Senator here, with few exceptions, can tell you everything that is in the bill. You get up here and talk about, oh, we are just gridlocked. It may be gridlock, but a couple of things—real, I think—have happened. One, the utilities woke up and business woke up about what is getting ready to happen to them, for one. That is one. Then we found we left out the elderly; we exempted everybody but the elderly. AARP, I am sure, did not know it. But last night it was 99 to zip when you found it, and that was because we said let us look at the bill. And Senator LEVIN, from Michigan, was the individual who found it, brought the amendment up, and the Republican floor leader became a cosponsor of that amendment. That was helpful.

You can stand here all you want to and say we have to get it through because the American people want it. But when small business and major businesses are being hurt, they are not able to be competitive with public—we have local incinerators and private; we have landfills, public and private; we have hospitals, public and private—and you are putting a heavier burden on business and taking it off of their competitor, which is government, I think you ought to take a step back and see what you are doing on this.

We on this side have given you an opportunity to do that. If you want to continue to make the mistake, continue to make the mistake of putting horrendous burdens on business and not on the public entities, then go ahead. When this Senator, 8 years ago, introduced unfunded mandates legislation—the threshold was $50 million then and it has not changed—I got two Senators, two Senators who would be cosponsors.

How times have changed. You said back, I guess in 1967 or 1968, you were here. Where were you when I needed you 8 years ago? Where was all this euphoria for unfunded mandates legislation? I introduced it a year later—nothing happened. So I dropped it. Maybe I should have carried it on. I would have been a part of the Contract With America. But I was there 8 years ago. I was there 7 years ago. The threshold is the same. Now you want to change some from $50 to $100 million. Things are beginning to change. And there are now some changes being made in the bill, I think for the better.

You can fuss at me all you want to. You just give me the devil. Devil take the hindmost, you know? But I am doing what I think is right, and two changes have made this bill better.

It does not go into effect until 1996. Why is the urge here to get something

done when mistakes are being made in the bill?

And one other thing, one other thing. Many of you, the new Members, are from the House. Over in the House you could be paid for your travel and be a frequent flier and you take those frequent flier miles and use them personally. That is all right on the House side. We have never done it on the Senate side. I am a chairman of the Rules Committee. I said no, and that is agreeable.

So I had a little amendment here, if you recall, about a week or 10 days ago that said the House could not use taxpayers' money for personal use. They get out here on the floor and every Republican voted against me and said let the House take care of it. If they want to have it for personal use, let them do it.

What is wrong is wrong and what is right is right. If you listened to Sam Donaldson the other night, and the House let the bill go through without making the changes and they are still getting the perk—you are going to get that amendment again. Because 50 million people watched, as they said the House did not take care of that personal perk. So think about it just a little bit.

In this bill you are changing the rules of the House. You are changing the rules of the House in this bill. And I am going to ask you to stop it because you would not—Let them have the perk. So why should you mandate changes in the rules of the House in this bill? All the former House Members, how mad would you get when the Senate did that when you were in the House? You got pretty mad, got pretty upset. You did not want it done. That was the reasoning.

But now in this bill it is all right. It is in your bill that you want to get through immediately, and you are changing the rules of the House. Try a look at page 26, (d), lines 1 through 5. Just take that little section of this bill and see what it does to the House. What is fair for the goose is fair for the gander. And you are going to have that amendment. You are going to say no, we just want to let them have perks. But in this bill, this is the difference. We are going to find out the attitude, and see how you go are going to vote because we are going to get that amendment. And it is coming pretty quickly. Maybe we can get it early Tuesday. But some changes ought to be made in the bill, and they will be offered. We will have a chance. The Senate will have a chance to be for or against this piece of legislation.

Mr. President, I do not know about my time. I do not know whether I can reserve it. But some will not use time, and I will be able to get more time later on.

But let us be reasonable about this. Talk about having comity. We get up and say how bad we are. I can go back and give speeches maybe of months ago almost identical on this side that the other side made. They are almost identical. So as times change, the more they stay the same.

Mr. President, I yield the floor.

Mr. SANTORUM addressed the Chair.

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

Mr. SANTORUM. Thank you, Mr. President.

Mr. President, I come here to join my colleague from Oklahoma in his comments concerning what is happening in the Senate. I have a statement, but I want to yield to him for a few moments to respond to the Senator from Kentucky.

Mr. INHOFE. I thank the Senator from Pennsylvania.

Mr. FORD. Mr. President, I might say that under the rules of the Senate, he can get, by asking unanimous consent, all the time he wants. The Senator does not have to yield to him.

Mr. INHOFE. I say to the Senator from Kentucky that we know the rules. But I would like to make one short response, if I may.

First of all, Mr. President, I have a great deal of respect for this institution, and I have studied the background and the history of how we got into a bicameral system. I think there is a very useful purpose for that. I served 8 years in the House of Representatives, and things run through there quickly. The train has slowed down here. But there is a difference between slowing down the train and stopping the train.

When a statement is made about why the urgency since it does not take effect until 1996, the urgency is that we have many other things in a contract, a so-called Contract With America, things that Americans believe they were voting for on November 8. We want an opportunity to present those. We cannot do that if we get bogged down day after day for hours and do not get much done with a bill.

I will make one other statement that I think is very significant. Certainly, I have the utmost respect for the Senator from Kentucky. It is true that when the Republicans were the minority here in this body, that there was filibustering going on. I think even though it may not have technically been a filibuster, what we have been experiencing in the last 6 days certainly is very close to that. The difference is this: The difference is when they were filibustering last year in this body, they were filibustering a bill; for example, the Government takeover of the health care system. That was something that 80 percent of the people did not want.

What we are talking about now is unfunded mandates, which is something that by survey 80 percent of the American people do want, and I draw a major distinction between the two.

I thank the Senator from Pennsylvania for yielding.

Mr. SANTORUM. Mr. President, what I want to do is first respond to the Senator from Kentucky and a couple of points that he made, and then talk in general about the problem I think we are confronting here in this debate on unfunded mandates.

I would agree with the Senator from Kentucky that amendments have been offered to improve the bill. I would agree that the amendments he referred to have in fact improved the bill, and have in fact gotten bipartisan support, and the legislative process in that respect is working.

I also remind the Senator from Kentucky that we are in the first step of the process. We are considering the bill here for the first time. The House is yet to bring it up. They are going to be considering amendments under an open rule which will allow improvement to this bill. We will then in all likelihood pass different versions of this bill. It will then go to conference where different ideas that have been percolated through the legislative process get resolved, and hopefully even a better product will come out with the best ideas of the House and Senate.

I do not think anyone would say that any bill that passes the House or the Senate is perfect. There are always things that are going to come up that could have been improved. We would like to see debate. I would like to see debate on germane amendments that deal with the issue of unfunded mandates. I would like to see improvements to the bill. I would like to hear the concerns of both Republicans and Democrats as to what we can do to make this bill a better and more efficient process for reducing the amount of unfunded mandates that we pass on to the State and local governments.

But that is not what is going on here. What is going on here are amendments that have absolutely nothing to do with unfunded mandates, like frequent flier amendments, abortion clinic amendments, and going on and on, that have nothing to do with the substance of the bill that are in these riders.

I remember when I was running for office, people would come up to me and say, ''When you get to the Senate, you get rid of those riders, all of those things that they just throw on these bills that have nothing to do with the bill, that really clog up the legislative process and get all these things thrown in there that we do not like.''

What we are seeing here is a classic example of what the American public does not like, which is a bill that has broad public support that is moving through the process, that is continually being derailed on education issues, on abortion issues, and unfortunately we are not getting back to the subject at hand, which is unfunded mandates, and moving that process through which has overwhelming public support.

We are happy to deal with germane amendments and improvements to the bill. That is what we have been striving to do—limit the debate with cloture petitions that the majority leader has

sent to the desk. Let us have a full and open debate on unfunded mandates. Let us deal with the amendments that are germane to the bill that could improve the quality of legislation. That is what we are attempting to do with the cloture petition. Let us just deal with the things that are germane, that are improvements to the bill, and let us put all this other stuff—which may be important—let us put it aside and we can bring it up another day.

As many Senators from both sides of the aisle said, we are in early January. We have a lot of time in this session to deal with a variety of issues.

But this is a bill that has the support that has been worked on for at least 8 years, and has had bipartisan support for a long period of time.

I just got off a conference call 2 days ago with mayors all across my State. We did a conference call talking to them. The comments that I got were just overwhelming. I have been getting calls from my county commissioners from both sides of the aisle saying, ''Please move this bill forward. We need this help. We need this assurance that you are not going to continue to push more and more costs on local government and State government without providing the needed funds to pay for these programs.''

So we have the consensus. I agree the details need to be worked out. The Senator from Kentucky is absolutely right. We have improved the bill. There will hopefully be other amendments on which we can make improvements, at least that we can discuss, to this bill. But let us do that. Let us focus in on that.

I came from the House of Representatives. I have been reminded many, many times that the House and the Senate are different bodies, and they are. I appreciate the difference. I understand the Senate is a more deliberative body. That is a wonderful thing.

I look back at last year, and look at the bills that were stopped here in the Senate that were rammed through the House because of the rules of the House, that were rammed through the House, that came here to the Senate and were slowed down and in many cases changed, and in some cases stopped completely. It was a benefit.

The Senator from Oklahoma referred to the health care bill. He is absolutely right. That process was slowed down dramatically here in the Senate, and I think to the benefit of the American public in the long run.

So the Senate does have an important role to play. But when we have pieces of legislation that have broad support, in fact have broad bipartisan support in this body—we have 60-some cosponsors on this bill—we have, hopefully, more that will actually vote for the bill. When you have that kind of support, when you have the support here, the support in the public, and you have—with this last election—a clear mandate to move, then I think it is the obligation of the people who support this measure, on both sides of the aisle, to stand up and say that it is time to move forward.

So I hope that Republicans and Democrats can join together and push this package forward and limit the debate to amendments that are germane to improving the quality of this bill, so we can produce the best product here in the Senate, so we can come up with the best piece of legislation that the best minds in the country here in the U.S. Senate can work on and craft and send to the House. And maybe if they recognize the great handiwork that we have done here, they will just accept what we have done.

They did that with the congressional accountability bill—another bill that was slowed down for a week with spurious amendments on a whole variety of different topics that had nothing to do with congressional accountability. We did such fine work on the germane amendments, such good handiwork here in the Senate on the underlying bill, that we kept it, in a sense, clean from all these other amendments. And when it came to the House, the House said: You folks did a pretty good job; we will just pass your bill. In fact, it is now on the President's desk.

That is the kind of action the folks in Pennsylvania want. I think that is the kind of action folks all over the United States of America want from this body. They want us to get down to business. They want us to focus in, one by one, on the issues that are important to America. The Senator from Kentucky is absolutely right. The frequent flier issue is an important issue. It is a perk that the House should not have. When I was in the House, I did not accept my frequent flier miles. I did not use them for personal use. It was my office policy. The Senator from Kentucky is right that that privilege is available and it should not be. It should not be. I hope that we can work together and make that happen. I hope the House acts quickly to do that. But I would not be averse to putting some pressure on the House to do that.

Let us focus on what we all now agree should be passed, what needs to be passed to restore to this institution the faith of the American public that we are a body that listens, that we are a body that can act, and that we are a body that understands our obligation to serve the American public. I hope that is what we can do when we return for votes Monday and Tuesday—that we can focus the attention back on the bill, that we can improve the quality of the bill, that we can move the bill forward quickly, that we can get to the other pieces of legislation that are waiting in line behind unfunded mandates, like the balanced budget amendment, that are important pieces of legislation which, again, the public wants us to take up and move in a timely fashion.

I do not want to stop debate on any amendment that improves the quality of this bill, not one. Offer them, debate them. It is needed. The Senator from West Virginia is absolutely right that there are things in this bill that concern a lot of Members and a lot of people in this country, and they should be debated. That is what we want to do with this cloture motion. If we get an agreement to limit the number of amendments and the time in which they can be offered, that is what we want to do.

That is what this side of the aisle is trying to do. We are trying to move the bill forward, trying to be accommodating. We are trying to keep our promise with the American public to move this institution, to get bills passed, to get it done in a prompt fashion, and to deliver on the November election.

I think we can do that, and I hope that with the support of Members on both sides of the aisle, we will be able to accomplish that.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky [Mr. FORD] is recognized.

Mr. FORD. Mr. President, may I inquire of the Chair, what would be the procedure now since we are limited to 15 minutes and no other Senator is seeking recognition? What would be the parliamentary procedure, so that we might understand that for the rest of the day?

I felt the Senator from Oklahoma could have gotten the floor in his own right without——

The PRESIDING OFFICER. The Chair finds that as long as we are in morning business, any Senator can be recognized for 15 minutes at a time.

Mr. FORD. I ask unanimous consent to speak as in morning business for an additional 5 minutes.

The PRESIDING OFFICER. The Chair would find that every time the Senator is recognized, he would have 15 minutes; it is not necessary to ask unanimous consent.

Mr. FORD. Now, that is clear.

HOW THE SENATE OPERATES

Mr. FORD. Mr. President, it is a new day and I am enjoying it. I remember when I came from Frankfort, KY, as a former Governor, I had a file cabinet, one of those paper file cabinets, drawer size, with projects in it that I was unable to complete. If you remember—maybe you all are not old enough—but if you remember, we had a pocket veto of highway funds and utility funds by President Nixon. A suit was filed, as I recall—do not hold me to every detail, but a suit was filed—and I think Senator Muskie was the chairman of the Budget Committee, and the Governor of Missouri filed suit. The courts held that the President of the United States had to release that money.

Well, we had been held up for a year and we were into the second year of appropriated funds, so we had a lot of money to spend. We were doing well. We got the first and second phases of some projects done—sewer, water,

things of that nature. So I came with that box of projects that I wanted to get finished. The senior Members here said to me—you know, I was gung ho. They said, ''That is all right, son; you just relax. We will get to it next week, and if we do not get to it that week, we will get to it the week after that.''

It was hard for me to take. That has only been 20 years, and I remember it as if it were yesterday. I wanted to move. When I was Governor, I picked up the phone and the highway department would move, or I picked up the phone and somebody else would do something for me. It was something that I felt I would be in a position to do here, but I could not. The rules were different; attitudes were different; the institution was different from the Governor's office.

So, as my learned friend from Pennsylvania said, the House and Senate are different. The Senator from Pennsylvania talked about the nongermane amendments. Well, if you recall, it was on both sides of the aisle yesterday. It was not just Democrats that put up a nongermane amendment. A Republican put up a nongermane amendment which took hours. Even your majority leader offered a nonbinding amendment, a sense-of-the-Senate amendment to that amendment to try to get rid of it. We had another one on our side. It took hours. That proves a point, though, about the Senate.

Every Senator has a right on this floor, and his right is not stymied by a Rules Committee and a vote of the Senate that limits him to 2 minutes or 5 minutes or three amendments, or something of that nature. Every Senator has a right. That makes this body significantly different. So the Republican Senator was within his right to offer a nongermane amendment here. The Democratic Senator was within his right to offer a nongermane amendment, under the rules of the Senate.

So maybe you do not like it, but that was his right and he exercised that right. As far as frequent flier miles, I tried to put that on congressional coverage. I argued strenuously that we were not truly doing what we had told the American people we were going to do about congressional coverage. Congress took care of itself. You are immune. The people out there think you are not.

We set up a commission to study and see what should apply—about $5 million a year. I, as former chairman of the Rules Committee, had set up the Fair Employment Office. That is about $1 million a year just for that office. You are not paying for it; the taxpayers are paying for it. I thought maybe we should lift the veil and let it all apply, instead of being special and Congress taking care of itself again. That was part of my problem.

The distinguished majority leader said at that time that this bill would be accepted by the House and sent to the President.

So I felt it was more incumbent upon me, then, and other Senators here, incumbent upon us to see that that bill was as good a bill as we could pass. Because it was not going to conference, we would not have a second shot at it. And so that became the concern of those that felt that congressional coverage was not adequate and that we were not being fair with the American people. So I just think you have to get it all in the right perspective.

And when your leader says it will be accepted on the House side, I respect that statement. So, therefore, when I respect the individual and the statement he made, I became more concerned that this bill ought to be changed, if it was going to be changed, here, because they were going to accept it and, just like grease, go to the White House.

So that was one of my concerns and one of the reasons I felt that we ought to debate that bill and try to change it and make it as good as possible. Because that was the last chance we were going to have; no other shot at it.

So now on this piece of legislation, unfunded mandates, sure they want it. Oh, do they want it. I had a mayor from Kentucky, who is the retiring president of the National Mayors Association. Oh, do I get calls; do I get fussed at a little bit.

But when you sit down and talk to them and say, ''Look, we are getting down to the amendments now that we feel are very important''—and they are—''and we left out the elderly.'' We exempted everybody else but the elderly. I want to respect the elderly. I think they ought to be given the same kind of respect and coverage as others. So we put in the elderly. It is a good amendment. Everybody voted for it. Even those that are fussing at us because they think we are holding the bill up.

My learned friend from Pennsylvania says we ought to get an agreed list. We have an agreed list. We did it last night. I stayed here until almost 1 o'clock this morning. I do not know where those Senators were when we made that agreement, but we made that agreement. And those amendments have to be offered by the individual Senator unless it is by unanimous consent. He or she has to be here and offer that amendment. We got that agreement. We have a time certain to shut off amendments, and then we go to third reading and that is debatable.

We had a gentleman's agreement last night. And if, in the judgment of one or the other, that gentleman's agreement is breaking down, they have every right, it was said last night, to file a cloture motion.

So I think we have done a decent job here, even though everybody wants to move it a little bit fast.

I am going to vote for the bill. I am very strong for unfunded mandates. But I do not want to jeopardize the mother's milk of the economy, and that is business. If you are going to look at this bill and say you are going to mandate on business and not the public sector when they are in competition with each other, I think you ought to take a step back and look at it. Hopefully, some of these amendments will be taken very seriously. I hope that business will come forward. They are very strongly for the unfunded mandates bill. So I hope that they will look at it a little bit closer. Do they want to take a chance on having a public entity, government entity, to be in a better position to compete than they are? Maybe they already have. But this is another addition.

I wish the Senator from Oklahoma were here. He talked about one filibuster that we filed cloture on.

There were 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 filibusters. Here they are. You voted on them in the 103d Congress.

And now, when we are trying to correct a bill—and even getting Republican support for our changes in the bill—we are being fussed at because there is gridlock. There is no gridlock here.

As the congressional coverage bill was to leave here and never to be considered again, we would never have another shot at it, I think it was incumbent upon us to try to correct it. And filibusters—there they are. There is the record. I will not put it in the RECORD. I do not want the cost of $480 a page.

So Mr. President, I am overwhelmed by the attendance here this morning and those who want to wax eloquent. As I heard my distinguished friend from Arkansas say last night, he was going to wax eloquent. Someone said he was going to wax. He said ''no,'' it is going to be eloquent.

So I am sure there is nothing waxing or eloquent about me. I am enjoying being here this morning and visiting with some of my colleagues and talking about this great institution and how we function here and what is good for the country and how fast we ought to be moving and that sort of thing.

I was out here and someone said, ''You're awful nice, FORD.'' I said, ''Yes, I'm a better human being than I was because I want to be good.''

A lot of us got stomped on November 8—real good. I listened. I listened 8 years ago on unfunded mandates. I listened 7 years ago on unfunded mandates. I listened in 1991 when we cut off frequent flier miles for personal use. I listened then.

The House Members came over here and wanted it. I turned it down. It was the Rules Committee who said ''no.'' I think we made a good decision under the circumstances. So those House Members came over here; and even the Vice President was interested in it when he was a Senator.

So there are a lot of things. Just remember, it is all down in black and white in the history there. Let us be sure what we say, and I want to be sure what I say is correct.

I see another Senator here who probably would like to have some time.

Mr. President, under the ruling of the Chair that when you are recognized each time, you have 15 minutes, I will yield the floor so I can be recognized again.

The PRESIDING OFFICER. Does any Senator seek recognition?

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH). The Chair recognizes the Senator from Tennessee.

MEDICAL SAVINGS ACCOUNTS

Mr. FRIST. Mr. President, I rise today to discuss the issue of health care in America and specifically the concept of medical savings accounts, sometimes called medical IRA's.

I speak today as an elected official, as a U.S. Senator, but also as a practicing physician having devoted the last 20 years of my life to caring for patients.

I have witnessed first hand the unequalled quality of health care in the United States. But I have also witnessed the problems in health care today—the skyrocketing costs and limitations in terms of access.

Last year, President Clinton addressed the problems of our health care system, but his proposed solutions were fatally flawed. He favored monopolization, not competition. He sought to empower bureaucrats, not individuals. And in the end, he relied on Government, not the private sector.

Fortunately, once the American people heard the truth about the administration's plan, they rejected it. Nevertheless, the problems with our health care system have not disappeared. Make no mistake. There are problems with our health care system in this country today. Instead of scrapping the whole system we must target and fix what is broken.

Mr. President, I believe the use of medical savings accounts is an important first step in that process. A fundamental problem which characterizes every interaction between patient and health care provider is that the provider is not paid directly by the patient but by a third party. On average, every time a patient in America receives a dollar's worth of medical services, 79 cents is paid for by someone else, usually the Government or an insurance company. The result is that we grossly overconsume medical services in this country today.

Imagine if we were all required to pay out of pocket only 20 cents out of every dollar of food that we purchased, or transportation, or clothing. We would all buy more than we need. That is what happens in medicine every day. Since people do not feel they are paying for it out of their own pockets, and everyone does want the very best and the very most at any price. Whether it is the deluxe hospital room, whether it is the MRI scan for a headache, whether it is the latest and the newest in nuclear medical imaging, we all want the best and we overconsume. We must become more cost-conscious consumers of medical services.

Mr. President, there are two methods of doing this. First, as the Clinton administration urged this past year, we can limit technology. We can ration care thereby ultimately destroying the good quality of health care that we have today. The American people outright rejected this alternative. And with good reason. It would have reduced the quality of care in this country.

I saw this happen first hand during a year I spent in England as a medical registrar in heart and lung surgery. I watched over and over again as patients waited months for medical procedures which they would have obtained in a few days or a few weeks in this country. Sadly, in some instances, I watched patients die while they waited.

The second choice, and the one I believe we must follow if we are to stem the skyrocketing cost of health care in this country, is to empower individuals to enable them to purchase their medical services directly, as they do other services in our society today.

Medical savings accounts would encourage patients to become more prudent in their decisionmaking in the purchase of health services. What are medical savings accounts? Medical savings accounts are tax-free personal savings accounts which can be used by an individual to pay his or her medical bills. Take, for an example, an employee of a typical company. Today, an employer might pay $2,000, $3,000, or even $4,000 for a medical insurance policy with a $500 deductible for an employee. But the employee then has no incentive to be cost conscious. In contrast, if medical savings accounts were available, the employer would deposit an amount, say $2,000, in a tax-free personal savings account which would belong to the employee. The employee would turn around and buy an inexpensive catastrophic-type policy which would cover medical expenses greater than $2,000 if they occurred in any single year. For medical expenses incurred up to that $2,000 deductible limit, the employee, using his or her own discretion, would use money from the savings account for these purchases.

Any savings account money not spent on health care over the course of that year would roll over into that savings account and grow tax free. It would accumulate, year after year. At retirement that money—the money not used—could be rolled over into an IRA, into a pension or be used to pay for long-term care or other expenses.

Thus, the individual would have a strong incentive to become a cost-conscious consumer of medical care. He or she will demand quality care at competitive prices. The consumer, the individual, the patient, will then drive the market. The system will respond with better outcome measures, better and lower unit prices for health care broadly. In short, medical savings accounts will give American health care consumers strong incentives to change to modify the way they consume health care services because they are able to keep any money that they do not spend.

We will potentially save billions of dollars in health care costs because individual patients will modify their purchasing habit behavior. Medical savings accounts will also potentially save billions of dollars in administrative costs. In 1992 alone, administrative costs for health insurance exceeded $41 billion. With medical savings accounts, patients will deal directly with health care providers and eliminate many of the third-party intermediaries.

Finally and perhaps most importantly, the use of medical savings accounts will maintain the high quality of care that Americans have come to know. While the Clinton administration would limit technology and force hospitals and doctors to ration care, medical savings accounts will put the individual back in charge of his or her own care and consumption of medical services.

Mr. President, in closing, we in America are fortunate to have the absolute highest quality of health care in the world. When the leaders of the world become seriously ill they do not go to Great Britain or Canada to seek treatment. They come here, to the United States. While there are those who would like to stifle our technological advances and allow bureaucrats to tell people how much and what kind of health care we can receive, the American people have spoken loudly and clearly and rejected this notion.

No one can predict what will happen in the next 50 years of the 21st century in the field of medicine; 50 years ago when my dad was a practicing physician, making house calls day by day, he would not envision that somebody such as myself would be doing heart transplants in the 1990's. The technological advances are simply mind-boggling.

Mr. President, the challenge for everyone is to maintain the highest quality health care in the world, and to continue to make it available to all Americans. This can only be done if we change the basic framework through which medical services are consumed and continue with a market-based system.

I believe the use of medical savings accounts will be a major first step in that direction. Individual patients become part of the solution, not just part of the problem. For this reason I hope that my colleagues in the Senate will support my efforts to pass legislation later in this session to create medical savings accounts.

Thank you, Mr. President. I yield the floor.

(Disturbance in the visitors' galleries.)

The PRESIDING OFFICER. The gallery is reminded not to display any approval or disapproval of remarks on the floor.

Mr. FORD. Mr. President, I have a longtime habit that is hard to break and it is opposed to the rules of the Senate. I should not refer to another Senator as ''you.'' It was not any disrespect at all. So in referring to the two Senators, one, I think, from Oklahoma, the other from Pennsylvania, by using the word ''you'' I hope that it will not be taken as an affront in any way because I did not mean it that way. I will look at the RECORD and see if I cannot straighten it out by unanimous consent.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KYL. Mr. President, I ask unanimous consent I be allowed to address the Senate in morning business.

The PRESIDING OFFICER. The Senator is recognized for up to 15 minutes.

UNFUNDED MANDATES

Mr. KYL. Mr. President, the debate we are engaged in, and have been for 8 days now, is important not only because the American people are tired of the Federal Government telling them what to do—and, in the case of State and local governments and tribal governments, having the additional burden of then having to pay for those Federal mandates. It is important, therefore, not only because the unfunded mandates legislation would put a stop to that in the future and say that from now on the Federal Government is going to have to identify the cost of mandates on the private sector and is going to have to pay for the mandates it imposes on the public sector—it is important not only for that reason, but it is also important because when we pass the balanced budget amendment and send that to the States for their ratification, the State legislatures and the Governors are going to be considering whether or not to ratify that amendment. One of the concerns that they are going to have is that the Federal Government might attempt to achieve its requirement of meeting a balanced budget by simply foisting the costs onto the State and local governments and tribal governments.

I would add as a footnote that in my State of Arizona the business of tribal governments is significant, and they have to bear the burden of some of these mandates. So they are all concerned about this.

In the case of the people in the State legislature, they suggested to me that if we want the balanced budget amendment to be ratified by the State legislatures, we had better make it very clear that the Federal Government is not going to attempt to achieve that balance by laying all of these mandates on State and local governments. We might have done that in the case of the health care legislation that, I think fortunately, was killed last year. One of my friends back in Arizona called it ''justifiable homicide.'' I am delighted we did not pass the kind of bill that was originally proposed because it would have created a huge mandate on the private sector. In fact, it was called employer mandates. And employers would have been required to pay substantial amounts of money. In some cases I believe there were situations where they really could not afford it, which is the reason they do not provide that health care today. So both for the public and private sectors it is important that the Government not impose these mandates. But as I said, it is important not only in its own right but because of the connection to the balanced budget amount.

BALANCED BUDGET AMENDMENT

Mr. KYL. Mr. President, I would like to turn for a moment to the subject of a balanced budget amendment in this overall context that we are debating unfunded mandates, and soon we will be debating the balanced budget amendment because the Joint Economic Committee held a hearing this morning and took testimony from both House and Senate Members on their proposals for achieving this goal.

When we talk about the Federal Government achieving a balanced budget without passing the costs on to the State and local governments in the form of unfunded mandates, the question of course, arises, how are we going to do it? In fact, some people, some Members of the Senate, have challenged those of us who support a balanced budget amendment as to how it is going to be done. They say be specific. Of course, we have said, ''You say we don't need a balanced budget to achieve balance. So why don't you tell us how you would do it? Why don't you be specific? You have had 40 years in the case of the House of Representatives and you have not gotten the job done. Give us a chance and we will do it.''

First, we want to establish the discipline that requires us to do it. Assume we had passed the balanced budget amendment in the House and it is the version that did not pass but almost passed the House of Representatives and, we believe, has the votes to pass in the Senate now and will pass the House of Representatives. That merely requires that the Federal Government balance its budget. What then? We know that there are people in both the House and Senate who propose that we also limit taxes. I am for a three-fifths vote to raise taxes. That would put an additional constraint on the House and Senate and would make it more difficult for us to try to achieve a balanced budget by raising taxes. The fact is that has never worked.

In March of 1993, W. Kirk Hauser wrote an article, an op-ed piece, in the Wall Street Journal in which he noted that over the last 30 or 40 years revenues to the Federal Treasury have been almost static at about 19 percent of the gross national product or 19.5 percent of the gross domestic product. It has ranged very little, and it does not matter whether we try to raise taxes or lower taxes or whether we have a Democrat President or a Republican President or we were in war or good times or bad times. None of that mattered. Over a few weeks revenues would fluctuate a little bit. But very soon they would stabilize at 19.5 percent of the GDP.

In fact, when we tried to raise tax rates in order to bring in more revenue, for a very short period of time more revenue came in. Then, as people changed their behavior, it settled right back into 19 percent of GNP. When we lowered tax rates momentarily there was a reduction in revenues. But very quickly the increased economic activity that resulted from those lower rates resulted in more taxes to the Federal Treasury even though at a lower rate.

How could that be? It is like a store that has a sale. When you reduce the prices you do not necessarily reduce income. You bring more people into the store. You sell more goods, and you can make more money than if you price the goods at a very high price. It is the same thing with revenues to the Treasury.

So we reduced tax rates. We have not reduced revenues to the Treasury. They have stabilized at 19 percent of the gross national product.

The lesson to be learned from this is this: People change their behavior based upon governmental actions. You cannot expect people to just sit there and take it when the Government does things to them. The result is that if we limited spending to 19 percent of the gross national product we would be limiting spending to the historic level that the American people have been willing to pay in the form of Federal tax revenues. We would also be balancing the budget because our spending would be the same as our revenues. That is what a balanced budget is all about.

The other advantages to this kind of approach—and I have to confess that the very first bill that I introduced as a Member of the House of Representatives was a Federal spending limit as the way to balance the budget and it was also the very first bill that I introduced here in the U.S. Senate; a bill that would require a balanced budget and achieve that by limiting spending

as a percent of the gross national product.

There are additional advantages to that approach. In addition to spending the historic amount that Americans have been willing to pay to the Federal Government, we would also be achieving another extraordinarily important objective.

Mr. President, I cannot stress this point too much. People who say that all we have to do is have a requirement for a balanced budget are, in effect, saying that we could balance the budget at twice what it is today, or three times as much or four times as much as long as we bring in the revenues to pay for that.

Would anybody support that? I think not. We have a $6 trillion economy right now. Would anybody suggest that we should have a $6 trillion Government budget and try to raise the money to pay for that budget? We would be in balance if we could do it. But, of course, that would be extraordinarily detrimental to our standard of living, to our economy, and nobody, I think, suggests that there should be an unlimited amount of money that could be spent so long as we raise it.

So it matters as much where we balance that budget as the fact that we require it be balanced. We need to balance it at a sensible level. I suggest that the level is again a historic amount that Americans have been willing to pay to the Treasury, 19 percent of the gross national product. That is where we need to balance the budget.

It also matters how we try to balance the budget. Did we raise more revenues by raising tax rates? The answer is no, because people change their behavior. The luxury tax of a few years ago is a perfect example. Congress thought that by raising the rates on yachts and jewelry, expensive cars, we would rake in more money. Of course, rich people are not necessarily dumb. And they just stopped buying the yachts and the jewelry and the cars. So guess what? The tax revenue did not come in. And there was another very serious unintended consequence. The people who made the yachts, for example, lost their jobs because people stopped buying them. You price yourself out of the market in the private market. Government can do the same thing in the case of tax rates.

So it matters how we achieve a balanced budget, and you cannot do it by artificially raising tax rates. No. You need to do it the simple, straightforward way by getting at the heart of the problem. What is our problem? The problem is Congress spends too much. Is there any other problem? Why are we out of balance? It is because we spend too much. So the simple and straightforward way to deal with that problem is by limiting Federal spending.

There is another very important reason why I believe that a Federal balanced budget amendment and spending limit makes a lot of sense. We need to do things to stimulate economic growth, to provide more jobs in this country. Fortunately, our unemployment rates are low right now. But it is a constant challenge, as the Secretary of Labor would attest, it is a constant challenge for us to keep this economy growing, to keep providing jobs so that future generations will have the same kind of standard of living that we have been able to enjoy.

You do not do that by sucking all of the money out of the private sector for Government revenues. I have never understood how you make people better off by taking more of their hard-earned tax dollars.

It is like the old practice of bleeding a patient with leeches in order to make the patient healthy. They figured out after a while that taking a patient's blood did not make him more healthy. The same thing is true with extracting more tax dollars. If you leave those dollars in people's pockets, they invest them, they spend them on things that are important in their lives; they will send their kids to college, they will put some money in a savings account.

By the way, what happens if they buy a stock or bond? Say they take a little of that and put it into a money market account —that is a stock; it is money that goes to a corporation which needs the money to expand, to build a new plant, let us say. Then they build a new plant. Plants are empty, so what do they do? They hire people to work in them. Putting money to work in the private sector is capitalism. That is what our economy and a free market is all about.

If you leave that money in the private sector, we will have a growing economy. Congress too often has pursued policies that are inimical to economic growth and to sound market principles. I believe if we had a spending limit requirement on a balanced budget amendment, what we would find is—particularly if we tied it to a percent of the gross national product—that Congress all of a sudden got real smart about economic policy. If we said—as my amendment says—Congress can only spend 19 percent of the gross national product, what would Congress' incentive be with respect to the gross national product? It would be to pursue policies to grow the gross national product, because the more the gross national product grew, the more the Congress could spend. If the gross national product grew $100 billion, Congress could spend $19 billion more. What does Congress love to do? It loves to spend money. Let us take advantage of a little human nature here. If we want Congress to promote sound economic policies, to help the economy grow, as measured by the gross national product, we say to the Congress, you can have more money to spend if the economy grows. So why do you not do some things to help it grow?

What are things we can do? We can reduce certain tax rates that are too high to promote economic growth. Studies show that there is $7 trillion locked up in our economy because of our capital gains tax rates today. That means if we were able to reduce the capital gains tax rates, people would say: Now there is incentive for me to turn this piece of property over that I have been holding all these years. I inherited this from Grandma Jones, and we have held onto it because if we sold it, we would have to pay a huge tax on it. But we could use the money and would like to invest it in something.

With reducing the capital gains tax rates, that family might make the decision to sell that piece of land, to reap the liquid result, the liquid capital from the sale, and invest that into something else.

Economists believe that this $7 trillion that is thus locked up could be freed by a reduction of capital gains tax rates in a way that would generate huge economic growth because of the turnover of this capital in our market.

So there is additional incentive to balance the budget by limiting Federal spending as a percent of the gross national product. I believe it would cause Congress to be more responsible in the way we deal with our economy.

Mr. President, these are just a few thoughts that I have regarding my proposal to limit Federal spending as a percent of the gross national product. I realize that this is too tough and, in a sense, it is too sensible, and that it is going to be easier to get the votes to pass a balanced budget amendment if we are not too tight, if we are not too tough, because some people have a view that we should be able to raise taxes, for example. And so the only version that probably has a chance of passing is one that simply requires us to balance the budget. It does not set the level or tell us how to do it. It does not provide incentives to help the economy grow. But we can achieve those objectives by the way we implement the balanced budget amendment.

In conclusion, what I am going to be suggesting here very soon is that as soon as the balanced budget amendment is adopted, we need to come in behind that, in the wake of the passage of the balanced budget amendment, with implementing legislation. A lot of our friends have said, ''How are you going to do it? Tell us how.'' Here is how I would do it. I think if we can provide implementing legislation that limits Federal spending, we can guarantee that we are going to achieve the objective in the right way. There will have to be enforcement provisions, and we will still have to make the tough, specific decisions as to exactly which programs in which to reduce spending, for example. But in terms of an outline of how we will achieve the objective, I think this spending limitation approach is exactly the right approach.

So while I would support the balanced budget amendment that does not have the spending limit requirement in it—because that is all I think we can get passed—I think we have to come in right behind that with a proposal to

limit spending as the way to implement the constitutional balanced budget amendment. Of course, as a mere statutory program, Congress can override it. We can always unpass what we just passed. But at least I think it sets forth a blueprint, a guideline for achieving the objective.

Finally, Mr. President, I think almost all of us agree that if we pass this balanced budget amendment and send it to the States for ratification, we have to begin achieving that balanced budget today. We have to go back to last year's budget and see if there is anything in the appropriations we passed last year that we can pull back—money that we can save. We need to look at this year's budget as the first of the budgets that gets us on the glidepath to a balanced budget, and set the outside limit of perhaps 7 years. But we probably ought to try to do it in a shorter period, if we can, so that when the balanced budget amendment has finally been ratified by all of the States, it will not be an impossible task for us; so that we will have already started the process and each year intervening will have brought that budget deficit down another ratchet.

If we do that, in the last couple of years when we actually have to do it as a constitutional requirement, it will be an achievable objective, and in the last year or two, we will be able to make the savings and limit spending in such a way that we can achieve that balanced budget at the time it is called for in the constitutional amendment.

So these are some of the things we are going to have to think about as the balanced budget debate begins to unfold. I think it is important to at least begin to think about them in the context of the debate we are having on unfunded mandates, because as the Governors and State legislators that have to deal with the balanced budget amendment tell us, they know we have to mean business and get on with the balanced budget amendment.

At this point, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Chair recognizes the Senator from Georgia for up to 15 minutes in morning business.

NATIONAL SERVICE

Mr. NUNN. Mr. President, I rise today to discuss the national service program which has been the subject of a good bit of discussion in recent media accounts and which President Clinton addressed this last week.

From the outset, I want to make it clear that I join President Clinton in expressing my continued strong support of the concept of national service. The passage of the national service bill in the last Congress was an event that I, along with a number of my colleagues, looked forward to for many years. Since President Clinton signed the legislation into law on September 21, 1993, thousands of Americans have served our country in projects which range from teaching school in inner-city neighborhoods to preventing destruction of lands along our Nation's rivers.

The case for this initiative depends on understanding that it is uniquely a program that offers a triple investment in the future productive capacity of our people and our communities—first of all, in the service performed; the service experience, No. 2; and the postservice benefit for our young people, No. 3. I know that the word ''investment'' has been much abused in debate on the Senate floor in recent years, and for some it is just a code word for Government spending. We must not, however, become so cynical that we cannot see a real investment with a real payoff when it is staring us in the face.

The idea for this investment came from recognition that many Americans have, for the first time, perhaps, in our history, forgotten the relationship between rights and responsibilities. We often see reports in the news media about various groups proclaiming that this Government service or that Government service is a right. We are so often reminded of the rights all Americans should enjoy that we often lose sight of the other side of the same coin, and that is the responsibilities that we must share in order to make these rights possible. Just as we have rights to freedom, to life, liberty and the pursuit of happiness, those sacred rights carry with them equally sacred responsibilities. The National Service Program was created to provide young Americans with opportunities to fulfill that obligation to give something back to their country and to their communities.

Dr. Martin Luther King, Jr., who dedicated his life to the cause of civil rights and whose birthday we celebrated this past Monday, understood that only through assuming responsibilities that accompany our rights can we help ourselves. He said in the last Sunday morning sermon before his assassination:

> Human progress never rolls in on the wheels of inevitability; it comes through the tireless efforts of men willing to be co-workers with God, and without this hard work, time itself becomes an ally of the forces of social stagnation. So we must help time and realize that the time is always ripe to do right.

National Service provides young people a means to meet the challenge to do right while expanding their own horizons and building opportunity for their futures.

Critics have tried to attack the National Service Program in a number of different ways. During the debate on the authorizing legislation, we heard cries of how many more Pell grants we could fund with the money, or how many more job training programs we could fund with the money. Though these criticisms are valid as far as they go, they almost inevitably lose sight of the fact that National Service does not exist for the purpose of simply providing student aid or even job training. National Service exists primarily to provide service. And if the program is not providing service, then it does not deserve to exist. A good analogy is our Nation's Armed Forces. We do not maintain Armed Forces in order to provide valuable skills and develop good character in young men and women. Rather, Armed Forces personnel develop skills and character in the military as they carry out their primary mission of providing our Nation's security.

The same is true of national service. Would critics have the Senate disregard the benefits to society of national service participants providing employment counseling and tutoring to homeless people in Atlanta? Should we ignore the benefits of the first-time immunization of 33,000 children in Fort Worth, TX, in one month which was carried out by those serving in the national service program?

I could go on and on with the kind of service being provided. That is the true test of national service. Are we really serving people and helping communities? Considering the benefits national service provides at the community level, it is difficult to see why there are so many objections to this program. Indeed, given the debates we have heard on unfunded mandates and we continue to hear that on legislation in this body, I would think that our colleagues would agree that national service represents the type of program that we ought to support.

National service is not a Federal mandate for any specific type of service, nor does it require that communities participate at all. National service gives communities and service organizations and young people the chance, voluntarily, to identify and perform the kind of service which best meets their local needs with the Federal Government providing the funding. So it is almost the opposite of a Government mandate.

At the same time, it provides meaningful work for young people addressing real problems without Federal micromanagement. This real work for real value will ensure a strong payback for the taxpayers' dollar. In the process, national service instills in young people the strong traditional values of hard work and responsibility. They learn those values because they are serving. It is not a program to teach those values. It is a program where the values are learned because of service rendered.

As for the claim that national service is—quoting one of the critics—''coerced volunteerism,'' I would suggest that critics ask any of the more than 200,000 people who requested applications for last year's AmeriCorps Program or the 20,000 that were selected and are now serving, whether they were coerced. National service is not coercion any more than was the Montgomery GI bill which provides educational benefits for hundreds of thousands of young Americans who serve and have served in our Nation's All-Volunteer Force.

Instead, like the Montgomery GI bill, national service is an opportunity, an opportunity that young people all over America have said they want. Nothing is more evident of that than the overwhelming number of applications. I think we will see even more of the applications in the years to come, assuming this program continues.

As for the benefits of service, and to me this must be the way we judge the program more than any other judgment, although there are, really, as I said, three parts to the program, service is the No. 1 part. In my State alone the excellent works that have been performed by these young people is very impressive. In Georgia, national service participants are working in Atlanta area schools as teaching assistants, tutors, and mentors. They are aiding police in developing a community-oriented police program in Albany, GA. They are helping create an emergency 911 network in Douglas and Coffee County. They are identifying local environmental programs in Decatur, GA, and developing plans to engage youth in solving them. They are tutoring hundreds and thousands of young people every day in elementary school. They are also in some of the rural areas that I visited. They do not have any foreign language teachers in the schools there and they have found that with the immigration that is growing in our State and other States, these young people who are in school that cannot speak English need help. In many cases, in a couple of the rural communities, that help is coming from national service participants who have a second language and who are able to be the only ones in the community that can really communicate with the newly arrived legal immigrants in our school.

All of these efforts are duplicated in national service programs nationwide. From aiding the American Red Cross and providing food and clothing for California flood victims to building homes for needy families in the poorest sections of Miami, with Habitat for Humanity.

In conclusion, Mr. President, national service provides a triple payback in valuable service to the community. Higher skills and lower debts for our young people for attending colleges or getting advanced education after high school and a much stronger sense that we are all in the American enterprise together, bound by mutual respect and mutual obligation.

In the Peace Corps Program in my State the participants begin each day with a chant announcing their readiness to serve, to earn, and to learn. That, Mr. President, is the most eloquent summary of the concept of national service that I think we can offer: To serve, to earn, and to learn.

I urge all Senators to listen to our young people, to visit these programs, to make sure that the criticism of the programs—which is welcome—make sure it is constructive, to make sure we look at whether we are really getting service in the communities where they are serving, rather than simply oppose this program as another governmental program.

I urge all Senators to particularly talk to our young people, listen to them, and see what they say about what they are doing in serving and earning and learning and continuing to give them a chance in this regard. There is room for improvement in the program. There is room for constructive criticism. There is room, perhaps, to even critique the program in a way that would affect the budget. In my view, blind opposition to this exciting concept is simply not the way to go at this point in time.

I think the main measure must be whether we are getting service from these young people and whether they are helping the communities, helping young people, helping those in need. It is my hope that if this program works and I believe it is working, that it will be viewed in the future as not simply an addition to the way we deliver services to those in need in our country and in our communities but rather in lieu of some of the existing programs.

I can think of no better way to deliver social services in this Nation to those in need. We are going to continue to have people in need. We are going to continue to have community demands that cannot be met with nominal funding. I can think of no better way than unleashing the energy, enthusiasm, and idealism of tens of thousands of America's young people in addressing these critical problems. To me this is the way we ought to begin thinking about shaping our social services.

At this point in time this program is in addition to the existing programs. We should look at it more and more as a substitute to some of the programs and a supplement to others.

I thank the Chair. I know the Senator from New Hampshire would like to speak. I yield the floor.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

END DELAY ON UNFUNDED MANDATES LEGISLATION

Mr. SMITH. Thank you, Mr. President.

Mr. President, the bill that has been before the Senate for 8 days now basically has been delayed and stalled, is very important business for the people of the United States of America and certainly many communities around the country who suffer from the unfunded mandates that they have to comply with.

I want to discuss that legislation today for a few minutes and also to say that I sincerely hope that in the very near future, hopefully some time early next week, that we will be able to pass that legislation and get it on through the House and the Senate and get it to the President. Hopefully he will sign it. This is a major piece of legislation that the majority, overwhelming majority of the American people support.

I do not understand why we are delaying it. Apparently there seems to be, based on those we talk with, a great number of people on the other side of the aisle who say they support the bill yet when it came down to signing the petition for cloture, we did not get much help at all. Indeed, we only had one vote. I find a strange inconsistency here that those who say they support the legislation cannot bring themselves to bring the legislation to a vote. I think sometimes we get criticized here for not being able to accomplish anything and the American people look at this and say, why is it that a Senator, perhaps my own Senator, would say, ''I am for this bill but I do not want us to vote on it.''

When we get criticized out there in the public, we really should not wonder why that happens. There is nothing wrong with debate. All Senators have every right to debate this legislation as long as they wish. Certainly, I stand here today before one of the most historic desks in the U.S. Senate. This desk belonged to Daniel Webster, one of the few original desks in the Senate.

Daniel Webster, of course, at one time represented New Hampshire in the House, was born in New Hampshire, and represented Massachusetts in the U.S. Senate, one of the greatest orators of the pre-Civil War time. He certainly stood on the floor of the U.S. Senate before this desk and debated many of the great issues of the day and, I am sure, frustrated a lot of people on the other side. That is the way it should be. That is what the Senate is. There is nothing wrong with that. I do not criticize that in any way.

I will say that this is an issue, the unfunded mandate issue, that is so overwhelmingly supported by the people in this country—I hesitate to say this, but I think it is true—that the American people, I think, are going to exact a price from those who delay it. I think they do it under grave risks.

This legislation places, very interestingly, increased and added responsibilities on those who want to create the new mandate. It would also increase the cost of an existing one. In other words, they must get an estimate of the cost of the new requirement to both State and local government and the private sector and provide the

funds needed for the State and local governments to comply with the change. So it puts the responsibility on those who want to produce the mandates.

It is a very important piece of legislation that is going to provide not only relief from the unfunded mandates—that is a very general way of saying it—but it is also going to provide relief for the taxpayers, the local and State taxpayers who have to pay for this when the Federal Government puts the mandate in and does not fund it. Those are the people who are going to benefit from this bill. Those are the people who need relief. When we pass a piece of legislation without funding it and insist that the local community pay for it, what has to happen? Money does not come from heaven. It has to come from the taxpayers. It is extracted involuntarily from those taxpayers in those local communities.

These local communities, Mr. President, all over the country are speaking out to us saying, ''Pass this bill.'' It is enthusiastically endorsed by the U.S. Conference of Mayors, National League of Cities, Council of State Governments, National School Boards Association, U.S. Chamber of Commerce, National Governors Association—and on and on—National Association of Counties.

This information has been stated on the floor during the debate, but it is interesting, one quote comes from John Motley, the vice president of NFIB, who strongly supports S. 1, who said:

> It was not the cities and States who paid roughly $10 billion in unfunded mandates during the 1980's. It was the taxpayers, small business owners as well as everybody else. In June 1994, a poll of all NFIB members resulted in a resounding 90 percent vote against unfunded mandates.

Even the Democratic Governor, who is the chairman of the National Governors Association, Gov. Howard Dean, said:

> We begin the 104th Congress with S. 1, the Unfunded Mandate Relief Act of 1995, which is a major priority for all State and local officials. We have reviewed the new bill, drafted in full consultation with all our organizations, and strongly support its enactment.

So it is bipartisan support that we have—support from communities, from selectmen, from mayors, from Governors, from taxpayers all across America in every State and hamlet. It is one of the most overwhelmingly supported pieces of legislation in recent time. Yet, here it is bottled up in the U.S. Senate for 8 days. We are essentially doing no business today, other than debating it and offering amendments. We are in morning business, which means we do not have to debate it. I choose to debate it because I think it is important. That is why I am here. The majority leader, to his credit, sought on the floor last evening to get support to bring this thing to a head, and I hope that this will happen in the next few days and that we will see a vote.

In talking about unfunded mandates, it really is an interesting dichotomy, just the very fact that we are here to try to repeal unfunded mandates or to stop future unfunded mandates, as this bill specifically does, because we always hear experts, if you will, constitutional experts, telling us what the Founding Fathers intended or what they did not intend. It is always very interesting. I would be fascinated to see people like Thomas Jefferson and James Madison and George Washington and Alexander Hamilton, John Jay, and others come here and listen to the debate that goes on in this Chamber regarding what they thought these gentlemen really believed and what they were saying in the remarks that they made. It is interesting the way we twist and turn these remarks.

If you take them literally, there is not any doubt. Let us listen to Thomas Jefferson:

> When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will render powerless the checks provided of one government on another and will become as venal and oppressive as the government from which we separated.

It does not get any clearer than that. Jefferson was saying that we left England, we separated from the Government of England for this very reason. They created a government here where they did not want all of the power in Washington, and they made it very clear in the 10th amendment to the Constitution that all power would not be in Washington. Yet, here we are debating a bill that we want to pass to eliminate unfunded mandates which we really should not have in the first place. That is exactly where we are.

The 10th amendment is the constitutional embodiment of Jefferson's belief in a limited Federal Government, respectful of the rights of the States. How are we being respectful to the rights of the States, Mr. President, when we simply put unfunded mandates on them telling them they must do this without the money? That is not being respectful. With all due respect, that is being disrespectful. Of course it is being disrespectful, and we have been doing it to the States and the communities all across this country for years in education, environment, you name it, we have done it to them and they know it. That is why we have so much support, so much grassroots support from all over America, at the levels that I discussed, coming back and saying to us, ''Get this off our backs, we are sick of it, we are tired of it. We want it off our backs.''

What does the 10th amendment say? Again, we get all these interpretations. Let us read it. It is very simple:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectfully, or to the people.

Yet somebody somewhere along the line at some course in our history has come up with this terrible idea, stupid idea that this is wrong and that we ought to be able to provide unfunded mandates to the States and communities. This is in direct conflict with the 10th amendment. But all these great legal scholars and constitutional scholars and probably some of our predecessors on the floor of this body thought otherwise and basically took the 10th amendment and tore it up as if it did not exist. And there it goes. So here we are now trying to get this corrected.

That is what went wrong. When did this start happening? We can go back to the New Deal. Ever since then, the Federal Government has increasingly encroached upon fiscal and constitutional prerogatives of the State and local governments. When you put a mandate on a State, on a community, you force the taxpayers to pay for it. That is where it comes from. The State and local government has no choice but to increase those taxes. So you are mandating a tax increase on a small community, whether it is in Indiana or New Hampshire or Georgia or West Virginia, or wherever.

This is exactly what Jefferson warned us against. Very clearly he warned us against it: Do not draw all the power to Washington, for the same reason they did not want all the power drawn to England or to a monarch or to a tyrant. They were afraid of it. They feared it. That is why they came here and built this country. That is why they wrote the Constitution, because they did fear it. That is why they disseminated the power among the three branches of government as they did, and between the States and the Federal Government.

These States were reluctant to create this country from the Constitution. The Federalist papers by Madison and Jay and Hamilton were particularly written to convince the people to write the Constitution. They had to be persuaded because they were afraid to give up their State and community rights. That is why the 10th amendment was put in the Constitution, my colleagues.

Unfunded Federal mandates impose enormous costs on the States. Nationwide examples are all over the place. The U.S. Conference of Mayors recently reported that the Clean Water Act alone mandated costs on the cities with populations greater than 30,000 more than $3.6 billion in 1993.

Now, our opponents will say, ''What's wrong with the Clean Water Act?'' I am not opposed to cleaning up the water in the United States. I do not think there is a citizen in America who wants to drink dirty water or swim in dirty water. The issue is not that. The issue is should this Congress, this Government, pass laws that mandate that be done without providing the dollars? Did they ever stop to think that maybe a community of a few hundred people cannot raise that kind of money out of the taxpayers? It is not there.

That is what is wrong. That is why the American people voted the way

they did on November 8, 1994—because they are sick of it. They are sick of it. They want it changed. They made it very clear.

Now, from 1994 through 1998, the Conference of Mayors reports 10 Federal mandates that they studied—10, just 10 Federal mandates, unfunded some of them—will cost $54 billion. The Clean Water Act alone is $29.3 billion; Safe Drinking Water Act, $8.6 billion, and RCRA, Resource Conservation and Recovery Act, $5.5 billion—again, well intended pieces of legislation, some of which do a good job. But should it be mandated without the funds? The answer is no. That is what we are here talking about. That is what is being delayed. That is what the other side, our friends on the other side of the aisle are doing. They are delaying this bill to stop this stuff so it does not happen in the future.

Now, there was a Price Waterhouse survey that said counties are spending $4.8 billion annually—1993, $4.8 billion annually—to comply with just 12 of many unfunded mandates in Federal programs, and that they will spend $33.7 billion over the next 5 years.

Let me give you a couple of examples in New Hampshire.

The city of Berlin, NH, economically depends on one business really for its livelihood, and that is a big paper mill—11,700 residents and declining. It is under an EPA order to construct a new $18 million water supply system pursuant to this Safe Drinking Water Act, mandated $18 million.

Berlin has problems with its water, and it is trying to correct them, and it needs the time to do that. Those citizens, many of whom I know personally, do not want to drink polluted water. But they cannot bond this amount of money within the time that is dictated to them by the EPA. They simply cannot do it. So they are facing fines of $25,000 a day, a depressed community of 11,700 people facing $25,000 a day fines for not complying with the regulations.

I might inquire of the Chair, has my time expired?

The PRESIDING OFFICER. It has. The Senator may seek additional time if he wishes to ask unanimous consent.

Mr. SMITH. I ask unanimous consent for an additional 10 minutes.

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

Mr. SMITH. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Here we are facing fines of $25,000 a day, trying to fix $18 million worth of problems. Does that make sense? Does it really make sense to fine these people to try to comply?

That is what an unfunded mandate does. Not only is it an unfunded mandate; it is fining for not complying with an unfunded mandate, which compounds it. It makes it worse. You cannot get $25,000 a day from people who do not have jobs, who are worried about the mill closing. It just does not work. Yet, here we go. I have people in those towns tell me, ''Senator, why don't you have the Federal Government come up here and take over the town because it will be a lot easier. It will give us less headaches. You run it. You want to tell us what to do, so go ahead and run the town.''

Rochester, NH, same thing—mandate under the Clean Water Act. I could mention numerous examples all over my State, and of course every Senator could mention similar horror stories all over America. Because of the enormous costs associated with the removal of these materials, for example, in Rochester, it has been forced to hire lawyers now to fight its case.

Oh, boy, there is always the opportunity to hire lawyers. Get the lawyers involved and stretch it out to cost even more. There is always a lawyer on either side to get a lot of money out of this thing. So we do not spend any money on cleanup; we spend it on lawyers rather than on cleanup, which makes it worse.

Why? You know why? Do you know why we have the lawyers involved in this? Because somebody back beginning approximately in the New Deal era, and built upon since then, has said that the 10th amendment ought to be torn up and thrown in the waste basket and ignored, and that we ought to put mandates on the people of America. That is why lawyers are fighting. And it is ironic that these same lawyers are the ones who are sworn to uphold the Constitution and to work under the Constitution.

I was a local official. I was a school board member for 6 years. I was the chairman of that same school board for 3 years. I know what it is like. I have seen what happened to my school district when an unfunded mandate came in that said: You will do this. I do not care what it costs, you will do it. That forces many small communities to go out and raise additional taxes on that mandate.

But again, we always get the debate off on whether or not what the mandate directs is good or bad. That is not the issue. In most cases, they are good. For example, handicapped children, absolutely, educating the handicapped, helping those people to get mainstreamed, absolutely supported by me and others. But should it be an unfunded mandate? If you want to mandate it, if that is what America wants, then fund it. Do not force a community that cannot pay for it to pay for it.

Do you really want to cut taxes for the middle class? That is what I hear the President say—cut taxes for the middle class. Then, Mr. President, when you get this bill, if you ever get it, if your party ever will let us get it to you, sign it and you are going to save hundreds of millions of dollars—hundreds of millions of dollars on middle-class Americans who carry the load.

Unfunded Federal mandates encroach on the authority of the States in contravention of the 10th amendment.

So what is the solution? The solution has been proposed by my most distinguished colleague, the Senator from Idaho [Mr. KEMPTHORNE], himself a former mayor, who drafted this legislation, who traveled all over the country getting support for it and pulling this thing together and managing it so brilliantly in the Chamber. Some say he has only been here 2 years as a Senator. But he had several years as a mayor on the receiving end of these mandates. He knows what those mandates do to his tax base, as the mayor of Boise, ID, and he knows what it does to the tax base of every community that is impacted by one of those mandates.

This is a vital step. It will end a deplorable practice of Congress imposing unfunded mandates on State and local governments.

Now, S. 1, the bill which we are talking about, sets a tough standard. It is stuff. You bet it is. And it ought to be. We are trying to get back to the Constitution of the United States, which we have ignored. It needs to be tough. This bill provides that it shall not be in order for the Senate to even consider any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the $50 million threshold to be exceeded unless the mandate is paid by the Federal Government.

That is the way it ought to be. We cannot even consider it, let alone pass it. That is how tough it is, and that is good. That is why it is being opposed by some on the other side, because some of our colleagues on the other side—not all—are responsible for the fact that we have these mandates in the first place, and they do not want them to go away. But the American people want them to go away.

Any bill that imposes an unfunded mandate above that threshold of $50 million on State and/or local governments shall be out of order on the Senate floor. You cannot even get a chance to vote on it to pass it. That is tough. That is the way it should be.

There is a further step. I am going to support Senator HATCH's constitutional amendment to prohibit unfunded mandates on State and local governments unless two-thirds of the Houses of Congress decide to do so. And there again is another irony. We have a 10th amendment that says we cannot have unfunded mandates, in my opinion, yet we are now going to probably have to have a 27th or 28th amendment which says we are going to prohibit them.

That tells you where we are at in this country. It tells you that people in this country—some in this Congress—are willing to trash the Constitution of the United States of America. For what? Political gain? I do not know. How do you get political gain out of something the majority of the American people do not want by advocating it? It beats me.

It is unfortunate, and frankly ironic, that S. 1 has become necessary. Our Founding Fathers are probably spinning around in their graves right now. They created a limited Federal Government that would respect the rights of the States and here we are on the floor of the Senate, trying to gain back what the Founding Fathers never wanted to lose in the first place. They made that protection very explicit in that 10th amendment. Frankly, not only the Congress, the Supreme Court as well—let us not let the Supreme Court off the hook here—all these brilliant judges, scholars, over the years who have allowed this to happen. They are responsible, too. They have not afforded sufficient respect to the 10th amendment.

There have been some brilliant people who have served in Government since the Constitution was written, many of them. I stand at the desk of one of them, Daniel Webster. Henry Clay, John C. Calhoun—great orators, great Senators down through the years as well as others in the House and the Senate. And, frankly, out of politics—on the courts: brilliant people. But I have not yet met the match for Thomas Jefferson and James Madison and John Jay and others during that time, our forefathers, who wrote this brilliant document.

They knew what they were doing. They knew what they were doing. I think we made some terrible mistakes. The Senator from Idaho with this legislation is giving us the opportunity to correct some.

The Senator from Tennessee, who is a surgeon, who was talking about health care a while ago on floor when I was in the Chair—we are going to have to perform corrective surgery. And it is about time. It is about time. That is why the American people changed course on November 8. I hope this Senate will get the message and pass this legislation next week, get it through the House, and get it to the President of the United States so it will become the law—which it already should be under the 10th amendment.

In conclusion, we must never forget—and I think we have—that it was the States, there were only 13 at the time, but it was the States that created this Government. I used to teach history, so forgive me for a moment. The States created this Government. Without the large State-small State compromise, the Senate would not be here. The House would not be here. The Federal Government would not be here. They decided to give certain powers to the Federal Government and created that Government as a result. They never wanted the Federal Government to go beyond the specific powers they were given.

Let us get back to the Constitution. If we do the debate, the integrity of the debate is on our side, and we will win. I think we will. It is just going to take a little time. It is a little frustrating that Senators exercise the right that they have to delay and debate. If you are going to delay to debate to make your point that is fine. If you are going to delay simply to stop the legislation, from us getting a chance to vote on it, I think that is wrong. Especially when you are trying to repeal something that is unconstitutional, in my opinion, to begin with.

Mr. President, I yield.

The PRESIDING OFFICER. The Senator from Pennsylvania.

FEDERALISM

Mr. SPECTER. Mr. President, I support Senate bill 1 to eliminate unfunded mandates to States and local government. There is no doubt about the onerous imposition of very expensive projects on State and local government which have been decreed out of Washington, DC, and the Federal Government. I think as a matter of fundamental fairness, if we decide something ought to be done as a matter of national policy, then we ought to be paying for it.

Many have spoken about the principle of federalism, which is the concept that the United States was founded on. It is to leave to the States all that was not specifically delegated to the Federal Government in the Constitution on the very obvious point of having the governmental unit closest to the people making the decision. Also, as a matter of federalism and the concept of federalism, the idea is to leave to local government as much as possible so the people closest to the problem may decide what they want to spend their money on.

We have within the bill presently on the floor the principle of the States leaving to local government the maximum amount possible without telling local government what ought to be done. So I think this is a sound bill. I look forward to its early passage as a signal to the American people that the mandate from the last election is being complied with. We have already enacted important legislation which imposes on every Member of the U.S. Senate and the U.S. House of Representatives the same obligations that any other American citizen bears. That is sound as a matter of basic fairness but also sound as part of the regulatory system so we may not overly burden American business and the American people when we have to comply with the same rules.

Mr. President, I now ask unanimous consent that I may make two brief statements as in morning business. There is no one else on the floor to speak to the bill.

The PRESIDING OFFICER. Without objection the Senator from Pennsylvania is recognized as in morning business.

Mr. SPECTER. I thank the Chair and I ask unanimous consent my following remarks be captioned: ''Silvi Morton Specter.''

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

SILVI MORTON SPECTER

Mr. SPECTER. Mr. President, last night I spoke briefly on the one-year anniversary of the birth of the next generation of the Specter family, on the birth date of my granddaughter, the first grandchild in our family, the daughter of my son Shanin Specter, and his wife, Tracey Pearl Specter. But I could not speak at any length because we were in the midst of working out the unanimous-consent agreement on the disposition of this bill. And as the hour grew late, when we had consecutive back-to-back votes as part of the efforts to reach an accommodation on the bill, I did secure the floor for a few minutes, at 11:25, but spoke only briefly because the managers of the bill were about to present the unanimous-consent agreement and there were many Senators on the floor at the time.

I now speak to an empty Chamber with the exception of the Presiding Officer. But this is a matter, I think, of importance beyond the birth date of one young woman in America because I speak about all of the children of America and Silvi Specter's generation.

We have a heavy burden, the Congress of the United States, and in the U.S. Senate, to see to it that adequate care and protection will be given to her generation. I focus on the balanced budget amendment which has now been reported out of the Judiciary Committee, which will seek to eliminate the deficit Federal spending which now approximates $200 billion a year and a national debt which is climbing toward $5 trillion.

We had debated the deficit and the national debt more in the 14 years-plus that I have been in the U.S. Senate than any other subject.

So frequently there has been agreement that the Federal Government ought to live within its means just as every other unit of government has to. The State governments, the city governments, the county governments, and for that matter any individual has to live within his or her means or they face bankruptcy. But at the same time we have continued to spend. The promise of the balanced budget amendment is to put the same discipline on Congress which every other governmental unit in the past has had and every private citizen has. I think that is very important for Silvi Specter's generation. Certainly, I would not think of borrowing on her account or using her credit card. But that is exactly what we are doing when we run up these deficits.

I think, too, about the primary duty of Government to protect its citizens and the strides which are yet to be made on crime control domestically and national defense on the international scene.

We have a great deal to do, Mr. President, on the basic issue of crime control. It is something that we have to address for the present generation and succeeding generations.

I had the opportunity to serve as district attorney of Philadelphia for some 8 years after having been an assistant district attorney for 4 years where I tried many robbery cases, many rape cases, many burglary cases, and then as the district attorney ran an office which prosecuted 30,000 criminal cases a year including 500 homicide cases.

I believe that we have to tackle the problem of violent crime on many levels. I think to start with, this is a major problem in our criminal justice system in our failure to utilize capital punishment as an effective deterrent against violent crime. It is obvious that the critical aspect of a deterrent is its certainty and its swiftness. But that is not the case with the death penalty. At the present time there are more than 2,800 inmates on death row and in the last year only 38 cases where the judgment of sentence was carried out. The reason for that is the Federal appeals processes which allow the cases to go on virtually interminably forever; some as long as 20 years, on the average 8 years. We have the power to correct that.

My legislation was passed by the Senate in 1990 and has a good chance to be passed this year by the House and the Senate and signed into law if we would make a few basic changes. First, provide that the requirement ''upon exhaustion of State remedies'' is eliminated because that means the case has to be litigated in the State courts until every possible issue has been resolved before going to the Federal courts. And then there is a ping-pong effect where it goes back and forth.

My legislation provides that there would be Federal jurisdiction attaching as soon as the State supreme court had upheld the judgment of sentence of the death penalty. Then there would be one hearing in the Federal courts taking up all the issues without getting involved in what is a full and fair hearing in the State courts, which leads to interminable litigation, again with the State court taking it up and then coming to the Federal court as to whether there had been a full and fair hearing, which is an aspect of exhaustion of State remedies.

The Federal court ought to hear it once and once alone. If something then arises at a later time which warrants exceptional circumstances and unique Federal review again, that should happen only if the court of appeals approves it; that is, submission to Federal judges.

There also ought to be a time limit of 120 days in the Federal district court, unless the judge is able to put on the record factors which require a longer period of time, and that should be within the discretion of the trial judge. But I have handled these cases in the Federal court on habeas corpus, and 120 days is long enough, providing the judge puts it at the top of the list. That would not be an undue burden where only one of these cases would come before a judge every 18 months. There should be time limits in the court of appeals so that this appellate proceeding could be concluded within 2 years instead of 20 years.

Then, Mr. President, I think it is necessary to look at realistic rehabilitation. It is no surprise when someone leaves jail without a trade or a skill, as a functional illiterate, to go out into society, they are back to a life of crime and a revolving door. What I think we need to do is to have early intervention, especially with juveniles, for literacy and job training to give them a chance. But if they become career criminals—that is, three major offenses—then I think it is fair for society to impose a life sentence and to carry it out with adequate prison space.

Just the day before yesterday in the city of Philadelphia there was an atrocious murder a block and a half from the Philadelphia police station where a car was stopped. Apparently the individual was being followed on a robbery attempt, and a cold-blooded murder at 5:23 in the afternoon a block and a half from the police station at 7th and Vine in Philadelphia. A man was shot down in cold blood.

This happens again and again with drive-by shootings, with people being at risk. Violent crime could be curtailed if we really took the steps necessary to do that. That is something we ought to be looking at for this generation, the next generation, and those which follow.

There is also a major problem in international issues with national security. From the position that I have just taken on as chairman of the Intelligence Committee, there is a real need to do more in the area of nuclear nonproliferation. There is grave concern about the agreement which the administration has just made with North Korea where we will not be inspecting the spent fuel rods for some 5 years; whether this is the best way to protect against whether North Korea is in fact proceeding to build nuclear weapons. It has been disclosed recently that North Korea and Iran are working jointly on ballistic missiles and that North Korea currently has the capacity to send a missile as far as Alaska. When we asked the director of the Central Intelligence Agency in hearings a week ago Tuesday what the prognosis was for reaching the continental United States, there can be no assurance. A great deal more has to be done in that respect.

The issue of nutrition is of enormous importance. I was shocked more than a decade ago on my first occasion to see a 1-pound baby, a human being about as big as the size of my hand weighing 1 pound. That is a human tragedy because those children carry scars for a lifetime, and frequently the lifetime is not too long because of the intensity of the injuries carried. And it is a financial disaster with more than $150,000 in cost for each child and multibillion dollars in costs.

It is a matter which can be corrected with prenatal visits as outlined by Dr. Everett Koop, former Surgeon General, in part of a health care package which I have proposed in Senate bill 18.

As I think about the tragedy of low-birthweight babies or the tragedy of teenage pregnancies, as I think of my granddaughter, Silvi Morton Specter, who lives surrounded by love with her mother, Tracey Pearl Specter—a professional woman in her own right, but her daughter comes first—as I see them playing together—in effect, I say that Tracey is Silvi's best playmate—it is a sight to behold and really a tragedy that all children do not have the affection that Silvi has from her doting mother and doting father, my son Shanin Specter, and her grandparents, Carol and Alvin Pearl and Joan and myself.

So I take a few moments on this Friday afternoon to talk about Silvi Morton Specter's generation and the obligations we have here on personal safety from violent crime at home, the problem of nuclear attack abroad, and the issue of not spending to burden Silvi's generation on the problems which children face everywhere. It is a real burden that we face and a real obligation that we have to do a better job as Senators and Members of Congress as we look forward to the 21st century. It is my own personal view that America has not seen its best and brightest days.

I think of my father, who came to this country as an immigrant from Russia at the age of 18 in 1911 without any formal education, and my mother, who came with her parents from Poland in 1905 at the age of 5, and how much better it has been for my brother, my two sisters and me, and how much better it has been for my two sons, Shanin and Steve, and how much better it can be for Tracey and for Silvi Specter's generation if we do our jobs in the U.S. Congress.

I thank the Chair. I yield the floor.

RULES OF THE COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, Senate Standing Rule XXVI requires each committee to adopt rules to govern the procedures of the committee and to publish those rules in the CONGRESSIONAL RECORD not later than March 1 of the first year of each Congress. On January 11, 1995, the Committee on Indian Affairs held a business meeting during which the members of the committee unanimously adopted rules to govern the procedures of the committee. Consistent with Standing Rule XXVI, today I am submitting for printing in the CONGRESSIONAL RECORD a copy of the rules of the Senate Committee on Indian Affairs.

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

RULES OF THE COMMITTEE ON INDIAN AFFAIRS

COMMITTEE RULES

Rule 1. The Standing Rules of the Senate, Senate Resolution 4, and the provisions of the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, to the extent the provisions of such Act are applicable to the Committee on Indian Affairs and supplemented by these rules, are adopted as the rules of the Committee.

MEETINGS OF THE COMMITTEE

Rule 2. The committee shall meet on the first Tuesday of each month while the Congress is in session for the purpose of conducting business, unless, for the convenience of Members, the Chairman shall set some other day for a meeting. Additional meetings may be called by the Chairman as he may deem necessary.

OPEN HEARINGS AND MEETINGS

Rule 3. Hearings and business meetings of the committee shall be open to the public except when the committee by majority vote orders a closed hearing or meeting.

HEARING PROCEDURE

Rule 4(a). Public notice shall be given of the date, place, and subject matter of any hearing to be held by the committee at least one week in advance of such hearing unless the Chairman of the committee determines that the hearing is noncontroversial or that special circumstances require expedited procedures and a majority of the committee involved concurs. In no case shall a hearing be conducted with less than 24 hours notice.

(b). Each witness who is to appear before the committee shall file with the committee, at least 48 hours in advance of the hearing, a written statement of his or her testimony with 25 copies.

(c). Each Member shall be limited to five (5) minutes in the questioning of any witness until such time as all Members who so desire have had an opportunity to question the witness unless the committee shall decide otherwise.

(d). The Chairman and Vice Chairman or the Ranking Majority and Minority Members present at the hearing may each appoint one committee staff member to question each witness. Such staff member may question the witness only after all Members present have completed their questioning of the witness or at such other time as the Chairman or Vice Chairman or the Ranking Majority and Minority Members present may agree.

BUSINESS MEETING AGENDA

Rule 5(a). A legislative measure or subject shall be included in the agenda of the next following business meeting of the committee if a written request for such inclusion has been filed with the Chairman of the committee at least one week prior to such meeting. Nothing in this rule shall be construed to limit the authority of the Chairman of the committee to include legislative measures or subjects on the committee agenda in the absence of such request.

(b). The agenda for any business meeting of the committee shall be provided to each Member and made available to the public at least two days prior to such meeting, and no new items may be added after the agenda is published except by the approval of a majority of the Members of the committee. The Clerk shall promptly notify absent Members of any action taken by the committee on matters not included in the published agenda.

QUORUMS

Rule 6(a). Except as provided in subsections (b) and (c) six (6) members shall constitute a quorum for the conduct of business of the committee. Consistent with Senate rules, a quorum is presumed to be present, unless the absence of a quorum is noted.

(b). A measure may be ordered reported from the committee unless an objection is made by a Member, in which case a recorded vote of the members shall be required.

(c). One Member shall constitute a quorum for the purpose of conducting a hearing or taking testimony on any measure before the committee.

VOTING

Rule 7(a). A recorded vote of the Members shall be taken upon the request of any Member.

(b). Proxy voting shall be permitted on all matters, except that proxies may not be counted for the purpose of determining the presence of a quorum. Unless further limited, a proxy shall be exercised only on the date for which it is given and upon the terms published in the agenda for that date.

SWORN TESTIMONY AND FINANCIAL STATEMENTS

Rule 8. Witnesses in committee hearings may be required to give testimony under oath whenever the Chairman or Vice Chairman of the committee deems it to be necessary. At any hearing to confirm a Presidential nomination, the testimony of the nominee, and at the request of any Members, any other witness shall be under oath. Every nominee shall submit a financial statement, on forms to be perfected by the committee, which shall be sworn to by the nominee as to its completeness and accuracy. All such statements shall be made public by the committee unless the committee, in executive session, determines that special circumstances require a full or partial exception to this rule.

CONFIDENTIAL TESTIMONY

Rule 9. No confidential testimony taken by or confidential material presented to the committee or any report of the proceedings of a closed committee hearing or business meeting shall be made public in whole or in part by way of summary, unless authorized by a majority of the Members of the committee at a business meeting called for the purpose of making such a determination.

DEFAMATORY STATEMENTS

Rule 10. Any person whose name is mentioned or who is specifically identified in, or who believes that testimony or other evidence presented at, an open committee hearing tends to defame him or otherwise adversely affect his reputation may file with the committee for its consideration and action a sworn statement of facts relevant to such testimony or evidence.

BROADCASTING OF HEARINGS OR MEETINGS

Rule 11. Any meeting or hearing by the committee which is open to the public may be covered in whole or in part by television, radio broadcast, or still photography. Photographers and reporters using mechanical recording, filming, or broadcasting devices shall position their equipment so as not to interfere with the sight, vision, and hearing of Members and staff on the dais or with the orderly process of meeting or hearing.

AMENDING THE RULES

Rule 12. These rules may be amended only by a vote of a majority of all the Members of the committee in a business meeting of the committee. Provided, that no vote may be taken on any proposed amendment unless such amendment is reproduced in full in the committee agenda for such meeting at least seven (7) days in advance of such meeting.

MEDICAL SAVINGS ACCOUNTS

Mr. FRIST. Mr. President, I rise today to discuss the issue of health care in America and, specifically, the concept of medical savings accounts, sometimes called medical IRA's.

I speak today as an elected official, but also as a practicing physician, having devoted the last 20 years of my life to caring for patients. I have witnessed first hand the unequalled quality of care that we have in the United States, but also the problems which include skyrocketing costs, uneven access, and inadequate emphasis on prevention.

Last year, President Clinton addressed the problems in our health care system, but his proposed solution was fatally flawed. He favored monopolization, not competition. He sought to empower bureaucrats, not individuals. And, in the end, he relied on Government, not the private sector. Fortunately, once the American people heard the truth about the administration's plan, they rejected it.

Nevertheless, the problems with our health care system have not disappeared. And make no mistake, there are problems with our health care system. But instead of scrapping the whole system, we must target and fix what is broken. Mr. President, I believe the use of medical savings accounts is an important first step in this process.

A fundamental problem which characterizes every interaction between patient and health care provider is that the provider is paid not by the patient, but by a third party. On average, every time a patient in America receives a dollar's worth of medical services, 79 cents is paid for by someone else—usually the Government or an insurance company. The result is that we grossly over-consume medical services. Imagine if we were all required to pay out of our own pockets only 20 cents of every dollar spent on food, clothing, and transportation. We would over-consume—we would buy more than we need. And that's what happens in medicine. Since they don't feel they are paying for it, everyone wants the most and the best—at any price—whether it's the deluxe hospital room, the latest in nuclear medical imaging, or the MRI scan for a headache. We must become more cost-conscious consumers of medical services.

Mr. President, there are two methods of doing this. First, as the Clinton administration urged, we can limit medical technology and ration care, thereby limiting choice of physician and ultimately access. The American people rejected this alternative—and with good reason. It would have severely reduced the quality of patient care. I saw this happen first-hand during the year I spent in England as a registrar in heart and lung surgery. I watched over and over again as patients waited months for medical procedures which they would have obtained in days or weeks in the United States. And sadly, in some instances, I watched patients die while they waited.

The second choice, and the one I believe we must follow if we want to stem rising health care costs without decreasing the availability and quality of patient care, is to empower individuals and enable them to purchase medical services directly, as they do other services. Medical savings accounts would encourage patients to make prudent, cost-conscious decision about purchasing medical services.

What are medical savings accounts? Medical savings accounts are tax-free, personal accounts which can be used by an individual to pay medical bills. Take, for example, an employee of a company: today an employer might pay $3,000 or $4,000 for a medical insurance policy with a $500 deductible. The employee has no incentive to be cost-conscious. In contrast, if medical savings accounts were available, the employer would deposit an amount—say $2,000—tax free in a savings account, which would belong to the employee. The employee would buy an inexpensive, catastrophic-type policy which would cover medical expenses above $2,000 per year. For medical expenses up to the $2,000 deductible limit, the employee using his own discretion would use money from the savings account. Any savings account money not spent on health care that year would grow tax free in the employee's account and would accumulate year to year. At retirement, the money could be rolled over into an IRA or a pension, or could be used to pay for long-term care or other expenses. Thus, the individual has a strong incentive to become a cost-conscious consumer of medical care. He will demand quality care at competitive prices. The consumer will drive the market. The system will respond with better outcome measures and lower unit prices for health care.

In short, medical savings accounts will give American health care consumers strong incentives to change the way they consume health care services because they keep any money they don't spend.

We will potentially save billions of dollars in health care costs because individual patients will modify their health care purchasing habits to consume health care services prudently.

Medical savings accounts will potentially also save billions of dollars in administrative costs. In 1992 alone, administrative costs for health insurance exceeded $41 billion. With medical savings accounts, patients will deal directly with health care providers and eliminate many third parties.

Finally, and perhaps most importantly, the use of medical savings accounts will help maintain the high quality of care that Americans have come to know. While the Clinton administration would limit technology and force hospitals and doctors to ration care, medical savings accounts will put the individual back in charge of his or her own consumption of medical services.

Mr. President, in closing, we in America are fortunate to have the absolute highest quality health care in the world. When the leaders of the world become seriously ill, they don't go to Great Britain or Canada to seek treatment, they come to the United States. And while there are those who would like to stifle our technological advances and allow bureaucrats to tell us how much and what kind of health care we can receive, the American people have loudly and clearly rejected this notion.

No one can predict what will happen in medicine in the first 50 years of the 21st century. Fifty years ago, when my father was a young doctor in Tennessee making house calls, he could not have envisioned what medical practice today would be like. The technological advances are simply mind-boggling. Mr. President, the challenge for us is to maintain the highest quality health care in the world and to continue to make it available to all Americans. But this can only be done if we first change the basic framework through which medical services are consumed, and continue with a market-based system. I believe the use of medical savings accounts will be a major step in that direction. Individual patients will become part of the solution, instead of remaining part of the problem. For this reason, I hope that you and my other colleagues in the Senate will support my efforts to pass legislation later in this session to create medical savings accounts.

Thank you, Mr. President, I yield the floor.

TRIBUTE TO DR. ARCHIE HILL CARMICHAEL III

Mr. HEFLIN. Mr. President, I spoke earlier this month about the untimely death of Dr. Archie H. Carmichael III, a distinguished physician from the shoals area of Alabama, which includes Muscle Shoals, Sheffield, Florence, and my hometown of Tuscumbia.

Dr. Carmichael truly epitomized the high ideals which constitute the medical profession. He was a dear friend to many, including his patients, who he served so diligently for over 30 years. He had a remarkable bedside manner and his patients highly respected him. In short, he was the type of rare individual who can never really be replaced. He had patients from all over northwest Alabama, northeast Mississippi, and southern Tennessee and will be genuinely missed.

Upon learning of his death, Tuscumbia mayor Ray Cahoon remarked that ''Archie Hill had done a really great job of serving his community as a physician. He was really well-loved. He was already missed by many because he had to cease his practice due to his illness.''

One of his medical colleagues said that he had always treasured his professional and personal association with Dr. Carmichael, and noted that he had loved his work and his patients and had always put them before his personal concerns. He was known as a very pleasant person to work with and a dedicated professional.

Archie Hill Carmichael was an all-state football player from Deshler High School who received a football scholarship to attend the Georgia Institute of Technology. Later, however, the young athlete gave up his football career due to his mother's urging, and finally his own decision, to pursue a career in the field of medicine. He subsequently took his bachelor of science and medical degrees from Vanderbilt University, to which he had transferred from Georgia Tech, and completed his residency in internal medicine at Bowman-Gray Medical School at Wake Forest University. He served in the U.S. Naval Medical Corps for several years. He practiced medicine in Sheffield, AL for 31 years and served as an adjunct professor of medicine at the University of Alabama Medical School for a while.

Dr. Carmichael married Ann Cothran, and they had two children, Lawrence Carmichael, M.D., and Beth Carmichael Riley. Ann Cothran Carmichael predeceased her husband by several years, and he then married Jean Pigford Cleveland. They had a son, Archie Hill Carmichael IV. He was a great family man, a dedicated father, and devoted husband

From a very distinguished family including his grandfather, former Member of Congress Archie H. Carmichael—Archie Hill III, added much to his family's legacy. His Congressman grandfather was succeeded in the House by my own predecessor in the Senate, the legendary John J. Sparkman.

Dr. Carmichael had retired due to a serious illness, and passed away on January 4, 1995. At the time of his retirement, he practiced as a specialist in internal medicine with his longtime partner, Dr. R. Winston Williams. He was a member of First United Methodist Church in Tuscumbia; the Colbert County Medical Society; the Medical Society of the State of Alabama, and the American College of Physicians.

I extend my sincerest condolences to Jean Carmichael and his entire family as they lament this tremendous loss.

TRIBUTE TO JAMES T. FLEMING

Mr. HEFLIN. Mr. President, many of you may have heard that James T. Fleming, a longtime administrative assistant to Senator WENDELL FORD passed away recently.

I had the opportunity to get to know Jim quite well after coming to the Senate. Because of his vast knowledge of the political field, many looked up to Jim and looked to him for advice on a host of issues. His boss stated Jim was ''one of the smartest people [he'd] ever known.'' It is no wonder he achieved a great deal of success over his lifetime.

Jim's career began after graduating from Centre College. After graduating, he was commissioned a lieutenant in the Navy and served in the Pacific during World War II.

Jim then went on to get his master's in political science at the University of Kentucky. It was there that he developed his love for politics.

His political career got off to a start upon joining the legislative research commission staff in 1944. He later became the Kentucky General Assembly's top administrator and director from 1963 to 1972.

Jim served as staff director in the 1960's for Gov. Edward T. ''Ned'' Breathit. I believe this is worth mentioning since it was around this time the Governor tried to revise the State's constitution. Jim was one of the masterminds behind the project.

Just a few years later, Jim devised a plan on which the modern general assembly is based.

In 1973, Jim was in charge of reorganizing the executive branch of government. This is a noteworthy because it was the first time such an attempt had been made since 1936.

When WENDELL FORD won a Senate seat in 1974, Jim followed him to Washington as his administrative assistant. Here, he planned and coordinated Senator FORD'S legislative staff. The issues he focused on most while an AA were those involving energy and coal.

Up until his last days, he was an adviser to Senator FORD.

The Nation and our friend Senator FORD lost a very respected and intelligent man when James passed away.

My deepest condolences go to Jim's son Michael Fleming, and daughter, Dr. Barbara Fleming Phillips.

TRIBUTE TO DR. LUTHER FOSTER

Mr. HEFLIN. Mr. President, Alabama and the nation lost a prized citizen when Dr. Luther Foster, former president of Tuskegee University, passed away last November.

Luther was known for being intellectual, involved, and achievement-oriented. His hard work and dedication to his studies earned him several degrees and honors from several institutions. He was known by many through the numerous organizations with which he affiliated himself. His qualities led to the type of career and accomplishments many only dream of.

Dr. Foster received his bachelor's degree from Virginia State College, now known as Hampton Institute, his MBA from Harvard University, and his doctoral degree from the University of Chicago.

His honorary degrees include doctorates of civil law, humane letters, and public service.

Dr. Foster was a member of the American Revolution Bicentennial Commission; the Commission on Critical Choices for America; the Council on Financial Aid to Education; the National Advisory Committee on Black Higher Education and Black Colleges and Universities; the President's Advisory Commission on International Educational and Cultural Exchange; the President's General Advisory Committee on Foreign Assistance Programs; the President's Task Force on Priorities in Higher Education; Resources for the Future, and the U.S. Air Force Academy Advisory Council.

In addition, he directed the Center for Creative Learning; the March of Dimes; Norton Simon, Inc.; the Overseas Development Committee; Political and Economic Studies; the Retirement Equities Fund; the United Negro College Fund, and Sears, Roebuck and Co.

He also chaired the Association of American Colleges and the Race Relations Information center.

Dr. Foster served as the budget officer of Howard University from 1937–41. He later relocated to the Tuskegee Institute where he served as business manager from 1941–53. He was then named president of Tuskegee in 1953 and held this position for the next 28 years. At the time of his death, he was chairman and CEO of Robert R. Moton Memorial Institute.

Dr. Foster was a highly intelligent man who was not only known for his scholarly abilities, his many affiliations, or even his lifetime accomplishments. He was most known for his ability to touch the lives around him in meaningful ways.

My deepest condolences go out to his wife of 53 years, Vera Chandler Foster of Alexandria, and their entire family in the wake of this tremendous loss.

SENATE QUARTERLY MAIL COSTS

Mr. STEVENS. Mr. President, in accordance with section 318 of Public Law 101–520, I am submitting the summary tabulations of Senate mass mail costs for the fourth quarter of fiscal year 1994, which is the period of July 1, 1994 through September 30, 1994, to be printed in the RECORD.

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

SENATE QUARTERLY MASS MAIL VOLUMES AND COSTS FOR THE QUARTER ENDING SEPT. 30, 1994

Senators	Original total pieces	Pieces per capita	Original total cost	Cost per capita
Akaka				
Baucus	12,658	0.01536	$4,145.27	$0.00503
Bennett	13,800	0.00761	2,100.36	0.00116
Biden	325,048	0.47177	55,241.17	0.08018
Bingaman	143,925	0.09103	28,613.04	0.01810
Bond	11,530	0.00222	2,336.03	0.00045
Boren				
Boxer	916,897	0.02970	148,205.94	0.00480
Bradley	2,070,300	0.26580	303,998.16	0.03903
Breaux				
Brown				
Bryan	14,733	0.01110	11,264.42	0.00849
Bumpers		0.00000		0.00000
Burns		0.00000		0.00000
Byrd		0.00000		0.00000
Campbell		0.00000		0.00000
Chafee		0.00000		0.00000
Coats		0.00000		0.00000
Cochran		0.00000		0.00000
Cohen	60,900	0.04931	11,298.73	0.00915
Conrad		0.00000		0.00000
Coverdell		0.00000		0.00000
Craig	97,100	0.09100	17,230.87	0.01615
D'Amato	2,895,300	0.15979	450,881.81	0.02488
Danforth		0.00000		0.00000

SENATE QUARTERLY MASS MAIL VOLUMES AND COSTS FOR THE QUARTER ENDING SEPT. 30, 1994—Continued

Senators	Original total pieces	Pieces per capita	Original total cost	Cost per capita
Daschle	10,800	0.01519	1,614.20	0.00227
DeConcini		0.00000		0.00000
Dodd	9,132	0.00278	7,240.25	0.00221
Dole		0.00000		0.00000
Domenici		0.00000		0.00000
Dorgan		0.00000		0.00000
Durenberger		0.00000		0.00000
Exon		0.00000		0.00000
Faircloth	78,800	0.01152	14,979.50	0.00219
Feingold		0.00000		0.00000
Feinstein		0.00000		0.00000
Ford		0.00000		0.00000
Glenn		0.00000		0.00000
Gorton	158,265	0.03081	29,313.21	0.00571
Graham		0.00000		0.00000
Gramm	1,326,750	0.07514	237,287.80	0.01344
Grassley	313,000	0.11131	52,336.74	0.01861
Gregg		0.00000		0.00000
Harkin	296,000	892.8900	469.00	0.00017
Hatch		0.00000		
Hatfield	284,250	0.09548	44,964.94	0.01510
Heflin	841,000	0.20334	133,205.78	0.03221
Helms		0.00000		0.00000
Hollings		0.00000		0.00000
Hutchison		0.00000		0.00000
Inouye		0.00000		0.00000
Jeffords	22,843	0.04008	10,920.40	0.01916
Johnston	2,300	0.00054	507.98	0.00012
Kassebaum		0.00000		0.00000
Kempthorne		0.00000		0.00000
Kennedy		0.00000		0.00000
Kerrey		0.00000		0.00000
Kerry	857	0.00014	187.83	0.00003
Kohl		0.00000		0.00000
Lautenberg	2,100	0.00027	670.19	0.00009
Leahy	6,600	0.01158	1,407.07	0.00247
Levin		0.00000		0.00000
Lieberman		0.00000		0.00000
Lott	2,350	0.00090	520.19	0.00020
Lugar		0.00000		0.00000
Mack		0.00000		0.00000
Mathews		0.00000		0.00000
McCain	26,498	0.00691	20,452.71	0.00534
McConnell	393,750	0.10486	68,309.01	0.01819
Metzenbaum		0.00000		0.00000
Mikulski		0.00000		0.00000
Mitchell		0.00000		0.00000
Moseley-Braun		0.00000		0.00000
Moynihan		0.00000		0.00000
Murkowski		0.00000		0.00000
Murray	21,810	0.00425	4,647.34	0.00090
Nickles		0.00000		0.00000
Nunn		0.00000		0.00000
Packwood	66,850	0.02246	12,001.79	0.00403
Pell		0.00000		0.00000
Pressler		0.00000		0.00000
Pryor	1,550	0.00065	488.40	0.00020
Reid	37,200	0.02803	5,621.61	0.00424
Riegle		0.00000		0.00000
Robb		0.00000		0.00000
Rockefeller	14,600	0.00806	2,109.86	0.00116
Roth	46,100	0.06691	6,688.17	0.00971
Sarbanes		0.00000		0.00000
Sasser		0.00000		0.00000
Shelby		0.00000		0.00000
Simon	53,100	0.00457	8,089.17	0.00070
Simpson		0.00000		0.00000
Smith		0.00000		0.00000
Specter	987,000	0.08219	151,718.90	0.01263
Stevens		0.00000		0.00000
Thurmond		0.00000		0.00000
Wallop		0.00000		0.00000
Warner		0.00000		0.00000
Wellstone	4,600	0.00103	8,594.80	0.00192
Wofford		0.00000		0.00000

Other offices	Total pieces	Total cost
The Vice President	0	0.00
The President pro-tempore	0	0.00
The majority leader	0	0.00
The minority leader	0	0.00
The assistant majority leader	0	0.00
The assistant minority leader	0	0.00
Secretary of majority conference	0	0.00
Secretary of minority conference	0	0.00
Agriculture Committee	0	0.00
Appropriations Committee	0	0.00
Armed Services Committee	0	0.00
Banking Committee	0	0.00
Budget Committee	0	0.00
Commerce Committee	0	0.00
Energy Committee	0	0.00
Environment Committee	0	0.00
Finance Committee	0	0.00
Foreign Relations Committee	0	0.00
Government Affairs Committee	0	0.00
Judiciary Committee	0	0.00
Labor Committee	0	0.00
Rules Committee	0	0.00
Small Business Committee	0	0.00
Veterans Affairs Committee	0	0.00
Ethics Committee	0	0.00

Other offices	Total pieces	Total cost
Indian Affairs Committee	0	0.00
Intelligence Committee	0	0.00
Aging Committee	0	0.00
Joint Economic Committee	0	0.00
Joint Committee on Printing	0	0.00
Joint Committee on Congressional Inauguration	0	0.00
Democratic Policy Committee	0	0.00
Democratic Conference	0	0.00
Republican Policy Committee	0	0.00
Republican Conference	0	0.00
Legislative counsel	0	0.00
Legal counsel	0	0.00
Secretary of the Senate	0	0.00
Sergeant at Arms	0	0.00
Narcotics Caucus	0	0.00
Subcommittee on POW/MIA	0	0.00

WAS CONGRESS IRRESPONSIBLE? THE VOTERS SAID YES

Mr. HELMS. Mr. President, as of the close of business on Thursday, January 19, the Federal debt stood at $4,795,323,651,745.86 meaning that on a per capita basis, every man, woman, and child in America owes $18,203.13 as his or her share of that debt.

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 4, 1995, the Secretary of the Senate, on January 20, 1995, during the recess of the Senate, received a message from the House of Representatives announcing that pursuant to the provisions of title 15, United States Code, section 1024(a), the Speaker appoints the following Members on the part of the House to serve as members of the Joint Economic Committee: Mr. SAXTON, Mr. EWING, Mr. QUINN, Mr. MANZULLO, Mr. SANFORD, Mr. THORNBERRY, Mr. STARK, Mr. OBEY, Mr. HAMILTON, and Mr. MFUME.

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–141. A communication from the Director of the Office of Federal Housing Enterprise Oversight, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–142. A communication from the Chief of Staff of the Office of the Nuclear Waste Negotiator, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal years 1992 and 1993; to the Committee on Governmental Affairs.

EC–143. A communication from the Office of Special Counsel, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–144. A communication from the Director of the United States Information Agency, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–145. A communication from the Chairman of the Postal Rate Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–146. A communication from the Chairman of U.S. Commission for the Preservation of America's Heritage Abroad, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–147. A communication from the Director of the U.S. Soldiers' and Airmen's Home, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–148. A communication from the Chairman of the Commodity Futures Trading Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–149. A communication from the Executive Director of the Marine Mammal Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–150. A communication from the President of the National Endowment for Democracy, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–151. A communication from the Chairman of the Nuclear Waste Technical Review Board, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–152. A communication from the Armed Forces Retirement Home (U.S. Naval Home), transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–153. A communication from the Executive Director of the Committee For Purchase From People Who Are Blind or Severely Disabled, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–154. A communication from the Chairman of the Equal Employment Opportunity Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–155. A communication from the Staff Director of the U.S. Commission on Civil Rights, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–156. A communication from the Chairman of the National Credit Union Administration, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–157. A communication from the Chairman and Chief Executive Officer of the Farm Credit Administration, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–158. A communication from the Chairman of the Consumer Product Safety Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–159. A communication from the Secretary of Labor, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–160. A communication from the Chairman of the Federal Mine Safety and Health Review Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1992; to the Committee on Governmental Affairs.

EC–161. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–162. A communication from the Chairman of the U.S. International Trade Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–163. A communication from the Administrator of the Panama Canal Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–164. A communication from the Executive Secretary of the Barry M. Goldwater Scholarship and Excellence In Education Foundation, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–165. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–166. A communication from the Chairman of the Defense Nuclear Facilities Safety Board, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–167. A communication from the Chairman of the Board of the African Development Foundation, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–168. A communication from the Acting Archivist of the United States, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–169. A communication from the Chairman of the Farm Credit System Insurance Corporation, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–170. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–171. A communication from the Administration of the Environmental Protection Agency, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–172. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, the report on the internal

controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–173. A communication from the Attorney General, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–174. A communication from the Secretary of Education, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–175. A communication from the Chairman of the Federal Communications Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–176. A communication from the Chairman of the National Endowment For the Arts, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–177. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–178. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–179. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the report on the internal controls and financial systems in effect during fiscal year 1994; to the Committee on Governmental Affairs.

EC–180. A communication from the President of the James Madison Memorial Fellowship Foundation, transmitting, pursuant to law, the annual report for fiscal year 1994; to the Committee on Governmental Affairs.

EC–181. A communication from the Secretary of Education, transmitting, pursuant to law, the report concerning surplus Federal real property; to the Committee on Governmental Affairs.

EC–182. A communication from the Board of Governors of the U.S. Postal Service, transmitting, pursuant to law, the report under the Government in the Sunshine Act for calendar year 1994; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services, without amendment:

S. Res. 65. An original resolution authorizing expenditures by the Committee on Armed Services.

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. LOTT:

S. 252. A bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age; to the Committee on Finance.

S. 253. A bill to repeal certain prohibitions against political recommendations relating to Federal employment, to reenact certain provisions relating to recommendations by Members of Congress, and for other purposes; to the Committee on Governmental Affairs.

S. 254. A bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II; to the Committee on Veterans Affairs.

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

S. 255. A bill to require the Secretary of the Army to carry out such activities as are necessary to stabilize the bluffs along the Mississippi River in the vicinity of Natchez, Mississippi, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DOLE (for himself, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. SIMPSON):

S. 256. A bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes; to the Committee on Armed Services.

By Mr. DOLE (for himself, Mr. INOUYE, Mr. THURMOND, Mr. WARNER, Mr. MCCAIN, and Mr. CAMPBELL):

S. 257. A bill to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. THURMOND:

S. Res. 65. An original resolution authorizing expenditures by the Committee on Armed Services; from the Committee on Armed Services; to the Committee on Rules and Administration.

By Mr. PRESSLER (for Mr. GORTON (for himself, Mr. LIEBERMAN, Mr. GRAMM, and Mr. BYRD)):

S. Res. 66. A resolution to prevent the adoption of certain national history standards; considered and agreed to.

By Mr. PRESSLER (for Mrs. BOXER (for herself, Mrs. MURRAY, Mr. FEINGOLD, Mr. KENNEDY, Mr. CAMPBELL, Mr. SIMON, Mr. LAUTENBERG, Mr. DODD, Mr. BAUCUS, Mr. LEVIN, Mr. LIEBERMAN, Ms. MOSELEY-BRAUN, Mr. HARKIN, Mr. PELL, Mr. INOUYE, Ms. MIKULSKI, Mrs. FEINSTEIN, Mr. REID, Mr. WELLSTONE, Mr. ROBB, Mr. KOHL, Mr. BRYAN, and Mr. KERRY)):

S. Res. 67. A resolution relating to violence at clinics; considered and agreed to.

By Mr. PRESSLER (for Mr. BRADLEY (for himself, Mr. CHAFEE, Mr. DORGAN, Mr. SIMPSON, Mr. ROBB, Mr. DOLE, Mr. NICKLES, Mr. LAUTENBERG, Mr. KEMPTHORNE, and Mr. WELLSTONE)):

S. Res. 68. A resolution relating to impact on local governments; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LOTT:

S. 252. A bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age; to the Committee on Finance.

THE OLDER AMERICANS' FREEDOM TO WORK ACT

Mr. LOTT. Mr. President, today I am introducing the Older Americans Freedom to Work Act of 1995 to eliminate the Social Security earnings test for individuals who have attained retirement age.

As the Social Security Act is designed, the Government seems to give little thought to older Americans' ability to make an important contribution to our work force. Senior citizens are subject to taxes such as the Federal Contributions Act [FICA], even in situations where they are receiving Social Security benefits. They are also subject to various Federal, State, and local taxes.

This brings me to the biggest outrage: the Social Security retirement earnings limit. Presently, this limit reduces benefits to persons between ages 65 and 69 who earn more than $11,280 yearly. These reductions amount to $1 in reduced benefits for every $3 in earnings above the aforementioned limit—$1 for $3 withholding rate.

The earnings test is very unfair, but it also poses a serious threat to the labor work force. Demographers tell us that between the years 2000 and 2010 the baby boom generation will be in their retirement years. With fewer babies being born to replace them, this Nation is looking at a severe labor shortage. The skills and expertise of older workers is desperately needed.

An earnings limit for Social Security beneficiaries is an ill conceived idea and an administrative nightmare for the Social Security Administration [SSA]. SSA spends a great deal of money and devotes a full 8 percent of its employees to police the income levels of retirees. For beneficiaries, the income limit is a frustrating experience of estimating and reporting income levels to SSA.

In the 1930's, when the earned income limit was devised, encouraging the elderly to leave the workplace was seen as a positive act, designed to increase job opportunities for younger workers. Today, with our shrinking labor force, such a policy is absurd. We need the skills, wisdom, and experience of our older workers, and my proposal will encourage them to remain in the labor force.

In the 102d Congress, the Senate adopted an amendment to the older Americans reauthorization amendments to repeal the earnings test. While it was dropped from final passage, this legislation has perennial bipartisan interest and support.

It is a pleasure to again sponsor legislation in the Senate to abolish the onerous retirement earnings test. This begins the process of providing employment opportunities for older Americans without punishing them for their efforts. It is my understanding that the President supports lifting the earnings test for retirees, and I urge my colleagues to join me in supporting this

vitally important legislation. 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. 252

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 ''Older Americans' Freedom to Work Act of 1995''.

SEC. 2. ELIMINATION OF EARNINGS TEST FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

Section 203 of the Social Security Act (42 U.S.C. 403) is amended—

(1) in paragraph (1) of subsection (c) and paragraphs (1)(A) and (2) of subsection (d), by striking ''the age of seventy'' and inserting ''retirement age (as defined in section 216(l))'';

(2) in subsection (f)(1)(B), by striking ''was age seventy or over'' and inserting ''was at or above retirement age (as defined in section 216(l))'';

(3) in subsection (f)(3), by striking ''33⅓ percent'' and all that follows through ''any other individual,'' and inserting ''50 percent of such individual's earnings for such year in excess of the product of the exempt amount as determined under paragraph (8),'' and by striking ''age 70'' and inserting ''retirement age (as defined in section 216(l))'';

(4) in subsection (h)(1)(A), by striking ''age 70'' each place it appears and inserting ''retirement age (as defined in section 216(l))''; and

(5) in subsection (j), by striking ''Age Seventy'' in the heading and inserting ''Retirement Age'', and by striking ''seventy years of age'' and inserting ''having attained retirement age (as defined in section 216(l))''.

SEC. 3. CONFORMING AMENDMENTS ELIMINATING THE SPECIAL EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

(a) UNIFORM EXEMPT AMOUNT.—Section 203(f)(8)(A) of the Social Security Act (42 U.S.C. 403(f)(8)(A)) is amended by striking ''the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable'' and inserting ''a new exempt amount which shall be applicable''.

(b) CONFORMING AMENDMENTS.—Section 203(f)(8)(B) of such Act (42 U.S.C. 403(f)(8)(B)) is amended—

(1) in the matter preceding clause (i), by striking ''Except'' and all that follows through ''whichever'' and inserting ''The exempt amount which is applicable for each month of a particular taxable year shall be whichever'';

(2) in clause (i), by striking ''corresponding''; and

(3) in the last sentence, by striking ''an exempt amount'' and inserting ''the exempt amount''.

(c) REPEAL OF BASIS FOR COMPUTATION OF SPECIAL EXEMPT AMOUNT.—Section 203(f)(8)(D) of such Act (42 U.S.C. (f)(8)(D)) is repealed.

SEC. 4. ADDITIONAL CONFORMING AMENDMENTS.

(a) ELIMINATION OF REDUNDANT REFERENCES TO RETIREMENT AGE.—Section 203 of the Social Security Act (42 U.S.C. 403) is amended—

(1) in the last sentence of subsection (c), by striking ''nor shall any deduction'' and all that follows and inserting ''nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60.''; and

(2) in subsection (f)(1), by striking clause (D) and inserting the following: ''(D) for which such individual is entitled to widow's or widower's insurance benefits if such individual became so entitled prior to attaining age 60, or''.

(b) CONFORMING AMENDMENT TO PROVISIONS FOR DETERMINING AMOUNT OF INCREASE ON ACCOUNT OF DELAYED RETIREMENT.—Section 202(w)(2)(B)(ii) of such Act (42 U.S.C. 402(w)(2)(B)(ii)) is amended—

(1) by striking ''either''; and

(2) by striking ''or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit''.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply only with respect to taxable years ending after December 31, 1995.

By Mr. LOTT:

S. 253. A bill to repeal certain prohibitions against political recommendations relating to Federal employment, to reenact certain provisions relating to recommendations by Member of Congress, and for other purpose; to the Committee on Governmental Affairs.

POLITICAL RECOMMENDATIONS LEGISLATION

Mr. LOTT. Mr. President, today, I am introducing legislation to allow Member of Congress to once again make political recommendations on behalf of constituents who have applied for Federal civil service employment. We have all been asked or wished to support constituents and friends who seek Federal positions. My bill would simply restore the basic right to make recommendations that Members held previously and would repeal this unnecessary prohibition.

The Hatch Act reform bill passed during the 103d Congress, but it included an onerous amendment that keeps Senators and Representatives from making suggestions. This provision went into effect in February 1994 and has probably caused difficulties for virtually every Member as constituents often ask us for recommendations when they have applied for Federal jobs.

Contacting a Federal agency in the interest of a citizen is the most basic of constituent services. My bill would restore us the ability to recommend those constituents who we feel will do an outstanding job with the Federal civil service. The bureaucracy needs applicants from outside the beltway to effect a change in how the U.S. Government works today. Exceptional candidates recommended by Senators and Representatives can help make these changes.

I urge my colleagues to join me in supporting this important legislation. 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. 253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITIONS AGAINST POLITICAL RECOMMENDATIONS RELATING TO FEDERAL EMPLOYMENT.

(a) IN GENERAL—Section 3303 of title 5, United States Code, is amended to read as follows:

''§ 3303. Competitive service; recommendations of Senators or Representatives

''An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The table of sections for chapter 33 of title 5, United States Code, is amended by amending the item relating to section 3303 to read as follows:

''3303. Competitive service; recommendations of Senators or Representatives.''.

(2) Section 2302(b)(2) of title 5, United States Code, is amended to read as follows:

''(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

''(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

''(B) an evaluation of the character, loyalty, or suitability of such individual;''.

(c) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of the enactment of this Act.

By Mr. LOTT:

S. 254. A bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II; to the Committee on Veterans' Affairs.

THE MERCHANT MARINERS FAIRNESS ACT

Mr. LOTT. Mr. President, today, it is my pleasure to reintroduce the Merchant Mariners Fairness Act.

My bill would grant veterans status to American merchant mariners who have been denied this status a well as veterans benefits. Similar legislation passed the House last year and related provisions were included in the Coast Guard authorization bill; however, these provisions were not included in the final conference report of that bill.

In 1988, the Secretary of the Air Force decided, for the purposes of granting veterans benefits to merchant seamen, that the cut-off date for service would be August, 15, 1945, V–J Day, rather than December 31, 1946, when hostilities were declared officially ended. My bill would correct the 1988 decision and extend veterans benefits to those merchant mariners who served from August 15, 1945 to December 31, 1946. It would extend eligibility for veterans burial benefits, funeral benefits, and related benefits for certain members of the U.S. merchant marine during World War II.

I urge my colleagues to join me in supporting this important legislation. 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. 254

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MERCHANT MARINER BENEFITS.

(a) Part G of subtitle II, title 46, United States Code, is amended by adding at the end of the following new chapter:

''CHAPTER 112—MERCHANT MARINER BENEFITS

''Sec.
''11201. Qualified service.
''11202. Documentation of qualified service.
''11203. Eligibility for certain veterans' benefits.
''11204. Processing fees.

''§ 11201. Qualified service

''For purposes of this chapter, a person engaged in qualified service if, between August 16, 1945, and December 31, 1946, the person—

''(1) was a member of the United States merchant marine (including the Army Transport Service and the Naval Transportation Service) serving as a crewmember of a vessel that was—

''(A) operated by the War Shipping Administration or the Office of Defense Transportation (or an agent of the Administration or Office);

''(B) operated in waters other than inland waters, the Great Lakes, other lakes, bays, and harbors of the United States;

''(C) under contract or charter to, or property of, the Government of the United States; and

''(D) serving the Armed Forces; and

''(2) while so serving, was licensed or otherwise documented for service as a crewmember of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.

''§ 11202. Documentation of qualified service

''(a) The Secretary shall, upon application—

''(1) issue a certificate of honorable discharge to a person who, as determined by the Secretary, engaged in qualified service of a nature and duration that warrants issuance of the certificate; and

''(2) correct, or request the appropriate official of the Federal Government to correct, the service records of the person to the extent necessary to reflect the qualified service and the issuance of the certificate of honorable discharge.

''(b) The Secretary shall take action on an application under subsection (a) not later than one year after the Secretary receives the application.

''(c) In making a determination under subsection (a)(1), the Secretary shall apply the same standards relating to the nature and duration of service that apply to the issuance of honorable discharges under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note).

''(d) An official of the Federal Government who is requested to correct service records under subsection (a)(2) shall do so.

''§ 11203. Eligibility for certain veterans' benefits

''(a) The qualified service of an individual who—

''(1) receives an honorable discharge certificate under section 11202 of this title, and

''(2) is not eligible under any other provision of law for benefits under laws administered by the Secretary of Veterans Affairs,

is deemed to be active duty in the Armed Forces during a period of war for purposes of eligibility for benefits under chapters 23 and 24 of title 38.

''(b) The Secretary shall reimburse the Secretary of Veterans Affairs for the value of benefits that the Secretary of Veterans Affairs provides for an individual by reason of eligibility under this section.

''(c) An individual is not entitled to receive, and may not received, benefits under this chapter for any period before the date on which this chapter takes effect.

''§ 11204. Processing fees

''(a) The Secretary shall collect a fee of $30 from each applicant for processing an application submitted under section 11202(a) of this title.

''(b) Amounts received by the Secretary under this section shall be credited to appropriations available to the Secretary for carrying out this chapter.''.

(b) The table of chapters at the beginning of subtitle II of title 46, United States Code, is amended by inserting after the item relating to chapter 111 the following:

''112. Merchant Mariner Benefits 11201''.

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

S. 255. A bill to require the Secretary of the Army to carry out such activities as are necessary to stabilize the bluffs along the Mississippi River in the vicinity of Natchez, MS, and for other purposes; to the Committee on Environment and Public Works.

NATCHEZ BLUFFS STABILIZATION LEGISLATION

Mr. LOTT. Mr. President, I rise today to introduce legislation to authorize the Corps of Engineers to stabilize sections of the Natchez Bluffs. The deterioration of these bluffs has created a profound danger to both life and property.

These bluffs overlook the Mississippi River and are formed by loess soil, a very fine powdery substance that practically liquefies when it gets wet. Water has infiltrated this soil causing numerous and unexpected mudslides and sloughing. This has put the historic homes on the bluffs and at their base in jeopardy.

Natchez has a long and distinguished history. Not only was this area the ancestral home for the Natchez Indians; it is the oldest settlement in my State. In fact, it is the oldest settlement on the Mississippi River, even older than New Orleans or St. Louis. When my State was a territory, Natchez was our capital, and during the antebellum times it was a major center for cotton trading. Natchez has been designated as a national historical park. The Natchez Trace, which was a major inland trade route during colonial days, historically started at these bluffs.

Last year the National Trust for Historic Preservation put Natchez on its list of America's ''Eleven Most Endangered Historic Places.'' To quote Richard Moe, president of the National Trust:

> The National Trust strongly supports the authorization for the Army Corps of Engineers to stabilize the bluffs. These historic resources are some of the most outstanding in the United States, and they must not be lost when there is an available remedy to the threat.

In March 1980, there was a very serious slide at the Natchez Bluffs that killed two people and injured many more. Last year there was another slide which carried away a significant portion of the bluffs. Clearly, the bluffs are now past the point of makeshift repair measures which the State and the municipality have attempted. Now is the time to have the Government Federal engineer step in. The Corps of Engineers examined the current situation, and their most recent draft report characterizes the deteriorating condition as an emergency.

I encourage all my colleagues to support this bill and the idea behind it. Not just due to the imminent danger posed to life by the real possibility for additional slides, but also for preserving nationally recognized historic property. I introduced similar legislation last year as Senate bill 1492, that would do essentially the same thing.

I am pleased to be joined by Senator THAD COCHRAN, the senior Senator from my State, in cosponsoring this legislation to protect these historically significant properties and to prevent potential loss of lives.

Mr. COCHRAN. Mr. President, I am pleased to join my colleague, Senator LOTT, in cosponsoring legislation which would authorize funds to stabilize the river bluffs at Natchez.

Two years ago, at my request, the Energy and Water Appropriations Subcommittee, in its fiscal year 1994 appropriations bill, asked the Corps of Engineers to undertake a technical study of the condition and possible stabilizing actions that could be taken. Last year, we asked the corps to prepare a second report focusing on updated cost estimates and, in light of more recent bad weather and deterioration, on the current severity of the situation. We have seen the corps' second report. In that report, the Corps of Engineers states what the Governor of Mississippi, the mayor of Natchez, and the people of Natchez have known and have been saying for some time: That the Natchez Bluff situation is an emergency.

Last October, the Natchez Democrat editorialized, ''Each day that passes without a remedy, sections of the bluffs become more precarious, threatening homes and businesses.'' Natchez Bluffs is like a deteriorating health problem. Every day that goes by without action means that corrective action will be more complex and more expensive. And so, in this day when budget constraints are the watchword, it is even more imperative to move on truly important projects like this one without delay. More delay will mean more money. More delay will mean more hardship for the people of Natchez.

Therefore, I urge the Senate to approve this authorization for Corps of Engineers work in Natchez. Individuals homes, businesses, and important, historic sections of a grand old American city are at stake.

By Mr. DOLE (for himself, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. SIMPSON):

S. 256. A bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes; to the Committee on Armed Services.

MISSING SERVICE PERSONNEL ACT

Mr. DOLE. Mr. President, today I rise, with my colleagues, Senator SIMPSON, Senator LAUTENBERG, and Senator LIEBERMAN, to introduce the Missing Service Personnel Act of 1995. This legislation is similar to that which was introduced last year but which the Congress was unable to consider before adjournment. The legislation would reform the Department of Defense's procedures for determining whether members of the Armed Forces should be listed as missing or presumed dead. Legislation pertaining to those missing in action has not changed in the past 50 years. Since the Vietnam war, the Department of Defense and the U.S. Government have been criticized for their handling of the POW/MIA issue. Some of that criticism is legitimate. Some of it has been brought upon the Government by its own actions or inactions. This bill attempts to correct most of those problems and establish a fair and equitable procedure for determining the exact status of such personnel. At the same time, it is my hope that we might restore some of the Department's credibility on this issue and rebuild faith and trust between the public and our Federal Government.

This bill attempts to ensure that missing members of the Armed Forces or civilian employees accompanying them are fully accounted for by the Government and that they are not declared dead solely because of the passage of time. The legislation would establish new procedures for determining the whereabouts and status of missing persons. Additionally, the bill provides for the appointment of counsel for the missing persons, ensuring that the Government does not disregard their interests and affording them due process of law. The proposal also attempts to remove the curtains of secrecy which often seem to surround these cases by ensuring access to Government information and by making all information available to the hearing officers. Additionally, the missing person's complete personnel file would be made available for review by the family members. Moreover, the legislation attempts to protect the interests of the missing person's immediate family, dependents, and next of kin, allowing them to be represented by counsel and to participate with the boards of inquiry. It is our hope that by allowing more participation by the family, requiring legal representation of the missing persons, and permitting Federal court review of all determinations, we will establish fundamental fairness for all concerned.

We recognize that the Department of Defense has concerns about this legislation. At the same time, we also realize that families of missing personnel raise legitimate issues. However, in my view, we need to look at this issue from the perspective of those brave men and women currently serving in our Armed Forces. As this bill moves through the legislative process, it is our hope that all of these issues and concerns will be addressed.

Mr. President, the men and women in uniform must know that this Nation will do everything possible to return them safely home in the event they become missing while serving in armed conflict. Additionally, we must assure them that a more open and fair procedure will be established to determine their exact status.

In closing, let me note the support that this legislation has already received. I have received letters encouraging the introduction of this bill from the American Legion, the Disabled American Veterans, the National Vietnam Veterans Coalition, and Vietnow.

Additionally, in just the short time between its introduction last year and our adjournment, this legislation gained a total of 23 cosponsors. I am pleased to again sponsor this important legislation with the distinguished Senator from New Jersey, and urge my colleagues to support it.

Mr. President, I ask unanimous consent that the text of the bill and letters from each of these organizations be printed in the RECORD following my statement.

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

S. 256

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 ''Missing Service Personnel Act of 1995''.

SEC. 2. PURPOSE.

The purpose of this Act is to ensure that any member of the Armed Forces and any civilian employee of the Federal Government or contractor of the Federal Government who serves with or accompanies an Armed Force in the field under orders is fully accounted for by the Federal Government and, as a general rule, is not declared dead solely because of the passage of time.

SEC. 3. DETERMINATION OF WHEREABOUTS AND STATUS OF CERTAIN MISSING PERSONS.

(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by adding at the end of the following new section:

''§ 1060b. Missing persons: informal investigations; inquiries; determinations of death; personnel files

''(a) INFORMAL INVESTIGATIONS.—

''(1) IN GENERAL.—After receiving factual information that the whereabouts or status of a person described in paragraph (2) is uncertain and that the absence of the person may be involuntary, the military commander of the unit, facility, or area to or in which the person is assigned shall conduct an investigation into the whereabouts and status of the person.

''(2) COVERED PERSONS.—Paragraph (1) applies to the following individuals:

''(A) Any member of the armed forces who disappears during a time or war or national emergency, or during a period of such other hostilities as the Secretary of Defense may prescribe.

''(B) Any civilian employee of the Federal Government (including an employee of a contractor of the Federal Government) who—

''(i) serves with or accompanies an armed force in the field during such a time or period; and

''(ii) disappears during such service or accompaniment.

''(3) FURTHER ACTIVITIES.—As a result of an investigation into the whereabouts and status of a person under paragraph (1), a commander shall—

''(A) place the person in a missing status;

''(B) submit a notice that the person has been placed in a missing status to—

''(i) in the case of a person who is a member of the armed forces, the officer having general court-martial authority over the person;

''(ii) in the case of a person who is a civilian employee of the Federal Government or contractor of the Federal Government, the Secretary of the department employing the person or contracting with the contractor;

''(C) retain and safeguard for official use any information, documents, records, statements, or other evidence relating to the whereabouts or status of the person that result from the investigation or from actions taken to locate the person; and

''(D) submit to the officer having general court-martial authority over the person, in the case of a member of the armed forces, or to the Secretary of the department employing the person or contracting with the contractor, in the case of a civilian employee of the Federal Government or contractor of the Federal Government, as the case may be—

''(i) not later than 48 hours after the date on which the absence of the person is officially noted, a report that—

''(I) contains information on the absence or disappearance of the person;

''(II) describes the actions taken to locate the person; and

''(III) sets forth any information relating to the whereabouts or status of the person not contained in any previous report;

''(ii) not later than 7 days after such date, a report that—

''(I) summarizes the actions taken to locate the person; and

''(II) sets forth any information relating to the whereabouts or status of the person not contained in any previous report;

''(iii) not later than 30 days after such date, a report that—

''(I) summarizes the continuing actions to locate the person; and

''(II) sets forth any information on the whereabouts or status of the person that results from such actions; and

''(iv) at any other time, a report that sets forth any other information that may be relevant to the whereabouts or status of the person.

''(b) INITIAL INQUIRY.—

''(1) IN GENERAL.—Not later than 7 days after receiving notification under subsection (a)(3)(B) that a person has been placed in missing status, the officer having general court-martial authority over the person, in the case of a person who is a member of the armed forces, or the Secretary of the department employing the person or contracting with the contractor, in the case of a person who is a civilian employee of the Federal Government or contractor of the Federal

Government, shall appoint a board to conduct an inquiry into the whereabouts and status of the person.

''(2) SCOPE OF CERTAIN INQUIRIES.—If it appears to the official who appoints a board under this subsection that the absence or missing status of two or more persons is factually related, the official may appoint one board under this subsection to conduct the inquiry into the whereabouts or status of the persons.

''(3) COMPOSITION.—

''(A) IN GENERAL.—A board appointed under this subsection shall consist of at least one individual described in subparagraph (B) who has experience with and understanding of military operations or activities similar to the operation or activity in which the person or persons disappeared.

''(B) REQUIRED MEMBER.—An individual referred to in subparagraph (A) is the following:

''(i) A military officer, in the case of an inquiry with respect to a member of the armed forces.

''(ii) A civilian, in the case of an inquiry with respect to a civilian employee of the Federal Government or contractor of the Federal Government.

''(C) ACCESS TO CLASSIFIED INFORMATION.—Each member of a board appointed for an inquiry under this subsection shall have a security clearance that affords the member access to all information relating to the whereabouts and status of the missing person or persons covered by the inquiry.

''(4) ACTIVITIES.—A board appointed to conduct an inquiry into the whereabouts or status of a missing person or persons under this subsection shall—

''(A) collect, develop, and investigate all facts and evidence relating to the disappearance, whereabouts, or status of the person or persons;

''(B) collect appropriate documentation of the facts and evidence covered by the investigation;

''(C) analyze the facts and evidence, make findings based on the analysis, and draw conclusions as to the current whereabouts and status of the person or persons; and

''(D) recommend to the officer having general court-martial authority over the person, in the case of a person who is a member of the armed forces, or the Secretary of the department employing the person or contracting with the contractor, in the case of a person who is a civilian employee of the Federal Government or contractor of the Federal Government, that—

''(i) the person or persons continue to have a missing status; or

''(ii) the person or persons be declared (I) to have deserted, (II) to be absent without leave, or (III) to be dead.

''(5) INQUIRY PROCEEDINGS.—During the proceedings of an inquiry under this subsection, a board shall—

''(A) collect, record, and safeguard all classified and unclassified facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information relating to the whereabouts or status of the person or persons covered by the inquiry;

''(B) gather facts and information relating to actions taken to find the person or persons, including any evidence of the whereabouts or status of the person or persons that arises from such actions; and

''(C) maintain a record of the proceedings.

''(6) COUNSEL FOR MISSING PERSON.—

''(A) IN GENERAL.—The official who appoints a board to conduct an inquiry under this subsection shall appoint counsel to represent the person or persons covered by the inquiry.

''(B) QUALIFICATIONS.—An individual appointed as counsel under this paragraph shall—

''(i) meet the qualifications set forth in section 827(b) of this title (article 27(b) of the Uniform Code of Military Justice); and

''(ii) have a security clearance that affords the individual access to all information relating to the whereabouts or status of the person or persons covered by the inquiry.

''(C) RESPONSIBILITIES AND DUTIES.—An individual appointed as counsel under this paragraph—

''(i) shall have access to all facts and evidence considered by the board during the proceedings under the inquiry for which the counsel is appointed;

''(ii) shall observe all official activities of the board during such proceedings;

''(iii) may question witnesses before the board;

''(iv) shall monitor the deliberations of the board;

''(v) shall review the report of the board under paragraph (9); and

''(vi) shall submit to the official who appointed the board an independent review of such report.

''(D) TREATMENT OF REVIEW.—A review of the report of a board on an inquiry that is submitted under subparagraph (C)(vi) shall be made an official part of the record of the board with respect to the inquiry.

''(7) ACCESS TO MEETINGS.—The proceedings of a board during an inquiry under this subsection shall be closed to the public, including to any member of the immediate family, dependent, primary next of kin, or previously designated person of the person or persons covered by the inquiry.

''(8) RECOMMENDATION ON STATUS.—

''(A) IN GENERAL.—Upon completion of an inquiry into the whereabouts or status of a person or persons under this subsection, a board shall make a recommendation to the official who appointed the board as to the current whereabouts or status of the person or persons.

''(B) RECOMMENDATION OF STATUS AS DEAD.—

''(i) IN GENERAL.—A board may not recommend under subparagraph (A) that a person or persons be declared dead unless conclusive proof of the death of the person or persons is established by the board.

''(ii) DEFINITION.—In this subparagraph, the term 'conclusive proof of death', in the case of a person or persons, means evidence establishing that death is the only plausible explanation for the absence of the person or persons.

''(9) REPORT.—

''(A) REQUIREMENT.—A board appointed under this subsection shall submit to the official who appointed the board a report on the inquiry carried out by the board. Such report shall include—

''(i) a discussion of the facts and evidence considered by the board in the inquiry; and

''(ii) the recommendation of the board under paragraph (8).

''(B) SUBMITTAL DATE.—A board shall submit a report under this paragraph not later than 45 days after the date of the first official notice of the disappearance of the person or persons covered by the inquiry described in the report.

''(C) PUBLIC AVAILABILITY.—A report submitted under this paragraph may not be made public until 1 year after the date referred to in subparagraph (B).

''(10) ACTIONS BY APPOINTING OFFICIAL.—

''(A) REVIEW.—Not later than 15 days after the date of the receipt of a report from a board under paragraph (9), the official who appointed the board shall review—

''(i) the report; and

''(ii) the review submitted under paragraph (6)(C)(vi) by the counsel for the person or persons covered by the inquiry described in the report.

''(B) SCOPE OF REVIEW.—In conducting a review of a report under subparagraph (A), the official receiving the report shall determine whether or not the report is complete and free of administrative error.

''(C) RETURN.—If an official determines under subparagraph (B) that a report is incomplete, or that a report is not free of administrative error, the official may return the report to the board for further action on the report by the board.

''(D) DETERMINATION OF STATUS.—Upon a determination by the official concerned that a report reviewed by the official under this paragraph is complete and free of administrative error, the official shall make a determination of the status of the person or persons covered by the report.

''(11) REPORT TO INTERESTED PERSONS.—Not later than 90 days after the first official notice of the disappearance of a person or persons, the official who appoints a board of inquiry into the whereabouts or status of the person or person under this subsection shall—

''(A) provide an unclassified summary of the report of the board to the members of the immediate family, dependents, primary next of kin, and previously designated persons of the person or persons; and

''(B) inform the individuals referred to in subparagraph (A) that the Federal Government will conduct a subsequent inquiry into the whereabouts or status of the person or persons not earlier than 1 year after the date of the first official notice of the disappearance of the person or persons, unless information becomes available sooner that would result in a substantial change in the official status of the person or persons.

''(12) ADDITIONAL INVESTIGATION.—

''(A) IN GENERAL.—If information on the whereabouts or status of a person or persons covered by an inquiry under this subsection becomes available within 1 year after the date of the first official notice of the disappearance of the person or persons, the official who appointed the board to inquire into the whereabouts or status of the person or persons under this subsection shall appoint an additional board to conduct an inquiry into the information

''(B) CONDUCT OF INQUIRY.—The appointment and activities of a board under this paragraph shall be subject to the provisions of this subsection.

''(c) SUBSEQUENT INQUIRY.—

''(1) REQUIREMENT.—

''(A) IN GENERAL.—If as a result of an inquiry under subsection (b) an official determines under paragraph (10)(D) of that subsection that a person or persons retain or be placed in a missing status, the Secretary concerned shall appoint a board under this subsection to conduct an inquiry into the whereabouts and status of the person or persons.

''(B) DEFINITION.—For purposes of this subsection, the term 'Secretary concerned' means the following:

''(i) In the case of a member of the armed forces, the Secretary of the military department having jurisdiction over the armed force of the member.

''(ii) In the case of a civilian employee of the Federal Government or contractor of the Government, the Secretary of the department employing the employee or contracting with the contractor, as the case may be.

''(2) DATE OF APPOINTMENT.—The Secretary concerned shall appoint a board under this subsection to conduct an inquiry into the whereabouts and status of a person or persons on or about 1 year after the date of the

first official notice of the disappearance of the person or persons.

''(3) SCOPE OF CERTAIN INQUIRIES.—If it appears to the Secretary concerned that the absence or status of two or more persons is factually related, the Secretary may appoint one board under this subsection to conduct the inquiry into the whereabouts or status of the persons.

''(4) COMPOSITION.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a board appointed under this subsection shall consist of the following:

''(i) In the case of a board appointed to inquire into the whereabouts or status of a member or members of the armed forces, not less than three officers having a grade O–4 or higher.

''(ii) In the case of a board appointed to inquire into the whereabouts or status of a civilian employee or employees of the Federal Government or contractor of the Government—

''(I) not less than three civilian employees of the Federal Government whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

''(II) such members of the armed forces as the Secretary concerned and the Secretary of Defense jointly determine advisable.

''(B) PRESIDENT OF BOARD.—The Secretary concerned shall designate one member of each board appointed under this subsection as President of the board. The President shall have a security clearance that affords the President access to all information relating to the whereabouts and status of the person or persons covered by the inquiry.

''(C) REQUIREMENTS FOR OTHER MEMBERS.—

''(i) ATTORNEY.—One member of each board appointed under this subsection shall be an attorney, or judge advocate, who has expertise in the public law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

''(ii) OCCUPATIONAL SPECIALIST.—One member of each board appointed under this subsection shall be an individual who has—

''(I) an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

''(II) an understanding of and expertise in the official activities of one or more such persons at the time such person or persons disappeared.

''(iii) EXPERT IN TRANSPORTATION.—If the person or persons covered by an inquiry disappeared in transit, one member of the board appointed for the inquiry shall be an individual whose occupational specialty relates to the piloting, navigation, or operation of the mode of transportation in which the person or persons were travelling at the time such person or persons disappeared.

''(5) ACTIVITIES.—A board appointed under this subsection to conduct an inquiry into the whereabouts or status of a person or persons shall—

''(A) review the report under paragraph (9) of subsection (b) of the board appointed to conduct the inquiry into the status or whereabouts of the person or persons under subsection (b) and the determination under paragraph (10)(D) of that subsection of the official who appointed the board under that subsection as to the status of the person or persons;

''(B) collect and evaluate any documents, facts, or other evidence with respect to the whereabouts or status of the person or persons that have become available since the completion of the inquiry under subsection (b);

''(C) draw conclusions as to the whereabouts or status of the person or persons;

''(D) determine on the basis of the activities under subparagraphs (A) and (B) whether the status of the person or persons should be continued or changed; and

''(E) issue a report to the Secretary concerned describing the findings and conclusions of the board, together with a recommendation on the whereabouts or status of the person or persons.

''(6) COUNSEL FOR MISSING PERSON OR PERSONS.—

''(A) IN GENERAL.—The Secretary who appoints a board to conduct an inquiry under this subsection shall appoint counsel to represent the person or persons covered by the inquiry.

''(B) QUALIFICATIONS.—An individual appointed as counsel under this paragraph shall—

''(i) meet the qualifications set forth in section 827(b) of this title (article 27(b) of the Uniform Code of Military Justice); and

''(ii) have a security clearance that affords the individual access to all information relating to the whereabouts or status of the person or persons.

''(C) RESPONSIBILITIES AND DUTIES.—An individual appointed as counsel under this paragraph—

''(i) shall have access to all facts and evidence considered by the board during the proceedings under the inquiry for which the counsel is appointed;

''(ii) shall observe all official activities of the board during such proceedings;

''(iii) may question witnesses before the board;

''(iv) shall monitor the deliberations of the board; and

''(v) shall review the report of the board under paragraph (11); and

''(vi) shall submit to the Secretary concerned an independent review of the recommendation of the board under paragraph (10).

''(D) TREATMENT OF REVIEW.—The review of the report of a board on an inquiry that is submitted under subparagraph (C)(vi) shall be made an official part of the record of the board with respect to the inquiry.

''(7) PARTICIPATION OF CERTAIN INTERESTED PERSONS IN PROCEEDINGS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, the members of the immediate family, dependents, primary next of kin, and previously designated persons of the person or persons covered by an inquiry under this subsection may participate at the proceedings of the board during the inquiry.

''(B) NOTIFICATION OF PERSONS.—The Secretary concerned shall notify the individuals referred to in subparagraph (A) of the opportunity to participate at the proceedings of a board not later than 60 days before the first meeting of the board.

''(C) RESPONSE.—An individual who receives notice under subparagraph (B) shall notify the Secretary of the intent, if any, of the individual to participate at the proceedings of a board not later than 21 days after the date of the individual's receipt of the notice.

''(D) SCHEDULE AND LOCATION OF PROCEEDINGS.—The Secretary shall, to the maximum extent practicable, provide that the schedule and location of the proceedings of a board under this subsection be established so as to be convenient to the individuals who notify the Secretary under subparagraph (C) of their intent to participate at such proceedings.

''(E) MANNER OF PARTICIPATION.—Individuals who notify the Secretary under subparagraph (C) of their intent to participate at the proceedings of a board—

''(i) in the case of individuals whose entitlement to the pay or allowances (including allotments) of a missing person could be reduced or terminated as a result of a revision in the status of the missing person, may attend the proceedings of the board with private counsel;

''(ii) shall have access to the personnel file of the missing person, to unclassified reports (if any) of the board appointed under subsection (b) to conduct the inquiry into the whereabouts and status of the person, and to any other unclassified information or documents relating to the whereabouts and status of the person;

''(iii) shall be afforded the opportunity to present information at the proceedings that such individuals consider to be relevant to the proceedings; and

''(iv) subject to subparagraph (F), shall be afforded the opportunity to submit in writing objections to the recommendations of the board under paragraph (10) as to the status of the missing person.

''(F) OBJECTIONS.—Objections to the recommendations of the board under subparagraph (E)(iv) shall be submitted to the President of the board not later than 24 hours after the date on which such recommendations are made. The President shall include the objections in the report of the board to the Secretary concerned under paragraph (12).

''(G) PROHIBITION ON REIMBURSEMENT.—Individuals referred to in subparagraph (A) who participate in the proceedings of a board under this paragraph shall not be entitled to reimbursement by the Federal Government for any costs incurred by such individuals in attending such proceedings, including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses.

''(8) AVAILABILITY OF INFORMATION TO BOARDS.—

''(A) IN GENERAL.—In conducting proceedings in an inquiry under this subsection, a board may secure directly from any department or agency of the Federal Government any information that the members of the board consider necessary in order to conduct the proceedings.

''(B) AUTHORITY TO RELEASE.—Upon written request from the President of a board, the head of a department or agency of the Federal Government shall release information covered by the request to the board. In releasing such information, the head of the department or agency shall—

''(i) declassify to an appropriate degree classified information; or

''(ii) release the information in a manner not requiring the removal of markings indicating the classified nature of the information.

''(C) TREATMENT OF CLASSIFIED INFORMATION.—

''(i) RELEASE.—If a request for information under subparagraph (B) covers classified information that cannot be declassified, cannot be removed before release from the information covered by the request, or cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the President of the board making the request and the counsel for the missing person appointed under paragraph (6).

''(ii) USE IN PROCEEDINGS.—The President of a board shall close to persons who do not have appropriate security clearances the proceeding of the board at which classified information is discussed. Participants at a proceeding of a board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. The Secretary concerned shall assist the President of a board in ensuring that classified information is not compromised through board proceedings.

''(9) BOARD MEETINGS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the proceedings of a board under this subsection shall be open to the public.

''(B) EXCEPTIONS.—A proceeding of a board shall be closed to the public at the request of the following:

''(i) The counsel appointed under paragraph (6) for the person or persons covered by the proceeding.

''(ii) Any member of the immediate family, dependent, primary next of kin, or previously designated person of the person or persons.

''(iii) The Secretary who appointed the board, but only if such Secretary determines that a proceeding open to the public could jeopardize the health and well-being of other missing persons or impair the activities of the Federal Government to recover missing persons in the theater of operations or the area in which the missing person or persons are thought to have disappeared.

''(iv) The President of the board, but only for discussion of classified information.

''(10) RECOMMENDATION ON STATUS.—

''(A) IN GENERAL.—Upon completion of proceedings in an inquiry under this subsection, a board shall make a recommendation as to the current whereabouts or status of the missing person or persons covered by the inquiry.

''(B) RECOMMENDATION OF DEAD STATUS.—

''(i) IN GENERAL.—A board may not recommend under subparagraph (A) that a person or persons be declared dead unless—

''(I) conclusive proof of death is established by the board; and

''(II) in making the declaration, the board complies with subsection (f).

''(ii) DEFINITION.—In this subparagraph, the term 'conclusive proof of death', in the case of a person or persons, means evidence establishing that death is the only plausible explanation for the absence of the person or persons.

''(11) REPORT.—

''(A) REQUIREMENT.—A board appointed under this subsection shall submit to the Secretary concerned a report on the inquiry carried out by the board, together with the evidence considered by the board during the inquiry.

''(B) CLASSIFIED ANNEX.—The report may include a classified annex.

''(12) ACTIONS BY SECRETARY.—

''(A) REVIEW.—Not later than 30 days after the receipt of a report from a board under paragraph (11), the Secretary concerned shall review—

''(i) the report;

''(ii) the review submitted to the Secretary under paragraph (6)(C)(vi) by the counsel for the person or persons covered by the report; and

''(iii) the objections, if any, to the report submitted to the President of the board under paragraph (7)(F).

''(B) SCOPE OF REVIEW.—In reviewing the report, review, and objections under subparagraph (A), the Secretary shall determine whether or not the report is complete and free of administrative error.

''(C) FURTHER ACTION.—If the Secretary determines under subparagraph (B) that a report is incomplete, or that a report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

''(D) DETERMINATION OF STATUS.—Upon a determination by the Secretary that a report reviewed by the Secretary under this paragraph is complete and free of administrative error, the Secretary shall make a determination of the status of the person or persons covered by the report.

''(13) REPORT TO INTERESTED PERSONS.—Not later than 90 days after a board submits a report on a person or persons under paragraph (11), the Secretary concerned shall—

''(A) provide an unclassified summary of the report to the members of the immediate family, the dependents, the primary next of kin, and the previously designated persons of the person or persons covered by the report; and

''(B) in the case of a person or persons who continue to be in missing status, inform the members, dependents, kin, and persons of the person or persons that the Federal Government will conduct a further investigation into the whereabouts or status of the person or persons not later than 3 years after the date of the official notice of the disappearance of the person or persons, unless information becomes available within that time that would result in a substantial change in the official status of the person or persons.

''(14) RECONVENING OF BOARD.—

''(A) IN GENERAL.—If the Secretary concerned recommends that a person or persons continue in missing status, or that a missing person previously declared dead be given a missing status, the Secretary shall reconvene the board when information becomes available that would directly lead to a determination of status of the missing person or persons.

''(B) CONDUCT OF PROCEEDINGS.—The provisions of this subsection shall apply to the activities of a board convened under this paragraph.

''(d) FURTHER REVIEW.—

''(1) SUBSEQUENT REVIEW.—

''(A) IN GENERAL.—The Secretary concerned shall appoint a board to conduct an inquiry into the whereabouts or status of any person or persons determined by the Secretary under subsection (c)(12)(D) to be a person or persons in missing status.

''(B) FREQUENCY OF APPOINTMENT.—Subject to subparagraph (C), the Secretary shall appoint a board to conduct an inquiry with respect to a person or persons under this paragraph—

''(i) on or about 3 years after the date of the official notice of the disappearance of the person or persons; and

''(ii) not later than every 3 years thereafter.

''(C) DELIMITING DATE.—The Secretary shall not be required to appoint a board under this paragraph more than 12 years after the end of the time of war or emergency or period of hostilities in which the missing person or persons disappeared.

''(2) REVIEW OF PROBATIVE INFORMATION.—Upon receipt of information that could result in a change or revision of status of a missing person or persons, the Secretary concerned shall appoint a board to evaluate the information and make a recommendation as to the status of the person or persons to which the information relates.

''(3) CONDUCT OF PROCEEDINGS.—The appointment of and activities before a board appointed under this subsection shall be governed by the provisions of subsection (c).

''(e) PERSONNEL FILES.—

''(1) INFORMATION IN FILES.—Except as provided in paragraph (2), the Secretary of the department having jurisdiction over a missing person at the time of the person's disappearance shall, to the maximum extent practicable, ensure that the personnel file of the person contains all information in the possession of the Federal Government relating to the disappearance and whereabouts or status of the person.

''(2) CLASSIFIED INFORMATION.—

''(A) AUTHORITY TO WITHHOLD.—The Secretary concerned may withhold classified information from a personnel file under this subsection.

''(B) NOTICE OF WITHHOLDING.—If the Secretary concerned withholds classified information from the personnel file of a person, the Secretary shall ensure that the file contains the following:

''(i) A notice that the withheld information exists.

''(ii) A notice of the date of the most recent review of the classification of the withheld information.

''(3) WRONGFUL WITHHOLDING.—Any person who knowingly and willfully withholds from the personnel file of a missing person any information (other than classified information) relating to the disappearance or whereabouts or status of a missing person shall be fined as provided in title 18, or imprisoned not more than 1 year, or both.

''(4) AVAILABILITY OF INFORMATION.—The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to members of the immediate family, dependents, primary next of kin, or previously designated person of the person.

''(f) RECOMMENDATION OF STATUS OF DEATH.—

''(1) REQUIREMENTS RELATING TO RECOMMENDATION.—A board appointed under subsection (c) or (d) may not recommend that a person be declared dead unless—

''(A) evidence (other than the passage of a period of time of less than 50 years) exists to suggest that the person is dead;

''(B) the Federal Government possesses no evidence that reasonably suggests that the person is alive;

''(C) representatives of the Federal Government have made a complete search of the area where the person was last seen (unless, after making every good faith effort to obtain access to such area, such representatives are not granted such access); and

''(D) representatives of the Federal Government have examined the records of the government or entity having control over the area where the person was last seen (unless, after making every good faith effort to obtain access to such records, such representatives are not granted such access).

''(2) SUBMITTAL OF INFORMATION ON DEATH.—If a board appointed under subsection (c) or (d) makes a recommendation that a missing person be declared dead, the board shall include in the report of the board with respect to the person under such subsection (c) or (d) the following:

''(A) A detailed description of the location where the death occurred.

''(B) A statement of the date on which the death occurred.

''(C) A description of the location of the body, if recovered.

''(D) If the body has been recovered, a certification by a licensed practitioner of forensic medicine that the body recovered is that of the missing person.

''(g) JUDICIAL REVIEW.—

''(1) IN GENERAL.—

''(A) JUDICIAL REVIEW.—A person referred to in subparagraph (B) may obtain review of a finding described in subparagraph (C) by the court of appeals of the United States for the circuit in which the person resides or in which the finding was made.

''(B) AVAILABILITY OF REVIEW.—Subparagraph (A) applies to any of the following persons with respect to a missing person subject to a finding described in subparagraph (C):

''(i) A member of the immediate family of the person.

''(ii) A dependent of the person.

''(iii) The primary next of kin of the person.

''(iv) A person previously designated by the person.

''(C) COVERED FINDINGS.—Subparagraph (A) applies to the following findings:

''(i) A finding by a board appointed under subsection (c) or (d) that a missing person is dead.

''(ii) A finding by a board appointed under subsection (h) that confirms that a missing person formerly declared dead is in fact dead.

''(D) COMMENCEMENT OF REVIEW.—A person referred to in subparagraph (B) shall request review of a finding under this paragraph by filing with the appropriate court a written petition requesting that the finding be set aside.

''(2) APPEAL AND FINALITY OF REVIEW.—The decision of the court of appeals on a petition for review under paragraph (1) shall be final, except that it shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

''(3) ADDITIONAL REVIEW.—

''(A) IN GENERAL.—Subject to subparagraph (B), upon request by a person referred to in paragraph (1)(B), the Secretary concerned shall appoint a board to review the status of a person covered by a finding described in paragraph (1)(C) if the court of appeals sets aside the finding and—

''(i) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed;

''(ii) the petition for certiorari has been denied; or

''(iii) the decision of the court of appeals has been affirmed by the Supreme Court.

''(B) DELIMITING DATE.—A person referred to in subparagraph (A) shall make a request referred to in that subparagraph not later than 3 years after the date of the event under that subparagraph that entitles the person to request the appointment of a board.

''(h) PERSONS PREVIOUSLY DECLARED DEAD.—

''(1) REVIEW OF STATUS.—

''(A) IN GENERAL.—Not later than 2 years after the date of the enactment of the Missing Service Personnel Act of 1994, a person referred to in subparagraph (B) may submit to the appropriate Secretary a request for appointment by the Secretary of a board to review the status of a person previously declared dead.

''(B) AVAILABILITY.—A board shall be appointed under this paragraph based on the request of any of the following persons:

''(i) An adult member of the immediate family of a person previously declared dead.

''(ii) An adult dependent of such person.

''(iii) The primary next of kin of such person.

''(iv) A person previously designated by such person.

''(C) APPROPRIATE SECRETARY.—A request under this paragraph shall be submitted to the Secretary of the department of the Federal Government that had jurisdiction over the person covered by the request at the time of the person's disappearance.

''(2) APPOINTMENT OF BOARD.—Upon request of a person under paragraph (1), the Secretary concerned shall appoint a board to review the status of the person covered by the request.

''(3) ACTIVITIES OF BOARD.—A board appointed under paragraph (2) to review the status of a person shall—

''(A) conduct an investigation to determine the status of the person; and

''(B) issue a report describing the findings of the board under the investigation and the recommendations of the board as to the status of the person.

''(4) SUBSEQUENT REVIEW.—If the Secretary concerned is apprised of any information which would directly lead to a determination of the status of a missing person, the Secretary shall reconvene a board to consider the information.

''(5) EFFECT OF CHANGE IN STATUS.—If a board appointed under this subsection recommends placing a person previously declared dead in a missing status such person shall accrue no pay or allowances as a result of the placement of the person in such status.

''(i) RETURN ALIVE OF PERSON DECLARED MISSING OR DEAD.—

''(1) PAY AND ALLOWANCES.—Any person in a missing status or declared dead under the Missing Persons Act of 1942 (56 Stat. 143) or by a board appointed under this section who is found alive and returned to the control of the United States shall be paid for the full time of the absence of the person while given that status or declared dead under the law and regulations relating to the pay and allowances of persons returning from a missing status.

''(2) EFFECT ON GRATUITIES PAID AS A RESULT OF STATUS.—Paragraph (1) shall not be interpreted to invalidate or otherwise affect the receipt by any person of a death gratuity or other payment from the United States on behalf of a person referred to in paragraph (1) before the date of the enactment of the Missing Service Personnel Act of 1994.

''(j) EFFECT ON STATE LAW.—Nothing in this section shall be construed to invalidate or limit the power of any State court or administrative entity, or the power of any court or administrative entity of any political subdivision thereof, to find or declare a person dead for purposes of the such State or political subdivision.

''(k) DEFINITIONS.—In this section:

''(1) The term 'classified information' means any information the unauthorized disclosure of which (as determined under applicable law and regulations) could reasonably be expected to damage the national security.

''(2) The term 'dependent', in the case of a missing person, mean any individual who would, but for the status of the person, be entitled to receive the pay and allowances (including allotments) of the person.

''(3) The term 'member of the immediate family', in the case of a missing person, means the spouse, adopted or natural child, parent, and sibling of the missing person.

''(4) The term 'missing person' means—

''(A) a member of the armed forces on active duty who is missing; or

''(B) a civilian employee serving with or accompanying an armed force under orders who is missing.

''(6) The term 'missing status' means the status of a missing person who is determined to be absent in a status of—

''(A) missing;

''(B) missing in action;

''(C) interned in a foreign country;

''(D) captured, beleaguered, or besieged by a hostile force; or

''(E) detained in a foreign country against his or her will.

''(6) The term 'primary next of kin', in the case of a missing person, means—

''(A) the principal individual who, but for the status of the person, would receive financial support from the person; or

''(B) in the case of a missing person for whom there is no individual meeting the requirement of subparagraph (A), the family member or other individual designated by the missing person to receive death gratuities.

''(7) The term 'previously designated person', in the case of a missing person, means an individual (other than an individual who is a member of the immediate family of the missing person) designated by the missing person as the individual to be notified of all matters relating to the status of the missing person.

''(8) The term 'State' means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 53 of title 10, United States Code, is amended by adding the end the following:

''1060b. Missing persons: informal investigations; inquiries; determinations of death; personnel files.''.

(c) CONFORMING AMENDMENTS.—(1)(A) Section 555 of title 37, United States Code, is repealed.

(B) The table of sections at the beginning of chapter 10 of such title is amended by striking out the item relating to section 555.

(2) Section 552 of such title is amended—

(A) in the second sentence of the flush matter following paragraph (2) in subsection (a), by striking out ''for all purposes,'' and all that follows through the end of the sentence and inserting in lieu thereof ''for all purposes.'';

(B) in striking out paragraph (2) of subsection (b) and inserting in lieu thereof the following:

''(2) that his death is determined under section 1060b of title 10.''; and

(C) in subsection (e), by striking ''section 555 of this title'' and inserting ''section 1060b of title 10''.

(3) Section 553 of such title is amended—

(A) in subsection (f), by inserting ''under section 1060b of title 10'' after ''When the Secretary concerned'';

(B) by striking out ''the Secretary concerned receives evidence'' and inserting in lieu thereof ''a board convened under section 1060b of title 10 reports''; and

(C) in subsection (g), by striking out ''section 555 of this title'' and inserting ''section 1060b of title 10''.

(4) Section 556 of such title is amended—

(A) in subsection (a)—

(i) by inserting ''and'' at the end of paragraph (3);

(ii) by striking out the semicolon at the end of paragraph (4) and inserting in lieu thereof a period; and

(iii) by striking paragraphs (1), (5), (6), and (7) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;

(B) by striking out subsection (b) and redesignating subsections (c), (d), (e), (f), (g), and (h) as subsections (b), (c), (d), (e), (f), and (g), respectively; and

(C) in subsection (g), as so redesignated—

(i) by striking out the second sentence; and

(ii) by striking ''status'' and inserting ''pay''.

(5) Section 557(a)(1) of such title is amended by striking out '', 553, and 555'' and inserting in lieu thereof ''and 553''.

(6) Section 559(b)(4)(B) of such title is amended by striking out ''section 556(f)'' and inserting in lieu thereof ''section 556(e)''.

SEC. 4. SOLICITATION OF INFORMATION ON DEPENDENTS, FAMILY MEMBERS, AND OTHER DESIGNATED PERSONS.

(a) REQUIREMENT.—Chapter 31 of title 10, United States Code, is amended by adding at the end the following:

''§ 520c. Enlistments: information on dependents, family members, and other designated persons

''(a) The Secretary concerned shall, upon the enlistment or commission of a person in an armed force, require that the person specify in writing the dependents of the person, the members of the immediate family of the person, the primary next of kin of the person, and any other individual that the person shall designate for purposes of section 1060b of this title. The purpose of the specification is to ensure the notification of appropriate individuals in the event that

the person is placed in missing status under that section.

''(b) The Secretary concerned shall, upon the request of a person referred to in subsection (a), permit the person to revise at any time the individuals specified by the person under that subsection. The person shall make any such revision in writing.''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

''520c. Enlistments: information on dependents, family members, and other designated persons.''.

THE AMERICAN LEGION,
Washington, DC, January 17, 1955.

Hon. ROBERT J. DOLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DOLE: A new calendar year and the convening of a new Congress affords all Americans a unique opportunity to renew their pledge to support all positive efforts to obtain the fullest possible accounting of American prisoners of war and those missing in action from past conflicts and the Cold War. The American Legion is especially appreciative of your personal efforts and concern for the plight of American POW/MIAs. Your introduction of the Dole-Lautenberg bill, The Missing Service Personnel Act of 1955, is both timely and welcome. It directly and substantially supports on-going Legion efforts to seek information about missing Americans from previous wars.

Your sponsorship of this bill is especially significant since it comes at a time when American contacts with foreign governments are more interested in making lucrative business arrangements than in obtaining a full and complete accounting of missing service personnel. With the lifting of the embargo against Vietnam early last year the U.S. lost its last major bargaining lever for POWs and MIAs from the war in Southeast Asia. Your bill, supported by the Senate in the 104th Congress will serve to provide a more equitable basis for making status determinations on missing service personnel from wars past and conflicts yet to be fought.

Sincerely,

JOHN F. SOMMER, Jr.,
Executive Director.

DISABLED AMERICAN VETERANS,
Washington, DC, January 17, 1955.

Hon. BOB DOLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DOLE: On behalf of the Disabled American Veterans (DAV), I take this opportunity to express our appreciation for your support last year for legislation to establish procedures for determining the whereabouts and status of missing American service members and to require the keeping of certain records on these persons. I understand that you intend to reintroduce a similar bill in the near future, and I therefore also write to express the DAV's full support for your efforts.

Your actions are a recognition of this nation's most important obligation to resolve questions about the fate of those missing-in-action. As a nation, we must do everything possible to account for those who have not returned, those that were captured or killed in the service of their country. Anything less would be an abandonment of our solemn responsibilities to these courageous defenders and would be a concession of defeat in the struggle to recover those who sacrificed so much for our benefit.

The members of DAV are deeply concerned for the nearly 100,000 of our fellow servicemen and women still unaccounted for in the aftermath of World War II, the Korean War, the Vietnam War, and subsequent military engagements, and we hope for a means to better account for our service members in any future conflicts. The delegates to our 1994 annual National Convention adopted a resolution supporting legislation to establish new procedures for determining the status of missing service members. We are confident that our nation's citizens share the DAV's concern and will also fully support any measures designed to improve our ability to account for our missing-in-action.

The DAV commends you and offers its support for your efforts. Please let us know if we can be of assistance to you in this matter.

Sincerely,

DONALD A. SIOSS,
National Commander.

VIETNOW,
Rockford, IL, December 23, 1994.

Senator ROBERT DOLE,
Hart Senate Office Building, Washington, D.C.

DEAR SENATOR DOLE: We, as Veterans of the Armed Forces of the United States of America, realize the importance and the immediate need for ''The Missing Service Personnel Act'', which is long over due.

The practice of changing the classification of those listed as Prisoner of War or Missing In Action to Killed In Action based on the presumption of death, due solely to the passage of time, is an outrage! In the proposed ''Missing Service Personnel Act'', ''conclusive proof of death'' is required to be established and based upon evidence that death is the only plausible explanation for the absence of the missing person.

Important provisions of this legislation, are the inclusion of family members in the review process, their access to information gained during the investigation and a set time frame for the review process.

Passage of the ''Missing Service Personnel Act'' is vital and will restore a sense of confidence not only to those effected by previous wars, but to those who may become Prisoner Of War or listed as Missing In Action as a result of future wars.

Senator Dole, we thank you for your past efforts and strongly support and encourage you to reintroduce the ''Missing Service Personnel Act'' as one of the first items to be introduced before the 104th Congress.

Sincerely,

RICH TEAGUE,
VietNow National POW/MIA Chairman.

NATIONAL VIETNAM VETERANS COALITION,
Washington, D.C, January 3, 1995.

Hon. FRANK LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Re: Missing Service Personnel Act.

DEAR SENATORS DOLE AND LAUTENBERG: The National Vietnam Veterans Coalition, a federation of seventy-eight (78) Vietnam veterans organizations and veterans issue groups, is pleased to support your efforts for long overdue reform of the Missing Persons Act.

The history of the law, as previously administered, has been one of arbitrary decisions based on incomplete information. The administration of the law has produced untold grief among the family members of the missing in action and has angered the Vietnam veteran community. The rote presumptive findings of death have contributed substantially to the ongoing failure of the POW/MIA bureaucracy to meaningfully resolve the issue.

The bill you are introducing provides considerable procedural protections to future MIAs. the provisions for appointment of counsel for the MIAs interests, the counsel's access to classified information, procedures for dealing with classified information, centralization of case information in the MIAs personnel file, the ability to reopen hearings for a period of time and effective reversal of the current de facto presumption of death reflexively applied in hearings mark tremendous progress. The encouragement to combine hearings in group disappearance cases would force hearing panels to weigh the evidence in a broader context.

The opening up of the process to include the right of participation of secondary next of kin is a welcome recognition of the fact that there is more than one person in each family who cares about the fate of a missing relative.

We are proud to endorse this much needed piece of legislation.

Sincerely,

J. THOMAS BURCH, Jr.
Chairman.

● Mr. LAUTENBERG. Mr. President, I am pleased to again join Senator DOLE in an effort to improve the way our government treats military service members and their families by reintroducing the Missing Service Personnel Act of 1995. It is perhaps fitting that two veterans of World War II join together to sponsor this legislation. Senator DOLE and I collaborated in writing this bill in a spirit of bipartisanship. We believe there is no room for politics when it comes to how the Government treats its missing personnel.

Mr. President, The Missing Service Personnel Act of 1995 updates existing law, last written by Congress in 1942. It focuses on how the U.S. Government deals with military personnel and Federal employees who are classified as ''missing in action.'' Our bill also makes some improvements in the way the Federal Government deals with the families of missing persons. They suffer when a loved one is missing and they deserve to have their interests protected and their needs met by their government.

Congressional interest in the issue is extensive, Mr. President. When the Senate Select Committee on POW/MIA Affairs—ably led by Senator KERRY and Senator SMITH—reported its findings to this body, it concluded there has been serious U.S. Government neglect and mismanagement in dealing with missing servicemembers. That's why we're here today—we want to rid the government of neglect and mismanagement in its treatment of Americans who are missing in action.

Having served in World War II, both Senator DOLE and I know first-hand the tremendous sacrifice service men and women make when they face combat. We know the terror soldiers face when they consider the prospect of being captured. We also know the anguish our loved ones suffer when a soldier goes into harm's way.

Over the past 25 years, the credibility of the Department of Defense on MIA/POW issues has been seriously questioned. Without substantial reform of its procedures, the American people

will continue to question the credibility of DOD in future military operations. Americans expect Pentagon officials to care for our soldiers and their families. They expect DOD officials to do the right thing when a servicemember is reported missing. There should be no curtain of secrecy. There should be no perception of incompetence. There should be no unfair treatment of families.

Our uniformed men and women serve proudly in the Armed Forces on behalf of all Americans. In return for their sacrifice, American servicemembers should be able to expect fairness, honesty, and support from the Department of Defense.

Unfortunately, Mr. President, when we look at recent history concerning the treatment of families of those missing in action, we see a troubling picture. No one in Congress should be content with what has happened in the past. We have seen families become outraged by the treatment they receive from the Government. We have witnessed their disgust toward elected officials. And, we have heard their calls for more information, more interest, and more action to recover their loved ones.

Today, we have an opportunity to respond, to provide better treatment. I believe the time is right to correct the Pentagon's flawed management practices. The cold war is over. The United States is not engaged in a major war, although we still have American men and women serving faithfully around the globe. They are ready for conflict if necessary. And, I suggest to my colleagues that the Pentagon must be ready as well.

Let's take a look at the problems we face now.

Mr. President, existing U.S. law concerning how the Government deals with missing persons is over 50 years old. That law is inadequate—it deals primarily with financial aspects of missing personnel and their dependents. That law is outdated—it doesn't address new issues that have emerged over the past 25 years. And that law is incomplete—it doesn't protect missing servicemembers from bureaucratic inaction.

Perhaps most troubling is the fact that existing law does not protect the rights of missing persons. Right now, missing persons do not have counsel in Government hearings. No one represents their interests. In addition, missing persons lose due process after 1 year. They just go into administrative limbo. They stay there until someone says they're dead. No wonder so many families think Government decisions are arbitrary and capricious.

Another problem deals with access to information. Right now, hearing officers can be denied information about missing persons. In addition, hearing officers can be excluded from reviewing classified information. And further, Government officials can willfully withhold relevant information without penalty. I believe these practices are the root cause for the curtain of secrecy that surrounds Government decisions.

The lack of specified rights for families is another problem with existing law. The Americans with the greatest stake in Government action have the least involvement in those decisions. Moreover, families have no right to appeal. No wonder many families make charges of ''cover-up'' and ''smokescreen.'' I believe we should have procedures that guarantee families of missing servicemembers honest, fair, and just treatment.

Finally, Mr. President, the old law doesn't create the opportunity for good, just decisions. Right now, officials assigned to conduct hearings may not be qualified. Further, they may have no guidance about making determinations of death. So today, what we have are poor decisions: Missing persons are pronounced dead . . . merely with the passage of time. I believe such determinations constitute disloyalty to our service men and women.

Mr. President, when you look at the problems with existing law in the aggregate, you can see why we've had so many problems over the years. Families are mad. Service men and women are wary. Government officials are frustrated. Senator DOLE and I wrote this bill to correct, once and for all, all these problems.

Unfortunately, Mr. President, when the Pentagon looks at these problems they see a rosy picture. Over the last 5 years, Pentagon officials have reported to Congress that everything is just fine. They have dragged their feet in upgrading government procedures. And despite our efforts to reform existing law, the Pentagon has not come forward with a reform proposal. Mr. President, there seems to be a general lack of will within the Pentagon to update its management procedures regarding missing persons.

In Congress today, there are several POW/MIA legislative initiative that address problems of past wars and conflicts. These initiatives attempt to resolve problems for World War II, Korea, and Vietnam. These are all worthy and should be pursued by both the Congress and the administration.

However, Mr. President, we have only one initiative that looks to the future—to the wars and conflicts not yet fought by Americans. In passing the fiscal year 1995 National Defense Authorization Act, the Senate took the first step in establishing new procedures for the future. In that legislation, we required the Department of Defense to review its procedures and recommend changes to Congress.

I remain skeptical about the Pentagon's response. I haven't seen any enthusiasm to update their procedures. Those in Congress who have dealt with these problems have seen little Pentagon interest in reform. Indeed, last year, an Assistant Secretary of Defense wrote to us with regard to the Pentagon's procedures . . . and I quote:

> I believe that the existing legislation provides adequate protections and venues for participation of all parties with legitimate interest.

Now Mr. President, I ask my colleagues: What should we expect from a Pentagon review of existing legislation? Does anyone in this body believe the Pentagon will come forward with reform legislation? I will tell you I am very skeptical.

This is why we are reintroducing this bill today. I want to lay on the table a proposal with real reform. I want the Pentagon to know that this Senator does not believe existing procedures are adequate. And I suggest the Senate needs to take the lead on this critical issue.

Mr. President, when we wrote this legislation, Senator DOLE and I took a new approach. We asked a simple question: How would a missing soldier want the U.S. Government to respond to his or her situation? What would a missing person want from his government? We wrote this bill from the point of view of American service men and women. When we finished, we had created wholly new procedures—procedures that, for the first time, are designed to serve those who are missing in action.

This legislation accomplishes four goals. First, it corrects management deficiencies for dealing with missing service members. Second, the bill safeguards the rights of missing personnel. Third, our legislation reestablishes a sense of trust between the U.S. Government and the families of missing personnel by raising what many people consider to be a ''curtain of secrecy'' surrounding Government decisions. And finally, Mr. President, our bill assures fundamental fairness to missing servicemembers by requiring timely Government action and specifying the rights of families and the Government's obligations to them. We hope that families of missing persons are treated fairly in all proceedings.

Let me discuss some of the provisions we are proposing in more detail.

First, the Act will establish new procedures for determining the whereabouts and status of missing persons. These procedures accelerate official action in order to recover the missing. They may even lead to the recovery of some servicemembers.

Moreover, the new procedures will afford missing persons due process well after the first year of their disappearance. Our service men and women should never believe that our Government will abandon them if captured. This legislation guarantees that the Government won't write them off merely with the passage of time.

The second important provision of the Act is that qualified counsel will be appointed for missing persons. This is new. Never before have missing persons been represented by counsel. Our service personnel should not have to worry about their rights, even if they are

missing in action. This legislation assures that the Government does not ignore issues and evidence. It assures that the Government affords the missing in action due process of the law.

Third, the act will assure access to Government information. It removes the ''curtain of secrecy.'' It makes all information available to hearing officers. Also, the bill carefully provides access to classified information. And, it makes complete personnel files available for review. These measures guarantee that the Government doesn't make ill-formed decisions about the statute of missing personnel.

The act also specifies the rights of the missing person's immediate family, dependents and next of kin. It ensures that our field commanders will give families updated, accurate information concerning the incident in which their loved one disappeared. The bill assures family participation in Government hearings. They will have access to the personnel file of the missing. They can be represented by private counsel. They can object in writing to a board's recommendations. And last, but not least, they can appeal a Government ruling. These are the basic rights of families—and no one can argue with putting them into law.

The last major provision of the act states criteria for making just decisions about the status of missing servicemembers. It gives guidance to officials about that factors they must consider before making a determination of death. The bill specifically prohibits declaring someone to be dead merely by virtue of the passage of time. I believe these provisions are important as an expression of Government loyalty to all persons who serve in the Armed Forces.

Mr. President, let me close by saying that there remains a strong bipartisan consensus across America in support of this bill. It has been building over the last 3 years. It started partly as a grassroots initiative from New Jersey and elsewhere. And it continues to enjoy the support of several major veterans organizations across the United States.

Mr. President, the good intentions of many Americans, who truly care about the welfare of the men and women in the Armed Services, have been combined into this initiative. They believe it is the right thing to do.

I urge my colleagues to join Senator DOLE and me in supporting this reform legislation when it is considered by the Senate.●

● Mr. LIEBERMAN. Mr. President, I am pleased to be an original cosponsor to the Missing Service Personnel Act of 1995 as I was when this legislation was first introduced in the 103d Congress. I commend the distinguished majority leader for his leadership on this issue and am proud to join him, Senator SIMPSON, and Senator LAUTENBERG in this important effort. This legislation is long overdue and is an important step toward providing the men and women who have served and will serve in our Armed Forces in conflict the protection and rights they and their families deserve, and we as a country owe them.

The current law which governs personnel who became missing in action was written in 1942 in the midst of World War II. We have now had over 50 years of experience with that law and the procedures it established to determine the status of people who became missing, captured, or presumed killed in a conflict. The experiences of MIA's and their families during and long after the Vietnam war provides clear evidence that the existing law is inadequate and revisions are sorely needed.

American citizens in uniform and in civilian clothes are serving our national interests in hostile places around the world even as we speak today. The end of the cold war has not brought an end to the valid need for Americans to serve abroad and sometimes to be placed in harm's way. The legislation we introduce today is an effort to address the legitimate concerns and needs of the men and women and their families who may one day find themselves missing in action because of their service to their country.

This legislation recognizes that a man who becomes missing in action does not surrender their legitimate rights as an American and that we must do everything we can to determine their true status. They will not break faith with America and America must not break faith with them or their families. Thus, the legislation prevents presuming that a missing service man or woman is dead simply because of the passage of time. It places a greater burden on the Government which commits our sons and daughters to conflict to persist in determining the truth about every one of those who became missing. Some may argue that this burden is too great. The mothers and fathers, husbands and wives, sons and daughters of those who are missing will reply that this is not too great a burden to bear for those who have answered the call of their country.

I hope and expect that this legislation will be given a thorough and fair examination both in committee and when it comes to the floor for passage. It is already supported by many veterans groups and organizations of families of the missing in action from the Vietnam war. Those in the Department of Defense who will have to implement this legislation should provide us their counsel on ways to improve it and to make it more effective. We welcome such constructive efforts. But let there be no mistake about out intentions or goals—the clock cannot be turned back. We cannot just tinker at the margins with policies and procedures which have failed in the past to live up to the covenant which must exist between the Government and those it sends off to defend its national interest.

We must never forget those who have served, are serving, or will serve their country. We owe it to them and their loved ones to commit ourselves to a full accounting of all who become missing in action. This legislation is an important step in the direction of returning faith and trust in this important covenant. I invite my colleagues to join us in cosponsoring this legislation and to work for its speedy enactment.●

By Mr. DOLE (for himself, Mr. INOUYE, Mr. THURMOND, Mr. WARNER, Mr. MCCAIN, and Mr. CAMPBELL):

S. 257. A bill to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea; to the Committee on the Judiciary.

THE VFW CHARTER LEGISLATION

Mr. DOLE. Mr. President, as a life member of the Veterans of Foreign Wars of the United States, I am particularly honored today to introduce legislation which will amend the congressional charter of the VFW to make those veterans who have served in South Korea eligible for membership.

Since the 1953 armistice, the 170-mile demilitarized zone [DMZ] which separates North and South Korea has been the source of extreme and serious tension. According to the VFW, 89 Americans have been killed and 132 wounded in clashes with North Korea since the armistice was signed.

Across this no-mans-land, North Korea has maintained 70 percent of its 1.2-million-man armed forces. Those forces are in forward deployed attack positions along the entire DMZ, only 30 miles from the South Korean capital of Seoul.

Since the end of the Korean war, the United States has pledged to the Republic of Korea to deter any renewal of the conflict. To fulfill our commitment, we have positioned a 37,000-man force consisting of the U.S. 8th Army, including the 2d Infantry Division and the Air Force's 314th Air Division. The record and performance of our military men and women during the past four decades in meeting that commitment, and in spite of constant danger, has been exemplary.

I wish to commend the leadership of this great veterans service organization, the Veterans of Foreign Wars, for their recognition of those members of our Armed Forces who have served in Korea since 1949. I am honored to introduce this legislation and provide my full support for its consideration and quick passage by my colleagues.

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. 257

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act

of May 28, 1936 (36 U.S.C. 115), is amended to read as follows:

''SEC. 5. A person may not be a member of the corporation created by this Act unless that person—

''(1) served honorably as a member of the Armed Forces of the United States in a foreign war, insurrection, or expedition, which service has been recognized as campaign-medal service and is governed by the authorization of the award of a campaign badge by the Government of the United States; or

''(2) while a member of the Armed Forces of the United States, served honorably on the Korean peninsula or in its territorial waters for not less that 30 consecutive days, or a total of 60 days, after June 30, 1949.''

ADDITIONAL COSPONSORS

S. 12

At the request of Mr. BREAUX, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 12, a bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes.

S. 32

At the request of Mr. BREAUX, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 32, a bill to amend the Internal Revenue Code of 1986 to provide a tax credit for the production of oil and gas from existing marginal oil and gas wells and from new oil and gas wells.

S. 33

At the request of Mr. BREAUX, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 33, a bill to amend the Oil Pollution Act of 1990 to clarify the financial responsibility requirements for offshore facilities.

S. 159

At the request of Mr. BREAUX, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 159, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for contributions to individual investment accounts, and for other purposes.

S. 234

At the request of Mr. CAMPBELL, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 234, a bill to amend title 23, United States Code, to exempt a State from certain penalties for failing to meet requirements relating to motorcycle helmet laws if the State has in effect a motorcycle safety program, and to delay the effective date of certain penalties for States that fail to meet certain requirements for motorcycle safety laws, and for other purposes.

AMENDMENT NO. 179

At the request of Mr. DORGAN the names of the Senator from Connecticut [Mr. DODD] and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of amendment No. 179 intended to be proposed to S. 1, a bill to curb the practice of imposing unfunded Federal mandates on States and local governments; to strengthen the partnership between the Federal Government and State, local, and tribal governments; to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and tribal governments without adequate funding, in a manner that may displace other essential governmental priorities; and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations; and for other purposes.

SENATE RESOLUTION 65—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON ARMED SERVICES

Mr. THURMOND, from the Committee on Armed Services, reported the following original resolution, which was referred to the Committee on Rules and Administration:

S. RES. 65

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Armed Services is authorized from March 1, 1995, through February 29, 1996, and March 1, 1996, through February 28, 1997, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel; and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee for the period March 1, 1995, through February 29, 1996, under this resolution shall not exceed $2,948,079.

(b) For the period March 1, 1996, through February 28, 1997, expenses of the committee under this resolution shall not exceed $3,015,532.

SEC. 3. The Committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 29, 1996, and February 28, 1997, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 1995, through February 29, 1996, and March 1, 1996, through February 28, 1997, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations''.

SENATE RESOLUTION 66—TO PREVENT THE ADOPTION OF CERTAIN NATIONAL HISTORY STANDARDS

Mr. PRESSLER (for Mr. GORTON, for himself, Mr. LIEBERMAN, Mr. GRAMM, and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 66

Resolved, That it is the sense of the Senate that—(a) the National Education Goals Panel should disapprove, and the National Education Standards and Improvement Council should not certify, any voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of world and United States history, developed prior to February 1, 1995;

(b) voluntary national content standards, voluntary national student performance standards, and criteria for the certification of such content and student performance standards, on the subject of world and United States history, established under title II of the Goals 2000: Educate America Act should not be based on standards developed primarily by the National Center for History in the Schools prior to February 1, 1995; and

(c) if the Department of Education, the National Endowment for the Humanities, or any other Federal agency provides funds for the development of the standards and criteria described in paragraph (b), the recipient of such funds should have a decent respect for the contributions of western civilization, and United States history, ideas, and institutions, to the increase of freedom and prosperity around the world.

SENATE RESOLUTION 67—RELATING TO REPRODUCTIVE HEALTH CLINICS

Mr. PRESSLER (for Mrs. BOXER, for herself, Mrs. MURRAY, Mr. FEINGOLD, Mr. KENNEDY, Mr. CAMPBELL, Mr. SIMON, Mr. LAUTENBERG, Mr. DODD, Mr. BAUCUS, Mr. LEVIN, Mr. LIEBERMAN, Ms. MOSELEY-BRAUN, Mr. HARKIN, Mr. PELL, Mr. INOUYE, Ms. MIKULSKI, Mrs. FEINSTEIN, Mr. REID, Mr. WELLSTONE, Mr. ROBB, Mr. KOHL, Mr. BRYAN, and Mr. KERRY) submitted the following resolution; which was considered and agreed to:

S. RES. 67

SENSE OF THE SENATE CONCERNING PROTECTION OF REPRODUCTIVE HEALTH CLINICS.

Whereas there are approximately 900 clinics in the United States providing reproductive health services;

Whereas violence directed at persons seeking to provide reproductive health services continues to increase in the United States, as demonstrated by the recent shootings at two reproductive health clinics in Massachusetts and another health care clinic in Virginia;

Whereas organizations monitoring clinic violence have recorded over 130 incidents of violence or harassment directed at reproductive health care clinics and their personnel

in 1994 such as death threats, stalking, chemical attacks, bombings and arson;

Whereas there has been one attempted murder in Florida and four individuals killed at reproductive health care clinics in Florida and Massachusetts in 1994;

Whereas the Congress passed and the President signed the Freedom of Access to Clinic Entrances Act of 1994, a law establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services;

Whereas violence is not a mode of free speech and should not be condoned as a method of expressing an opinion; and

Whereas the President has instructed the Attorney General to order—

(1) the United States Attorneys to create tasks forces of Federal, State and local law enforcement officials and develop plans to address security for reproductive health care clinics located within their jurisdictions; and

(2) the United States Marshals Service to ensure coordination between clinics and Federal, State and local law enforcement officials regarding potential threats of violence.

Resolved, it is the sense of the Senate.—That the United States Attorney General should fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violent attack.

SEC. 2.—Nothing in this resolution shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution.

SENATE RESOLUTION 68—RELATIVE TO LOCAL GOVERNMENTS

Mr. PRESSLER (for Mr. BRADLEY, for himself, Mr. CHAFEE, Mr. DORGAN, Mr. SIMPSON, Mr. ROBB, Mr. DOLE, Mr. NICKLES, Mr. LAUTENBERG, Mr. KEMPTHORNE, and Mr. WELLSTONE) submitted the following resolution; which was considered and agreed to:

S. RES. 68

IMPACT ON LOCAL GOVERNMENTS.

Whereas the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

Whereas cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

Whereas increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in safe, secure community: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

ADDITIONAL STATEMENTS

HEALTH CARE FRAUD PREVENTION

● Mr. COHEN. Mr. President, yesterday I introduced S. 245, the Health Care Fraud Prevention Act of 1995. It was inadvertently not printed in the RECORD at the conclusion of my remarks. I therefore ask that a copy of the bill be printed in today's RECORD.

The bill follows:

S. 245

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Health Care Fraud Prevention Act of 1995''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—ALL-PAYER FRAUD AND ABUSE CONTROL PROGRAM

SEC. 101. ALL-PAYER FRAUD AND ABUSE CONTROL PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—

(1) IN GENERAL.—Not later than January 1, 1996, the Secretary of Health and Human Services (in this title referred to as the ''Secretary''), acting through the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General shall establish a program—

(A) to coordinate Federal, State, and local law enforcement programs to control fraud and abuse with respect to the delivery of and payment for health care in the United States,

(B) to conduct investigations, audits, evaluations, and inspections relating to the delivery of and payment for health care in the United States,

(C) to facilitate the enforcement of the provisions of sections 1128, 1128A, and 1128B of the Social Security Act and other statutes applicable to health care fraud and abuse, and

(D) to provide for the modification and establishment of safe harbors and to issue interpretative rulings and special fraud alerts pursuant to section 103.

(2) COORDINATION WITH HEALTH PLANS.—In carrying out the program established under paragraph (1), the Secretary and the Attorney General shall consult with, and arrange for the sharing of data with representatives of health plans.

(3) REGULATIONS.—

(A) IN GENERAL.—The Secretary and the Attorney General shall by regulation establish standards to carry out the program under paragraph (1).

(B) INFORMATION STANDARDS.—

(i) IN GENERAL.—Such standards shall include standards relating to the furnishing of information by health plans, providers, and others to enable the Secretary and the Attorney General to carry out the program (including coordination with health plans under paragraph (2)).

(ii) CONFIDENTIALITY.—Such standards shall include procedures to assure that such information is provided and utilized in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services and items.

(iii) QUALIFIED IMMUNITY FOR PROVIDING INFORMATION.—The provisions of section 1157(a) of the Social Security Act (relating to limitation on liability) shall apply to a person providing information to the Secretary or the Attorney General in conjunction with their performance of duties under this section.

(C) DISCLOSURE OF OWNERSHIP INFORMATION.—

(i) IN GENERAL.—Such standards shall include standards relating to the disclosure of ownership information described in clause (ii) by any entity providing health care services and items.

(ii) OWNERSHIP INFORMATION DESCRIBED.—The ownership information described in this clause includes—

(I) a description of such items and services provided by such entity;

(II) the names and unique physician identification numbers of all physicians with a financial relationship (as defined in section

1877(a)(2) of the Social Security Act) with such entity;

(III) the names of all other individuals with such an ownership or investment interest in such entity; and

(IV) any other ownership and related information required to be disclosed by such entity under section 1124 or section 1124A of the Social Security Act, except that the Secretary shall establish procedures under which the information required to be submitted under this subclause will be reduced with respect to health care provider entities that the Secretary determines will be unduly burdened if such entities are required to comply fully with this subclause.

(4) AUTHORIZATION OF APPROPRIATIONS FOR INVESTIGATORS AND OTHER PERSONNEL.—In addition to any other amounts authorized to be appropriated to the Secretary, the Attorney General, the Director of the Federal Bureau of Investigation, and the Inspectors General of the Departments of Defense, Labor, and Veterans Affairs and of the Office of Personnel Management, for health care anti-fraud and abuse activities for a fiscal year, there are authorized to be appropriated additional amounts, from the Health Care Fraud and Abuse Account described in subsection (b) of this section, as may be necessary to enable the Secretary, the Attorney General, and such Inspectors General to conduct investigations and audits of allegations of health care fraud and abuse and otherwise carry out the program established under paragraph (1) in a fiscal year.

(5) ENSURING ACCESS TO DOCUMENTATION.—The Inspector General of the Department of Health and Human Services is authorized to exercise the authority described in paragraphs (4) and (5) of section 6 of the Inspector General Act of 1978 (relating to subpoenas and administration of oaths) with respect to the activities under the all-payer fraud and abuse control program established under this subsection to the same extent as such Inspector General may exercise such authorities to perform the functions assigned by such Act.

(6) AUTHORITY OF INSPECTOR GENERAL.—Nothing in this Act shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978.

(7) HEALTH PLAN DEFINED.—For the purposes of this subsection, the term ''health plan'' shall have the meaning given such term in section 1128(i) of the Social Security Act.

(b) HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is hereby established an account to be known as the ''Health Care Fraud and Abuse Control Account'' (in this section referred to as the ''Anti-Fraud Account''). The Anti-Fraud Account shall consist of—

(i) such gifts and bequests as may be made as provided in subparagraph (B);

(ii) such amounts as may be deposited in the Anti-Fraud Account as provided in subsection (a)(4), sections 5441(b) and 5442(b), and title XI of the Social Security Act; and

(iii) such amounts as are transferred to the Anti-Fraud Account under subparagraph (C).

(B) AUTHORIZATION TO ACCEPT GIFTS.—The Anti-Fraud Account is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to the Anti-Fraud Account, for the benefit of the Anti-Fraud Account or any activity financed through the Anti-Fraud Account.

(C) TRANSFER OF AMOUNTS.—

(i) IN GENERAL.—The Secretary of the Treasury shall transfer to the Anti-Fraud Account an amount equal to the sum of the following:

(I) Criminal fines imposed in cases involving a Federal health care offense (as defined in section 982(a)(6)(B) of title 18, United States Code).

(ii) Administrative penalties and assessments imposed under titles XI, XVIII, and XIX of the Social Security Act (except as otherwise provided by law).

(iii) Amounts resulting from the forfeiture of property by reason of a Federal health care offense.

(iv) Penalties and damages imposed under the False Claims Act (31 U.S.C. 3729 et seq.), in cases involving claims related to the provision of health care items and services (other than funds awarded to a relator or for restitution).

(2) USE OF FUNDS.—

(A) IN GENERAL.—Amounts in the Anti-Fraud Account shall be available to carry out the health care fraud and abuse control program established under subsection (a) (including the administration of the program), and may be used to cover costs incurred in operating the program, including costs (including equipment, salaries and benefits, and travel and training) of—

(i) prosecuting health care matters (through criminal, civil, and administrative proceedings);

(ii) investigations;

(iii) financial and performance audits of health care programs and operations;

(iv) inspections and other evaluations; and

(v) provider and consumer education regarding compliance with the provisions of this title.

(B) FUNDS USED TO SUPPLEMENT AGENCY APPROPRIATIONS.—It is intended that disbursements made from the Anti-Fraud Account to any Federal agency be used to increase and not supplant the recipient agency's appropriated operating budget.

(3) ANNUAL REPORT.—The Secretary and the Attorney General shall submit jointly an annual report to Congress on the amount of revenue which is generated and disbursed by the Anti-Fraud Account in each fiscal year.

(4) USE OF FUNDS BY INSPECTOR GENERAL.—

(A) REIMBURSEMENTS FOR INVESTIGATIONS.—The Inspector General is authorized to receive and retain for current use reimbursement for the costs of conducting investigations, when such restitution is ordered by a court, voluntarily agreed to by the payer, or otherwise.

(B) CREDITING.—Funds received by the Inspector General or the Inspectors General of the Departments of Defense, Labor, and Veterans Affairs and of the Office of Personnel Management, as reimbursement for costs of conducting investigations shall be deposited to the credit of the appropriation from which initially paid, or to appropriations for similar purposes currently available at the time of deposit, and shall remain available for obligation for 1 year from the date of their deposit.

SEC. 102. APPLICATION OF CERTAIN FEDERAL HEALTH ANTI-FRAUD AND ABUSE SANCTIONS TO FRAUD AND ABUSE AGAINST ANY HEALTH PLAN.

(a) CRIMES.—

(1) SOCIAL SECURITY ACT.—Section 1128B of the Social Security Act (42 U.S.C. 1320a–7b) is amended as follows:

(A) In the heading, by adding at the end the following: ''OR HEALTH PLANS''.

(B) In subsection (a)(1)—

(i) by striking ''title XVIII or'' and inserting ''title XVIII,'', and

(ii) by adding at the end the following: ''or a health plan (as defined in section 1128(i)),''.

(C) In subsection (a)(5), by striking ''title XVIII or a State health care program'' and inserting ''title XVIII, a State health care program, or a health plan''.

(D) In the second sentence of subsection (a)—

(i) by inserting after ''title XIX'' the following: ''or a health plan'', and

(ii) by inserting after ''the State'' the following: ''or the plan''.

(2) IDENTIFICATION OF COMMUNITY SERVICE OPPORTUNITIES.—Section 1128B of such Act (42 U.S.C. 1320a–7b) is further amended by adding at the end the following new subsection:

''(f) The Secretary may—

''(1) in consultation with State and local health care officials, identify opportunities for the satisfaction of community service obligations that a court may impose upon the conviction of an offense under this section, and

''(2) make information concerning such opportunities available to Federal and State law enforcement officers and State and local health care officials.''.

(b) HEALTH PLAN DEFINED.—Section 1128 of the Social Security Act (42 U.S.C. 1320a–7) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

''(i) HEALTH PLAN DEFINED.—For purposes of sections 1128A and 1128B, the term 'health plan' means a plan that provides health benefits, whether through directly, through insurance, or otherwise, and includes a policy of health insurance, a contract of a service benefit organization, or a membership agreement with a health maintenance organization or other prepaid health plan, and also includes an employee welfare benefit plan or a multiple employer welfare plan (as such terms are defined in section 3 of the Employee Retirement Income Security Act of 1974).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1996.

SEC. 103. HEALTH CARE FRAUD AND ABUSE GUIDANCE.

(a) SOLICITATION AND PUBLICATION OF MODIFICATIONS TO EXISTING SAFE HARBORS AND NEW SAFE HARBORS.—

(1) IN GENERAL.—

(A) SOLICITATION OF PROPOSALS FOR SAFE HARBORS.—Not later than January 1, 1996, and not less than annually thereafter, the Secretary shall publish a notice in the Federal Register soliciting proposals, which will be accepted during a 60-day period, for—

(i) modifications to existing safe harbors issued pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. 1320a–7b note);

(ii) additional safe harbors specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act the (42 U.S.C. 1320a–7b(b)) and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act (42 U.S.C. 1320a–7(b)(7));

(iii) interpretive rulings to be issued pursuant to subsection (b); and

(iv) special fraud alerts to be issued pursuant to subsection (c).

(B) PUBLICATION OF PROPOSED MODIFICATIONS AND PROPOSED ADDITIONAL STATE HARBORS.—After considering the proposals described in clauses (i) and (ii) of subparagraph (A), the Secretary, in consultation with the Attorney General, shall publish in the Federal Register proposed modifications to existing safe harbors and proposed additional safe harbors, if appropriate, with a 60-day comment period. After considering any public comments received during this period, the Secretary shall issue final rules modifying the existing safe harbors and establishing new safe harbors, as appropriate.

(C) REPORT.—The Inspector General of the Department of Health and Human Services (hereafter in this section referred to as the

''Inspector General'') shall, in an annual report to Congress or as part of the year-end semiannual report required by section 5 of the Inspector General Act of 1978 (5 U.S.C. App.), describe the proposals received under clauses (i) and (ii) of subparagraph (A) and explain which proposals were included in the publication described in subparagraph (B), which proposals were not included in that publication, and the reasons for the rejection of the proposals that were not included.

(2) CRITERIA FOR MODIFYING AND ESTABLISHING SAFE HARBORS.—In modifying and establishing safe harbors under paragraph (1)(B), the Secretary may consider the extent to which providing a safe harbor for the specified payment practice may result in any of the following:

(A) An increase or decrease in access to health care services.

(B) An increase or decrease in the quality of health care services.

(C) An increase or decrease in patient freedom of choice among health care providers.

(D) An increase or decrease in competition among health care providers.

(E) An increase or decrease in the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

(F) An increase or decrease in the cost to Government health care programs.

(G) An increase or decrease in the potential overutilization of health care services.

(H) The existence or nonexistence of any potential financial benefit to a health care professional or provider which may vary based on their decisions of—

(i) whether to order a health care item or service; or

(ii) whether to arrange for a referral of health care items or services to a particular practitioner or provider.

(I) Any other factors the Secretary deems appropriate in the interest of preventing fraud and abuse in Government health care programs.

(b) INTERPRETIVE RULINGS.—

(1) IN GENERAL.—

(A) REQUEST FOR INTERPRETIVE RULING.—Any person may present, at any time, a request to the Inspector General for a statement of the Inspector General's current interpretation of the meaning of a specific aspect of the application of sections 1128A and 1128B of the Social Security Act (hereafter in this section referred to as an ''interpretive ruling'').

(B) ISSUANCE AND EFFECT OF INTERPRETIVE RULING.—

(i) IN GENERAL.—If appropriate, the Inspector General shall in consultation with the Attorney General, issue an interpretive ruling in response to a request described in subparagraph (A). Interpretive rulings shall not have the force of law and shall be treated as an interpretive rule within the meaning of section 553(b) of title 5, United States Code. All interpretive rulings issued pursuant to this provision shall be published in the Federal Register or otherwise made available for public inspection.

(ii) REASONS FOR DENIAL.—If the Inspector General does not issue an interpretive ruling in response to a request described in subparagraph (A), the Inspector General shall notify the requesting party of such decision and shall identify the reasons for such decision.

(2) CRITERIA FOR INTERPRETIVE RULINGS.—

(A) IN GENERAL.—In determining whether to issue an interpretive ruling under paragraph (1)(B), the Inspector General may consider—

(i) whether and to what extent the request identifies an ambiguity within the language of the statute, the existing safe harbors, or previous interpretive rulings; and

(ii) whether the subject of the requested interpretive ruling can be adequately addressed by interpretation of the language of the statute, the existing safe harbor rules, or previous interpretive rulings, or whether the request would require a substantive ruling not authorized under this subsection.

(B) NO RULINGS ON FACTUAL ISSUES.—The Inspector General shall not give an interpretive ruling on any factual issue, including the intent of the parties or the fair market value of particular leased space or equipment.

(c) SPECIAL FRAUD ALERTS.—

(1) IN GENERAL.—

(A) REQUEST FOR SPECIAL FRAUD ALERTS.—Any person may present, at any time, a request to the Inspector General for a notice which informs the public of practices which the Inspector General considers to be suspect or of particular concern under section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) (hereafter in this subsection referred to as a ''special fraud alert'').

(B) ISSUANCE AND PUBLICATION OF SPECIAL FRAUD ALERTS.—Upon receipt of a request described in subparagraph (A), the Inspector General shall investigate the subject matter of the request to determine whether a special fraud alert should be issued. If appropriate, the Inspector General shall in consultation with the Attorney General, issue a special fraud alert in response to the request. All special fraud alerts issued pursuant to this subparagraph shall be published in the Federal Register.

(2) CRITERIA FOR SPECIAL FRAUD ALERTS.—In determining whether to issue a special fraud alert upon a request described in paragraph (1), the Inspector General may consider—

(A) whether and to what extent the practices that would be identified in the special fraud alert may result in any of the consequences described in subsection (a)(2); and

(B) the volume and frequency of the conduct that would be identified in the special fraud alert.

SEC. 104. REPORTING OF FRAUDULENT ACTIONS UNDER MEDICARE.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall establish a program through which individuals entitled to benefits under the medicare program may report to the Secretary on a confidential basis (at the individual's request) instances of suspected fraudulent actions arising under the program by providers of items and services under the program.

TITLE II—REVISIONS TO CURRENT SANCTIONS FOR FRAUD AND ABUSE

SEC. 201. MANDATORY EXCLUSION FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS.

(a) INDIVIDUAL CONVICTED OF FELONY RELATING TO FRAUD.—

(1) IN GENERAL.—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)) is amended by adding at the end the following new paragraph:

''(3) FELONY CONVICTION RELATING TO FRAUD.—Any individual or entity that has been convicted after the date of the enactment of the Health Care Fraud Prevention Act of 1995, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.''.

(2) CONFORMING AMENDMENT.—Section 1128(b)(1) of such Act (42 U.S.C. 1320a–7(b)(1)) is amended—

(A) in the heading, by striking ''CONVICTION'' and inserting ''MISDEMEANOR CONVICTION''; and

(B) by striking ''criminal offense'' and inserting ''criminal offense consisting of a misdemeanor''.

(b) INDIVIDUAL CONVICTED OF FELONY RELATING TO CONTROLLED SUBSTANCE.—

(1) IN GENERAL.—Section 1128(a) of the Social Security Act (42 U.S.C. 1320a–7(a)), as amended by subsection (a), is amended by adding at the end the following new paragraph:

''(4) FELONY CONVICTION RELATING TO CONTROLLED SUBSTANCE.—Any individual or entity that has been convicted after the date of the enactment of the Health Care Fraud Prevention Act of 1995, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.''.

(2) CONFORMING AMENDMENT.—Section 1128(b)(3) of such Act (42 U.S.C. 1320a–7(b)(3)) is amended—

(A) in the heading, by striking ''CONVICTION'' and inserting ''MISDEMEANOR CONVICTION''; and

(B) by striking ''criminal offense'' and inserting ''criminal offense consisting of a misdemeanor''.

SEC. 202. ESTABLISHMENT OF MINIMUM PERIOD OF EXCLUSION FOR CERTAIN INDIVIDUALS AND ENTITIES SUBJECT TO PERMISSIVE EXCLUSION FROM MEDICARE AND STATE HEALTH CARE PROGRAMS.

Section 1128(c)(3) of the Social Security Act (42 U.S.C. 1320a–7(c)(3)) is amended by adding at the end the following new subparagraphs:

''(D) In the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b), the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

''(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

''(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B), the period of the exclusion shall be not less than 1 year.''.

SEC. 203. PERMISSIVE EXCLUSION OF INDIVIDUALS WITH OWNERSHIP OR CONTROL INTEREST IN SANCTIONED ENTITIES.

Section 1128(b) of the Social Security Act (42 U.S.C. 1320a–7(b)) is amended by adding at the end the following new paragraph:

''(15) INDIVIDUALS CONTROLLING A SANCTIONED ENTITY.—Any individual who has a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of, an entity—

''(A) that has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection;

''(B) against which a civil monetary penalty has been assessed under section 1128A; or

''(C) that has been excluded from participation under a program under title XVIII or under a State health care program.''.

SEC. 204. SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.

(a) MINIMUM PERIOD OF EXCLUSION FOR PRACTITIONERS AND PERSONS FAILING TO MEET STATUTORY OBLIGATIONS.—

(1) IN GENERAL.—The second sentence of section 1156(b)(1) of the Social Security Act (42 U.S.C. 1320c–5(b)(1)) is amended by striking ''may prescribe)'' and inserting ''may prescribe, except that such period may not be less than 1 year)''.

(2) CONFORMING AMENDMENT.—Section 1156(b)(2) of such Act (42 U.S.C. 1320c–5(b)(2)) is amended by striking ''shall remain'' and inserting ''shall (subject to the minimum period specified in the second sentence of paragraph (1)) remain''.

(b) REPEAL OF ''UNWILLING OR UNABLE'' CONDITION FOR IMPOSITION OF SANCTION.—Section 1156(b)(1) of the Social Security Act (42 U.S.C. 1320c–5(b)(1)) is amended—

(1) in the second sentence, by striking ''and determines'' and all that follows through ''such obligations,''; and

(2) by striking the third sentence.

SEC. 205. INTERMEDIATE SANCTIONS FOR MEDICARE HEALTH MAINTENANCE ORGANIZATIONS.

(a) APPLICATION OF INTERMEDIATE SANCTIONS FOR ANY PROGRAM VIOLATIONS.—

(1) IN GENERAL.—Section 1876(i)(1) of the Social Security Act (42 U.S.C. 1395mm(i)(1)) is amended by striking ''the Secretary may terminate'' and all that follows and inserting the following: ''in accordance with procedures established under paragraph (9), the Secretary may at any time terminate any such contract or may impose the intermediate sanctions described in paragraph (6)(B) or (6)(C) (whichever is applicable) on the eligible organization if the Secretary determines that the organization—

''(A) has failed substantially to carry out the contract;

''(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section; or

''(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f).''.

(2) OTHER INTERMEDIATE SANCTIONS FOR MISCELLANEOUS PROGRAM VIOLATIONS.—Section 1876(i)(6) of such Act (42 U.S.C. 1395mm(i)(6)) is amended by adding at the end the following new subparagraph:

''(C) In the case of an eligible organization for which the Secretary makes a determination under paragraph (1) the basis of which is not described in subparagraph (A), the Secretary may apply the following intermediate sanctions:

''(i) Civil money penalties of not more than $25,000 for each determination under paragraph (1) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

''(ii) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under paragraph (9) during which the deficiency that is the basis of a determination under paragraph (1) exists.

''(iii) Suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.''.

(3) PROCEDURES FOR IMPOSING SANCTIONS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)) is amended by adding at the end the following new paragraph:

''(9) The Secretary may terminate a contract with an eligible organization under this section or may impose the intermediate sanctions described in paragraph (6) on the organization in accordance with formal investigation and compliance procedures established by the Secretary under which—

''(A) the Secretary provides the organization with the opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under paragraph (1);

''(B) in deciding whether to impose sanctions, the Secretary considers aggravating factors such as whether an entity has a history of deficiencies or has not taken action to correct deficiencies the Secretary has brought to their attention;

''(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

''(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before imposing any sanction or terminating the contract.''.

(4) CONFORMING AMENDMENTS.—Section 1876(i)(6)(B) of such Act (42 U.S.C. 1395mm(i)(6)(B)) is amended by striking the second sentence.

(b) AGREEMENTS WITH PEER REVIEW ORGANIZATIONS.—

(1) REQUIREMENT FOR WRITTEN AGREEMENT.—Section 1876(i)(7)(A) of the Social Security Act (42 U.S.C. 1395mm(i)(7)(A)) is amended by striking ''an agreement'' and inserting ''a written agreement''.

(2) DEVELOPMENT OF MODEL AGREEMENT.—Not later than July 1, 1996, the Secretary shall develop a model of the agreement that an eligible organization with a risk-sharing contract under section 1876 of the Social Security Act must enter into with an entity providing peer review services with respect to services provided by the organization under section 1876(i)(7)(A) of such Act.

(3) REPORT BY GAO.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study of the costs incurred by eligible organizations with risk-sharing contracts under section 1876(b) of such Act of complying with the requirement of entering into a written agreement with an entity providing peer review services with respect to services provided by the organization, together with an analysis of how information generated by such entities is used by the Secretary to assess the quality of services provided by such eligible organizations.

(B) REPORT TO CONGRESS.—Not later than July 1, 1998, the Comptroller General shall submit a report to the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance and the Special Committee on Aging of the Senate on the study conducted under subparagraph (A).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to contract years beginning on or after January 1, 1996.

SEC. 206. EFFECTIVE DATE.

The amendments made by this part shall take effect January 1, 1996.

TITLE III—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 301. ESTABLISHMENT OF THE HEALTH CARE FRAUD AND ABUSE DATA COLLECTION PROGRAM.

(a) GENERAL PURPOSE.—Not later than January 1, 1996, the Secretary shall establish a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made) against health care providers, suppliers, or practitioners as required by subsection (b), with access as set forth in subsection (c).

(b) REPORTING OF INFORMATION.—

(1) IN GENERAL.—Each government agency and health plan shall report any final adverse action (not including settlements in which no findings of liability have been made) taken against a health care provider, supplier, or practitioner.

(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) includes:

(A) The name of any health care provider, supplier, or practitioner who is the subject of a final adverse action.

(B) The name (if known) of any health care entity with which a health care provider, supplier, or practitioner is affiliated or associated.

(C) The nature of the final adverse action.

(D) A description of the acts or omissions and injuries upon which the final adverse action was based, and such other information as the Secretary determines by regulation is required for appropriate interpretation of information reported under this section.

(3) CONFIDENTIALITY.—In determining what information is required, the Secretary shall include procedures to assure that the privacy of individuals receiving health care services is appropriately protected.

(4) TIMING AND FORM OF REPORTING.—The information required to be reported under this subsection shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date specified by the Secretary.

(5) TO WHOM REPORTED.—The information required to be reported under this subsection shall be reported to the Secretary.

(c) DISCLOSURE AND CORRECTION OF INFORMATION.—

(1) DISCLOSURE.—With respect to the information about final adverse actions (not including settlements in which no findings of liability have been made) reported to the Secretary under this section respecting a health care provider, supplier, or practitioner, the Secretary shall, by regulation, provide for—

(A) disclosure of the information, upon request, to the health care provider, supplier, or licensed practitioner, and

(B) procedures in the case of disputed accuracy of the information.

(2) CORRECTIONS.—Each Government agency and health plan shall report corrections of information already reported about any final adverse action taken against a health care provider, supplier, or practitioner, in such form and manner that the Secretary prescribes by regulation.

(d) ACCESS TO REPORTED INFORMATION.—

(1) AVAILABILITY.—The information in this database shall be available to Federal and State government agencies and health plans pursuant to procedures that the Secretary shall provide by regulation.

(2) FEES FOR DISCLOSURE.—The Secretary may establish or approve reasonable fees for the disclosure of information in this database. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary or, in the Secretary's discretion to the agency designated under this section to cover such costs.

(e) PROTECTION FROM LIABILITY FOR REPORTING.—No person or entity, including the agency designated by the Secretary in subsection (b)(5) shall be held liable in any civil

action with respect to any report made as required by this section, without knowledge of the falsity of the information contained in the report.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

(1) The term ''final adverse action'' includes:

(A) Civil judgments against a health care provider in Federal or State court related to the delivery of a health care item or service.

(B) Federal or State criminal convictions related to the delivery of a health care item or service.

(C) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners, including—

(i) formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation,

(ii) any other loss of license of the provider, supplier, or practitioner, by operation of law, or

(iii) any other negative action or finding by such Federal or State agency that is publicly available information.

(D) Exclusion from participation in Federal or State health care programs.

(E) Any other adjudicated actions or decisions that the Secretary shall establish by regulation.

(2) The terms ''licensed health care practitioner'', ''licensed practitioner'', and ''practitioner'' mean, with respect to a State, an individual who is licensed or otherwise authorized by the State to provide health care services (or any individual who, without authority holds himself or herself out to be so licensed or authorized).

(3) The term ''health care provider'' means a provider of services as defined in section 1861(u) of the Social Security Act, and any entity, including a health maintenance organization, group medical practice, or any other entity listed by the Secretary in regulation, that provides health care services.

(4) The term ''supplier'' means a supplier of health care items and services described in section 1819(a) and (b), and section 1861 of the Social Security Act.

(5) The term ''Government agency'' shall include:

(A) The Department of Justice.

(B) The Department of Health and Human Services.

(C) Any other Federal agency that either administers or provides payment for the delivery of health care services, including, but not limited to the Department of Defense and the Veterans' Administration.

(D) State law enforcement agencies.

(E) State medicaid fraud and abuse units.

(F) Federal or State agencies responsible for the licensing and certification of health care providers and licensed health care practitioners.

(6) The term ''health plan'' has the meaning given to such term by section 1128(i) of the Social Security Act.

(7) For purposes of paragraph (2), the existence of a conviction shall be determined under paragraph (4) of section 1128(j) of the Social Security Act.

(g) CONFORMING AMENDMENT.—Section 1921(d) of the Social Security Act is amended by inserting ''and section 301 of the Health Care Fraud Prevention Act of 1995'' after ''section 422 of the Health Care Quality Improvement Act of 1986''.

TITLE IV—CIVIL MONETARY PENALTIES

SEC. 401. CIVIL MONETARY PENALTIES.

(a) GENERAL CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) is amended as follows:

(1) In subsection (a)(1), by inserting ''or of any health plan (as defined in section 1128(i)),'' after ''subsection (i)(1)),''.

(2) In subsection (f)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following new paragraphs:

''(3) With respect to amounts recovered arising out of a claim under a health plan, the portion of such amounts as is determined to have been paid by the plan shall be repaid to the plan, and the portion of such amounts attributable to the amounts recovered under this section by reason of the amendments made by the Health Care Fraud Prevention Act of 1995 (as estimated by the Secretary) shall be deposited into the Health Care Fraud and Abuse Control Account established under section 101(b) of such Act.''.

(3) In subsection (i)—

(A) in paragraph (2), by inserting ''or under a health plan'' before the period at the end, and

(B) in paragraph (5), by inserting ''or under a health plan'' after ''or XX''.

(b) EXCLUDED INDIVIDUAL RETAINING OWNERSHIP OR CONTROL INTEREST IN PARTICIPATING ENTITY.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)) is amended—

(1) by striking ''or'' at the end of paragraph (1)(D);

(2) by striking '', or'' at the end of paragraph (2) and inserting a semicolon;

(3) by striking the semicolon at the end of paragraph (3) and inserting ''; or''; and

(4) by inserting after paragraph (3) the following new paragraph:

''(4) in the case of a person who is not an organization, agency, or other entity, is excluded from participating in a program under title XVIII or a State health care program in accordance with this subsection or under section 1128 and who, at the time of a violation of this subsection, retains a direct or indirect ownership or control interest of 5 percent or more, or an ownership or control interest (as defined in section 1124(a)(3)) in, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of, an entity that is participating in a program under title XVIII or a State health care program;''.

(c) MODIFICATIONS OF AMOUNTS OF PENALTIES AND ASSESSMENTS.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)), as amended by subsection (b), is amended in the matter following paragraph (4)—

(1) by striking ''$2,000'' and inserting ''$10,000'';

(2) by inserting ''; in cases under paragraph (4), $10,000 for each day the prohibited relationship occurs'' after ''false or misleading information was given''; and

(3) by striking ''twice the amount'' and inserting ''3 times the amount''.

(d) CLAIM FOR ITEM OR SERVICE BASED ON INCORRECT CODING OR MEDICALLY UNNECESSARY SERVICES.—Section 1128A(a)(1) of the Social Security Act (42 U.S.C. 1320a–7a(a)(1)) is amended—

(1) in subparagraph (A) by striking ''claimed,'' and inserting the following: ''claimed, including any person who repeatedly presents or causes to be presented a claim for an item or service that is based on a code that the person knows or should know will result in a greater payment to the person than the code the person knows or should know is applicable to the item or service actually provided,'';

(2) in subparagraph (C), by striking ''or'' at the end;

(3) in subparagraph (D), by striking ''; or'' and inserting '', or''; and

(4) by inserting after subparagraph (D) the following new subparagraph:

''(E) is for a medical or other item or service that a person repeatedly knows or should know is not medically necessary; or''.

(e) PERMITTING SECRETARY TO IMPOSE CIVIL MONETARY PENALTY.—Section 1128A(b) of the Social Security Act (42 U.S.C. 1320a–7a(a)) is amended by adding the following new paragraph:

''(3) Any person (including any organization, agency, or other entity, but excluding a beneficiary as defined in subsection (i)(5)) who the Secretary determines has violated section 1128B(b) of this title shall be subject to a civil monetary penalty of not more than $10,000 for each such violation. In addition, such person shall be subject to an assessment of not more than twice the total amount of the remuneration offered, paid, solicited, or received in violation of section 1128B(b). The total amount of remuneration subject to an assessment shall be calculated without regard to whether some portion thereof also may have been intended to serve a purpose other than one proscribed by section 1128B(b).''.

(f) SANCTIONS AGAINST PRACTITIONERS AND PERSONS FOR FAILURE TO COMPLY WITH STATUTORY OBLIGATIONS.—Section 1156(b)(3) of the Social Security Act (42 U.S.C. 1320c–5(b)(3)) is amended by striking ''the actual or estimated cost'' and inserting the following: ''up to $10,000 for each instance''.

(g) PROCEDURAL PROVISIONS.—Section 1876(i)(6) of such Act (42 U.S.C. 1395mm(i)(6)) is further amended by adding at the end the following new subparagraph:

''(D) The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subparagraph (A) or (B) in the same manner as they apply to a civil money penalty or proceeding under section 1128A(a).''.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect January 1, 1996.

(i) PROHIBITION AGAINST OFFERING INDUCEMENTS TO INDIVIDUALS ENROLLED UNDER PROGRAMS OR PLANS.—

(1) OFFER OF REMUNERATION.—Section 1128A(a) of the Social Security Act (42 U.S.C. 1320a–7a(a)) is amended—

(A) by striking ''or'' at the end of paragraph (1)(D);

(B) by striking '', or'' at the end of paragraph (2) and inserting a semicolon;

(C) by striking the semicolon at the end of paragraph (3) and inserting ''; or''; and

(D) by inserting after paragraph (3) the following new paragraph:

''(4) offers to or transfers remuneration to any individual eligible for benefits under title XVIII of this Act, or under a State health care program (as defined in section 1128(h)) that such person knows or should know is likely to influence such individual to order or receive from a particular provider, practitioner, or supplier any item or service for which payment may be made, in whole or in part, under title XVIII, or a State health care program;''.

(2) REMUNERATION DEFINED.—Section 1128A(i) of such Act (42 U.S.C. 1320a–7a(i)) is amended by adding the following new paragraph:

''(6) The term 'remuneration' includes the waiver of coinsurance and deductible amounts (or any part thereof), and transfers of items or services for free or for other than fair market value. The term 'remuneration' does not include—

''(A) the waiver of coinsurance and deductible amounts by a person, if—

''(i) the waiver is not offered as part of any advertisement or solicitation;

''(ii) the person does not routinely waive coinsurance or deductible amounts; and

''(iii) the person—

''(I) waives the coinsurance and deductible amounts after determining in good faith that the individual is in financial need;

''(II) fails to collect coinsurance or deductible amounts after making reasonable collection efforts; or

''(III) provides for any permissible waiver as specified in section 1128B(b)(3) or in regulations issued by the Secretary;

''(B) differentials in coinsurance and deductible amounts as part of a benefit plan design as long as the differentials have been disclosed in writing to all third party payors to whom claims are presented and as long as the differentials meet the standards as defined in regulations promulgated by the Secretary; or

''(C) incentives given to individuals to promote the delivery of preventive care as determined by the Secretary in regulations.''.

TITLE V—AMENDMENTS TO CRIMINAL LAW

SEC. 501. HEALTH CARE FRAUD.

(a) IN GENERAL.—

(1) FINES AND IMPRISONMENT FOR HEALTH CARE FRAUD VIOLATIONS.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 1347. Health care fraud

''(a) Whoever knowingly executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any health plan or other person, in connection with the delivery of or payment for health care benefits, items, or services; or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health plan, or person in connection with the delivery of or payment for health care benefits, items, or services;

shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365(g)(3) of this title), such person shall be imprisoned for any term of years.

''(b) For purposes of this section, the term 'health plan' has the same meaning given such term in section 1128(i) of the Social Security Act.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1347. Health care fraud.''.

(b) CRIMINAL FINES DEPOSITED IN THE HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control Account established under section 101(b) an amount equal to the criminal fines imposed under section 1347 of title 18, United States Code (relating to health care fraud).

SEC. 502. FORFEITURES FOR FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Section 982(a) of title 18, United States Code, is amended by adding after paragraph (5) the following new paragraph:

''(6)(A) The court, in imposing sentence on a person convicted of a Federal health care offense, shall order the person to forfeit property, real or personal, that—

''(i) is used in the commission of the offense if the offense results in a financial loss or gain of $50,000 or more; or

''(ii) constitutes or is derived from proceeds traceable to the commission of the offense.

''(B) For purposes of this paragraph, the term 'Federal health care offense' means a violation of, or a criminal conspiracy to violate—

''(i) section 1347 of this title;

''(ii) section 1128B of the Social Security Act;

''(iii) sections 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 of this title if the violation or conspiracy relates to health care fraud; and

''(iv) section 501 or 511 of the Employee Retirement Income Security Act of 1974, if the violation or conspiracy relates to health care fraud.''.

(b) PROPERTY FORFEITED DEPOSITED IN HEALTH CARE FRAUD AND ABUSE CONTROL ACCOUNT.—The Secretary of the Treasury shall deposit into the Health Care Fraud and Abuse Control Account established under section 101(b) an amount equal to amounts resulting from forfeiture of property by reason of a Federal health care offense pursuant to section 982(a)(6) of title 18, United States Code.

SEC. 503. INJUNCTIVE RELIEF RELATING TO FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Section 1345(a)(1) of title 18, United States Code, is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by inserting ''or'' at the end of subparagraph (B); and

(3) by adding at the end the following:

''(C) committing or about to commit a Federal health care offense (as defined in section 982(a)(6)(B) of this title);''.

(b) FREEZING OF ASSETS.—Section 1345(a)(2) of title 18, United States Code, is amended by inserting ''or a Federal health care offense (as defined in section 982(a)(6)(B))'' after ''title)''.

SEC. 504. GRAND JURY DISCLOSURE.

Section 3322 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

''(c) A person who is privy to grand jury information concerning a Federal health care offense (as defined in section 982(a)(6)(B))—

''(1) received in the course of duty as an attorney for the Government; or

''(2) disclosed under rule 6(e)(3)(A)(ii) of the Federal Rules of Criminal Procedure;

may disclose that information to an attorney for the Government to use in any investigation or civil proceeding relating to health care fraud.''.

SEC. 505. FALSE STATEMENTS.

(a) IN GENERAL.—Chapter 47, of title 18, United States Code, is amended by adding at the end the following:

''§ 1033. False statements relating to health care matters

''Whoever, in any matter involving a health plan, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United State Code, in amended by adding at the end the following:

''1033. False statements relating to health care matters.''.

SEC. 506. VOLUNTARY DISCLOSURE PROGRAM.

In consultation with the Attorney General of the United States, the Secretary of Health and Human Services shall publish proposed regulations not later than 9 months after the date of enactment of this Act, and final regulations not later than 18 months after such date of enactment, establishing a program of voluntary disclosure that would facilitate the enforcement of sections 1128A and 1128B of the Social Security Act (42 U.S.C. 1320a-7a and 1320a-7b) and other relevant provisions of Federal law relating to health care fraud and abuse. Such program should promote and provide incentives for disclosures of potential violations of such sections and provisions by providing that, under certain circumstances, the voluntary disclosure of wrongdoing would result in the imposition of penalties and punishments less substantial than those that would be assessed for the same wrongdoing if voluntary disclosure did not occur.

SEC. 507. OBSTRUCTION OF CRIMINAL INVESTIGATIONS OF FEDERAL HEALTH CARE OFFENSES.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 1518. Obstruction of Criminal Investigations of Federal Health Care Offenses.

''(a) IN GENERAL.—Whoever willfully prevents, obstructs, misleads, delays or attempts to prevent, obstruct, mislead, or delay the communication of information or records relating to a Federal health care offense to a criminal investigator shall be fined under this title or imprisoned not more than 5 years, or both.

''(b) FEDERAL HEALTH CARE OFFENSE.—As used in this section the term 'Federal health care offense' has the same meaning given such term in section 982(a)(6)(B) of this title.

''(c) CRIMINAL INVESTIGATOR.—As used in this section the term 'criminal investigator' means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations for prosecutions for violations of health care offenses.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United State Code, in amended by adding at the end the following:

''1518. Obstruction of Criminal Investigations of Federal Health Care Offenses.''.

SEC. 508. THEFT OR EMBEZZLEMENT.

(a) IN GENERAL.—Chapter 31 of title 18, United States Code, is amended by adding at the end the following new section:

''§ 669. Theft or Embezzlement in Connection with Health Care.

''(a) IN GENERAL.—Whoever willfully embezzles, steals, or otherwise without authority willfully and unlawfully converts to the use of any person other than the rightful owner, or intentionally misapplies any of the moneys, funds, securities, premiums, credits, property, or other assets of a health care benefit program, shall be fined under this title or imprisoned not more than 10 years, or both.

''(b) FEDERAL HEALTH CARE OFFENSE.—As used in this section the term 'Federal health care offense' has the same meaning given such term in section 982(a)(6)(B) of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 31 of title 18, United State Code, in amended by adding at the end the following:

''669. Theft or Embezzlement in Connection with Health Care.''.

SEC. 509. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1956(c)(7) of title 18, United States Code, is amended by adding at the end the following new subparagraph:

''(F) Any act or activity constituting an offense involving a Federal health care offense as that term is defined in section 982(a)(6)(B) of this title.''.

TITLE VI—PAYMENTS FOR STATE HEALTH CARE FRAUD CONTROL UNITS

SEC. 601. ESTABLISHMENT OF STATE FRAUD UNITS.

(a) ESTABLISHMENT OF HEALTH CARE FRAUD AND ABUSE CONTROL UNIT.—The Governor of each State shall, consistent with State law, establish and maintain in accordance with subsection (b) a State agency to act as a Health Care Fraud and Abuse Control Unit for purposes of this part.

(b) DEFINITION.—In this section, a ''State Fraud Unit'' means a Health Care Fraud and Abuse Control Unit designated under subsection (a) that the Secretary certifies meets the requirements of this part.

SEC. 602. REQUIREMENTS FOR STATE FRAUD UNITS.

(a) IN GENERAL.—The State Fraud Unit must—

(1) be a single identifiable entity of the State government;

(2) be separate and distinct from any State agency with principal responsibility for the administration of any Federally-funded or mandated health care program;

(3) meet the other requirements of this section.

(b) SPECIFIC REQUIREMENTS DESCRIBED.—The State Fraud Unit shall—

(1) be a Unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations;

(2) if it is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, (A) assure its referral of suspected criminal violations to the appropriate authority or authorities in the State for prosecution, and (B) assure its assistance of, and coordination with, such authority or authorities in such prosecutions; or

(3) have a formal working relationship with the office of the State Attorney General or the appropriate authority or authorities for prosecution and have formal procedures (including procedures for its referral of suspected criminal violations to such office) which provide effective coordination of activities between the Fraud Unit and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to any Federally-funded or mandated health care programs.

(c) STAFFING REQUIREMENTS.—The State Fraud Unit shall—

(1) employ attorneys, auditors, investigators and other necessary personnel; and

(2) be organized in such a manner and provide sufficient resources as is necessary to promote the effective and efficient conduct of State Fraud Unit activities.

(d) COOPERATIVE AGREEMENTS; MEMORANDA OF UNDERSTANDING.—The State Fraud Unit shall have cooperative agreements with—

(1) Federally-funded or mandated health care programs;

(2) similar Fraud Units in other States, as exemplified through membership and participation in the National Association of Medicaid Fraud Control Units or its successor; and

(3) the Secretary.

(e) REPORTS.—The State Fraud Unit shall submit to the Secretary an application and an annual report containing such information as the Secretary determines to be necessary to determine whether the State Fraud Unit meets the requirements of this section.

(f) FUNDING SOURCE; PARTICIPATION IN ALL-PAYER PROGRAM.—In addition to those sums expended by a State under section 604(a) for purposes of determining the amount of the Secretary's payments, a State Fraud Unit may receive funding for its activities from other sources, the identity of which shall be reported to the Secretary in its application or annual report. The State Fraud Unit shall participate in the all-payer fraud and abuse control program established under section 101.

SEC. 603. SCOPE AND PURPOSE.

The State Fraud Unit shall carry out the following activities:

(1) The State Fraud Unit shall conduct a statewide program for the investigation and prosecution (or referring for prosecution) of violations of all applicable state laws regarding any and all aspects of fraud in connection with any aspect of the administration and provision of health care services and activities of providers of such services under any Federally-funded or mandated health care programs;

(2) The State Fraud Unit shall have procedures for reviewing complaints of the abuse or neglect of patients of facilities (including patients in residential facilities and home health care programs) that receive payments under any Federally-funded or mandated health care programs, and, where appropriate, to investigate and prosecute such complaints under the criminal laws of the State or for referring the complaints to other State agencies for action.

(3) The State Fraud Unit shall provide for the collection, or referral for collection to the appropriate agency, of overpayments that are made under any Federally-funded or mandated health care program and that are discovered by the State Fraud Unit in carrying out its activities.

SEC. 604. PAYMENTS TO STATES.

(a) MATCHING PAYMENTS TO STATES.—Subject to subsection (c), for each year for which a State has a State Fraud Unit approved under section 602(b) in operation the Secretary shall provide for a payment to the State for each quarter in a fiscal year in an amount equal to the applicable percentage of the sums expended during the quarter by the State Fraud Unit.

(b) APPLICABLE PERCENTAGE DEFINED.—

(1) IN GENERAL.—In subsection (a), the ''applicable percentage'' with respect to a State for a fiscal year is—

(A) 90 percent, for quarters occurring during the first 3 years for which the State Fraud Unit is in operation; or

(B) 75 percent, for any other quarters.

(2) TREATMENT OF STATES WITH MEDICAID FRAUD CONTROL UNITS.—In the case of a State with a State medicaid fraud control in operation prior to or as of the date of the enactment of this Act, in determining the number of years for which the State Fraud Unit under this part has been in operation, there shall be included the number of years for which such State medicaid fraud control unit was in operation.

(c) LIMIT ON PAYMENT.—Notwithstanding subsection (a), the total amount of payments made to a State under this section for a fiscal year may not exceed the amounts as authorized pursuant to section 1903(b)(3) of the Social Security Act.●

ORDER OF BUSINESS

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 256 and S. 257 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CRAIG addressed the Chair.

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

Mr. CRAIG. Mr. President, I ask unanimous consent to proceed for 5 minutes as if in morning business.

The PRESIDING OFFICER. The Senate is in morning business. The Senator from Idaho is recognized for up to 15 minutes.

Mr. CRAIG. I thank the Chair for clarifying that.

(Mr. INHOFE assumed the chair.)

REAUTHORIZE THE ENDANGERED SPECIES ACT

Mr. CRAIG. Mr. President and fellow Senators, I think the American public and even we here in the Congress recognize that the November elections was a profound statement on the part of this country to speak to change.

Since that time, all eyes have been focused on Washington, as we saw the changing of the guard in the House after 40 years of single-party rule, and certainly the change that has occurred here that has resulted with Republicans being in the majority, leading the Senate and chairing the committees. That has also resulted in a very aggressive legislative agenda that has focused most of the attention of the American people on what is going on in Washington. Whether it was the rule changes in the House or the debate on the unfunded mandates bill that still is before this Senate, directed by my colleague from Idaho, DIRK KEMPTHORNE, or whether it is the growing debate that will soon come to the floor on a balanced budget amendment, all eyes remain focused on Washington.

But while that is going on, something very tragic is still happening across America. And that is that there still remains business as usual on the part of the Federal Government and our Federal agencies and our Federal regulators—as was going on and has been going on long before the elections of last November— the treading on the private citizen, the taking away of rights, a Federal Government that is unconcerned, or demonstrating at least little concern, about the impact of their decisions and their activities on the economies of local communities.

So for just a moment this afternoon, I thought I would once again focus on something that is now occurring in my State of Idaho and try to once again impress upon the Congress, and certainly those who might be watching, the magnitude of the job we have before us and the tragedy of this administration failing to be responsive and allowing their agencies to run amok in an unwillingness to be concerned about the human being—the citizen, the taxpayer—but to be all concerned about the Federal regulations and to make sure that every letter of the law is complied with, even laws that no longer work for the American people or

demonstrate their fairness or their equity.

Last Thursday, in Boise, ID, Judge David Ezra, with a sweep of his pen, Mr. President, shut down 14 million acres in the State of Idaho. What does that mean? That means that in an area the size of Massachusetts and Connecticut and Maryland combined, this judge said, ''Under the auspices of the Endangered Species Act, there will be no logging, no mining, no grazing, no road building or any human activity until the Forest Service can convince me and convince national marine fisheries that all of their activities fit within the confines of the Endangered Species Act,'' even if not one of those activities can scientifically be proven to harm a species of fish that is now listed as endangered within the watersheds of that region of the State of Idaho.

As a result of that, 56 timber stations, 82 mining operations, 3 road construction projects, and 395 livestock grazing operations—better known as ranches—have been told to cease and desist. Thousands of miners will be out of work as of Monday morning, next Monday morning, not because the mine played out, not because the market for minerals dropped, but because the Federal Government said you can no longer mine, and a Federal judge, again, said last Thursday, with the sweep of his pen, ''Walk away. Pull your paycheck. We are not worried about your children and your homes and your families and your communities. We are worried that the law which is now clearly in question be complied with.''

Well, Mr. President, you can well imagine, chaos reigns supreme in my State of Idaho at this moment; that in six of the eight Federal forests in my State, amassing over 14 million acres, all human activity, which is a major part of the economic base of that region of my State, has just been told to shut down, awaiting the action of a Federal bureaucracy that is now days behind in what it should have been doing days ago.

That is why it is so imperative that the Environment and Public Works Committee look at the reauthorization of the Endangered Species Act now—not next year, not 3 years from now, but now—to make sure that these kinds of silly bureaucratic activities can no longer go on and put the average man and woman and small business people in my State or any other State arbitrarily out of business.

We saw it go on in Oregon, with the spotted owl—30,000 loggers in the State of Oregon. Now, in my State of Idaho, thousands—yes, thousands—of people, small businesses that have existed in one family for over 100 years, are being threatened with their very existence.

It is clearly a call to arms. And I think the people of my State recognize that. It is clearly the responsibility of this Congress to change the law, to make it more compatible, to make it more sensitive, to put the human species back into the blend of the Endangered Species Act so that we at least give some credence to the human species, that is the steward of the land, instead of arbitrarily saying to that human being—that mother, that father, that worker, that logger, that miner, that rancher, that small business person—''Step aside. You are no longer important. Step aside to a plant or an animal.''

Since when did this Government become so insensitive to the rights of the human being? Since we have ignored our responsibilities to reauthorize the Endangered Species Act, and do these kinds of things that the American people finally in November of last year rose up and said to the Congress of the United States: ''Become responsive to our needs or step aside and we will find somebody who will.''

Well, I certainly hope this Senate recognizes that call and will become increasingly sensitive to their responsibility to the taxpayer, to the citizens, the law-abiding citizens, of our country.

Let us start with reauthorization of the Endangered Species Act, so that what is going on in Idaho today and next week and throughout this coming year, and what has gone on in the State of Oregon and other places around our country will not be repeated again; that we, as Senators, who agree to take an oath to uphold the Constitution of the United States, will do that constitutional duty to put people back into the equation of being responsible for the stewards of our land.

I yield back the remainder of my time.

ORDERS FOR MONDAY, JANUARY 23, 1995

Mr. CRAIG. Mr. President, under the order entered last night, the Senate will convene at 9:30 a.m. on Monday, January 23, 1995.

I ask unanimous consent that when the Senate convenes on Monday, the time for the two leaders be reserved and there then be a period for the transaction of morning business not to extend beyond the hour of 10:30, with Senators permitted to speak for not to exceed 5 minutes each, with the exception of the following Senators: Senators GRASSLEY and PRYOR, for 15 minutes equally divided; Senator CONRAD, for up to 30 minutes. I further ask that at the hour of 10:30 a.m. the Senate resume consideration of S. 1, the unfunded mandates bill.

The PRESIDING OFFICER. Is there objection?

Mr. FORD. Mr. President, reserving the right to object, the only change I believe the Senator is making, so that we all understand it, instead of getting on S. 1 at 10 it will be at 10:30, and we are authorizing three Senators to speak in that time. Instead of 10 it will be 10:30, so that our colleagues know.

Mr. CRAIG. That is correct.

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

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

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

PREVENTING THE ADOPTION OF CERTAIN NATIONAL HISTORY STANDARDS

VIOLENCE AT CLINICS

IMPACT ON LOCAL GOVERNMENTS

Mr. PRESSLER. Mr. President, I ask unanimous consent that it be in order for me to send to the desk three resolutions and that they be considered en bloc, agreed to and the motion to reconsider be laid upon the table.

For the information of my colleagues, the three resolutions are the texts of the Gorton amendment, Bradley amendment and Boxer amendment that were offered to the unfunded mandates bill and voted on Wednesday.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. And without objection, where appropriate, the preambles are agreed to.

Mr. PRESSLER. Mr. President, I send the three resolutions to the desk.

So the resolutions (S. Res. 66, S. Res. 67, and S. Res. 68) were agreed to, as follows:

S. RES. 66

Resolved, That it is the sense of the Senate that—(a) the National Education Goals Panel should disapprove, and the National Education Standards and Improvement Council should not certify, any voluntary national content standards, voluntary national student performance standards, or criteria for the certification of such content and student performance standards, on the subject of world and United States history, developed prior to February 1, 1995.

(b) voluntary national content standards, voluntary national student performance standards, and criteria for the certification of such content and student performance standards, on the subject of world and United States history, established under title II of the Goals 2000: Educate America Act should not be based on standards developed primarily by the National Center for History in the Schools prior to February 1, 1995; and

(c) if the Department of Education, the National Endowment for the Humanities, or any other Federal agency provides funds for the development of the standards and criteria described in paragraph (6) the recipient of such funds should have a decent respect for the contributions of western civilization, and United States history, ideas, and institutions, to the increase of freedom and prosperity around the world.

S. RES. 67

SENSE OF THE SENATE CONCERNING PROTECTION OF REPRODUCTIVE HEALTH CLINICS.

Whereas, there are approximately 900 clinics in the United States providing reproduction health services;

Whereas, violence directed at persons seeking to provide reproductive health services continues to increase in the United States, as demonstrated by the recent shootings at two reproductive health clinics in Massachusetts and another health care clinic in Virginia;

Whereas, organizations monitoring clinic violence have recorded over 130 incidents of violence or harassment directed at reproductive health care clinics and their personnel in 1994 such as death threats, stalking, chemical attacks, bombings and arson;

Whereas, there has been one attempted murder in Florida and four individuals killed at reproductive health care clinics in Florida and Massachusetts in 1994;

Whereas, the Congress passed and the President signed the Freedom of Access to Clinic Entrances Act of 1994, a law establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services;

Whereas, violence is not a mode of free speech and should not be condoned as a method of expressing an opinion; and

Whereas, the President has intructed the Attorney General to order—

''(A) the United States Attorneys to create task forces of Federal, State and local law enforcement officials and develop plans to address security for reproductive health care clinics located within their jurisdictions; and

''(B) the United States Marshals Service to ensure coordination between clinics and Federal, State and local law enforcement officials regarding potential threats of violence: Now therefore, be it

Resolved, That it is the sense of the Senate that the United States Attorney General should fully enforce the law and protect persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services from violent attack.

(c) Nothing in this resolution shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the first amendment to the constitution.

S. RES. 68

IMPACT ON LOCAL GOVERNMENTS.

Whereas, the Congress should be concerned about shifting costs from Federal to State and local authorities and should be equally concerned about the growing tendency of States to shift costs to local governments;

Whereas, cost shifting from States to local governments has, in many instances, forced local governments to raise property taxes or curtail sometimes essential services; and

Whereas, increases in local property taxes and cuts in essential services threaten the ability of many citizens to attain and maintain the American dream of owning a home in a safe, secure community: Now therefore, be it

Resolved, That it is the sense of the Senate that

(1) the Federal Government should not shift certain costs to the State, and States should end the practice of shifting costs to local governments, which forces many local governments to increase property taxes;

(2) States should end the imposition, in the absence of full consideration by their legislatures, of State issued mandates on local governments without adequate State funding, in a manner that may displace other essential government priorities; and

(3) one primary objective of this Act and other efforts to change the relationship among Federal, State, and local governments should be to reduce taxes and spending at all levels and to end the practice of shifting costs from one level of government to another with little or no benefit to taxpayers.

RECESS UNTIL MONDAY, JANUARY 23, 1995 AT 9:30 A.M.

Mr. PRESSLER. Mr. President, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 1:35 p.m., recessed until Monday, January 23, 1995, at 9:30 a.m.