HOUSE OF REPRESENTATIVES—*Monday, August 3, 1992*

The House met at 12 noon and was called to order by the Speaker pro tempore (Mr. MONTGOMERY).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
July 31, 1992.

I hereby designate the Honorable G.V. (SONNY) MONTGOMERY to act as Speaker pro tempore on Monday, August 3, 1992.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we look to our communities and to our world, our eyes are often filled with scenes of hostility and the anguish of people living in suspicion and hatred with each other. Remind us, gracious God, that in addition to seeing the reality of selfishness in life, may we also see the power of the spirit, of respect and esteem and acts of justice that are also a part of the lives of people. May our dedication be as reconcilers of disputes and as agents of peace. May our words and deeds, our attitudes and our feelings, be directed to the good works of justice and mercy, the opportunities for which are all about us. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. MAZZOLI] will lead the House in the Pledge of Allegiance.

Mr. MAZZOLI led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

CONTROLS NEEDED ON CAMPAIGN SPENDING BY INDIVIDUAL CANDIDATES

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, there is an audible intake of breath by my audiences when I tell them that up to $1 million is sometimes spent to win a seat in the House of Representatives.

I wonder what my audience's reaction now will be when I report that this spring $3.4 million was spent, not to win a House seat, but simply to win the right to run for that House seat. And, of that $3.4 million, $3.3 million was contributed by the candidate himself.

Too much money is being spent in campaigns both by individuals on their own behalf and by political action committees and other special interest groups.

Now Congress can control what political action committees spend, but it cannot, under the Buckley-Valeo Supreme Court case, which cited constitutional reasons, control what individuals can spend on their own campaigns.

There is pending House Joint Resolution 524, offered by the gentleman from Michigan [Mr. DINGELL], of which I am a sponsor, which would change that. It would give Congress the authority to limit what individuals can contribute to their own campaigns.

Please cosponsor House Joint Resolution 524 and, by that, cosponsor better government.

FIFTY DAYS SINCE DEFEAT OF BALANCED BUDGET AMENDMENT: STILL NO DEMOCRAT PARTY SOLUTION TO DEFICIT

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, it has now been 50 days since the tax and spend Democrats who control Congress delivered a knock-out punch to the American taxpayer when they successfully defeated a balanced budget amendment.

Through the use of scare tactics on the elderly and under the guise of a promise from the Budget Committee chairman to "bring to the floor an enforcement procedure to move us toward a balanced budget with tough enforcement regardless of what happens," my colleagues on the other side of the aisle defeated efforts, which an overwhelming majority of Americans support, to balance the Federal budget.

Well, to borrow a line from a popular commercial, "Where's the Beef?" Mr. Speaker, where is the enforcement procedure that the chairman of the Budget Committee promised 50 days ago?

It is estimated that the national debt grows by $1.2 billion a day. That is almost an additional $60 billion in debt facing the American taxpayers since the Democrats defeated the balanced budget amendment. We ought to be ashamed! It is no wonder why people have had all they can stand of a Democrat-controlled Congress.

For Americans to send Bill Clinton and AL GORE to the White House to control runaway Federal spending by a Congress controlled by Democrats makes as much sense as sending a fire truck to a fire with its water tanks filled with gasoline.

SUPPORT BILL CLINTON AND GOOD HEALTH CARE

(Mr. STARK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STARK. Mr. Speaker, yesterday the President showed his true colors in Illinois by attacking a Clinton proposal, and in his attack he indicated what he really intends to do, and that is to end Medicare.

The President does not trust the Government to do anything. He does not trust the people. He does not trust other governments. He would end Medicare for seniors.

I would challenge anybody in this Hall to stand up and say that they would oppose Medicare as a good system for all seniors.

Clinton, on the other hand, Bill Clinton would provide all Americans with access to affordable health care.

Bush protects the big insurance companies, rich doctors, gouging for- profit hospitals, high-charging pharmaceutical companies; but Clinton would change that. He would hold down costs, make insurance available to all and pay fair rates to providers.

It is not enough for the President to use his plan, which is abstinence, celibacy, exercise and prayer. If you think that will bring health care to Americans, guess again; support Bill Clinton for change for the better.

COMMENDING PRESIDENT'S APPROVAL OF FUNDS FOR SALE OF PORK

(Mr. BEREUTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, for my export 1-minute today, I would like to commend President Bush's approval yesterday of Export Enhancement Program funds for the sale of pork to the Commonwealth of Independent States.

Mr. Speaker, this decision clearly demonstrates the President's longstanding commitment to agriculture and provides an excellent opportunity for United States farmers, the people of the former Soviet Union and the United States' economy.

It is estimated that the pork sale could add $125 million to the U.S. economy by creating additional revenues for pork producers and food processors as well. The sale could also boost significantly the consumption of corn and soybeans.

Mr. Speaker, this decision marks the beginning of an important commitment to compete in world markets for value-added agriculture products. Already, the European Community is aggressively pursuing the sale of such products in emerging markets throughout the world. EEP funding is essential to allow American pork producers to fairly compete with the heavily subsidized European Community meat producers.

The approval of this sale—which would be equal to one-third of all U.S. pork exports—also underlines the importance of agriculture exports to the U.S. economy. From October 1991 to May 1992, the U.S. recorded an agricultural trade surplus of $13.4 billion.

Mr. Speaker, exports of U.S. goods and services continually play a larger role in this Nation's prosperity, and agricultural exports are a significant portion of that total. Therefore, this Member applauds the President's recent decision to compete in the rapidly growing markets of value added and high value agricultural products.

STOP KILLINGS BY SERBIANS

(Mr. BILBRAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BILBRAY. Mr. Speaker, this weekend in Bosnia, one of the most horrible incidents took place. A busload of orphans, all very young children, was passing from Bosnia across to the coast of Croatia to be able to find a place to live safely. The bus was clearly marked. It was marked and the Serbian "Nationalist" forces were notified that they were going down this corridor.

As the nurses said, no one believed that the Serbian Nationalists, which are not Serbian Nationalists, they are a bunch of thugs and terrorists, would attack this bus. They did. They machine gunned it and killed two young girls, one 14 months old and one 3 years old.

The time has come for the Europeans and the Americans to do a surgical strike on the Serbian positions above these roads. We cannot allow thousands of innocents to go on being killed.

As the Bosnians and Croatians have said, if there was oil in Bosnia or in Croatia, we would be there in 5 minutes.

We in the United States as the leader of the free world must do something now to make sure this useless and inhumane slaughter is discontinued. Serbian Nationalists or terrorists as they are in that area must be brought to heel and they must be stopped before this slaughter becomes a genocide of those people who are not Serbians in the area.

□ 1210

GEORGE BUSH'S SCARE TALK ON HEALTH CARE

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, yesterday President Bush showed us how low a desperate candidate will go on the health care issue.

He said Bill Clinton's health reform plan would mean Government-controlled medicine, waiting lines, and unemployment. That is the kind of scare talk Republican candidates have been using for decades to block health care reform.

The truth is, the Clinton plan would control costs, provide affordable health care for everyone, let doctors treat disease instead of filling out paperwork, and level the playing field for American business.

George Bush would rather frighten voters than face the facts. The cost of health care has tripled in the Reagan-Bush years. Millions of American families have lost health insurance in this recession, and millions more live in daily fear that a major illness will bankrupt them.

But all George Bush proposes to do is throw more money at the health insurance industry through tax credits, cut back on private health insurance and Medicare benefits, and shift the burden to the States. Bill Clinton's plan is called pay or play—George Bush's should be called pay and pray.

Mr. Speaker, the American people have had enough of George Bush's scare talk and distortion. They are going to elect a President who will take on the special interests and lead the way to real health care reform.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1790

Mr. DANNEMEYER. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 1790.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, August 4, 1992.

TAX TREATMENT OF ASSOCIATIONS RESULTING FROM MERGERS OF CERTAIN FARM CREDIT ASSOCIATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5642) to amend the Internal Revenue Code of 1986 with respect to the treatment of certain property and casualty insurance companies under the minimum tax, and for other purposes.

The Clerk read as follows:

H.R. 5642

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

SECTION 1. MINIMUM TAX TREATMENT OF CERTAIN PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) ADJUSTED CURRENT EARNINGS PREFERENCE.—

(1) IN GENERAL.—Clause (i) of section 56(g)(4)(B) of the Internal Revenue Code of 1986 (relating to inclusion of items included for purposes of computing earnings and profits) is amended by adding at the end thereof the following new sentence: "In the case of any insurance company taxable under section 831(b), this clause shall not apply to any amount not described in section 834(b)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1989.

(b) ADJUSTMENTS FOR BOOK INCOME.—In applying section 56(f) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) to any insurance company taxable under section 831(b) of such Code, only ..et investment income as reported in the company's applicable financial statement shall be taken into account in determining the adjusted net book income of such insurance company. The preceding sentence shall apply to taxable years beginning after December 31, 1986, and before January 1, 1990.

SEC. 2. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS.

If an employer elects under Treasury Regulation 31.3402(g)-1 to determine the amount

to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 24 percent. The preceding sentence shall apply to payments made after December 31, 1993.

SEC. 3. TAX TREATMENT OF ASSOCIATIONS RESULTING FROM MERGERS OF CERTAIN FARM CREDIT ASSOCIATIONS.

(a) IN GENERAL.—Part IV of subchapter F of chapter 1 of the Internal Revenue Code of 1986 (relating to farmers' cooperatives) is amended by adding after section 521 the following new section:

"SEC. 522. CERTAIN MERGED FARM CREDIT ASSOCIATIONS.

"(a) IN GENERAL.—For purposes of this title, except as otherwise provided in this section, an applicable merged association shall be treated in the same manner as a production credit association is treated under section 2.6 of the Farm Credit Act of 1971 (12 U.S.C. 2077).

"(b) TREATMENT OF EXEMPT ITEMS.—

"(1) IN GENERAL.—For purposes of this title, an exempt item shall not be taken into account in computing the tax liability of any applicable merged association.

"(2) EXEMPT ITEM.—For purposes of this subsection, the term 'exempt item' means any item of income, gain, loss, or deduction which is properly allocable to loans described in section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) which have an initial term of at least 10 years.

"(c) DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE MERGED ASSOCIATION.—The term 'applicable merged association' means any association resulting from a merger under section 7.8 of the Farm Credit Act of 1971 or section 411 of the Agricultural Credit Act of 1987 of 1 or more production credit associations and 1 or more Federal land bank associations. Such term includes any corporation resulting from a subsequent merger of an association referred to in the preceding sentence with another corporation.

"(2) REFERENCES TO FARM CREDIT ACT OF 1971.—Any reference in this section to the Farm Credit Act of 1971 shall be a reference to such section as in effect immediately before the date of the enactment of this section."

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for part IV of subchapter F of chapter 1 of such Code is amended by adding at the end thereof the following new item:

"Sec. 522. *Certain merged farm credit associations.*"

(2)(A) The part heading for such part IV is amended by adding at the end thereof the following: "; **CERTAIN FARM CREDIT ASSOCIATIONS**".

(B) The item relating to part IV in the table of parts for subchapter F of chapter 1 of such Code is amended by inserting "; certain farm credit associations" after "cooperatives".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington [Mr. MCDERMOTT].

Mr. MCDERMOTT. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise today to urge my colleagues to support passage of H.R. 5642, a bill I coauthored along with my friend, Mr. JACOBS of Indiana. Section 1 of the bill addresses a minimum tax calculation problem for very small property and casualty insurance companies. These companies write less than $1.2 million in annual premium volume.

They are companies who only write business in one State and in many instances, one county. They are located in rural areas and service our farmers and small towns, insurance markets large companies are unwilling to service. The companies have been in business, in many cases, for over 100 years, and have 2 to 4 employees.

In 1986, the property/casualty insurance tax code was substantially changed and rewritten. Many changes were also made to the alternative minimum tax calculation.

The Congress decided that small property and casualty companies (less than $1.2 million annual premium) did not have sophisticated staff—attorneys, actuaries, investment and tax advisers—and would find it difficult to comply with the new Tax Code requirements.

In addition, because of the size and operations of these small companies, they don't have "loss reserves" and "unearned premium reserves."

Consequently, a different tax provision was included in the 1986 Tax Reform Act which allows these companies to elect to be taxed on investment income only. But we failed to include similar language in the alternative minimum Tax Code.

In recent years, the IRS has determined that without a legislative change to the Tax Code clarifying the AMT calculation, very small property and casualty insurers will have to make all the same calculations as the very large companies in order to comply with the AMT. Section I makes the necessary change to the Tax Code. With the enactment of the bill, very small property and casualty insurers will make their AMT calculation using taxable and tax-exempt investment income as their income basis.

While simplifying their tax calculations, the change also guarantees these companies will always be taxpayers even in years they experience underwriting losses.

Section I merely clarifies the intent of Congress in the 1986 Tax Reform Act.

Mr. Speaker, of particular interest to me is section 3 of the bill. That section clarifies the intent of the House of Representatives when it passed the Agricultural Credit Act of 1987, by restoring the traditional tax treatment of the associations of the Farm Credit System.

The historical tax treatment was unintentionally altered as part of the restructuring brought about by the 1987 act.

As approved by the Committee on Ways and Means, section 3 of the bill clarifies that the Farm Credit Systems' Agricultural Credit Associations are exempt from taxation on the earnings from long-term loans of the type made by Federal land bank associations.

Congress first established this exemption for the Farm Credit System when it created the system 75 years ago.

That exemption was unintentionally removed for Agricultural Credit Associations when the Congress sought to restore confidence and improve efficiency in the system in 1987.

In the 1987 Act, Congress recognized that some of the farmer-borrowers who own the Farm Credit System institutions may wish to organize their local associations to provide for one-stop credit services.

Accordingly, the 1987 act authorized the merger of Production Credit Associations with Federal Land Bank Associations.

The resulting Agricultural Credit Associations can provide both long-term mortgage loans and short-term production loans. When the mergers were authorized it was assumed that the attributes of the two original lenders would be retained, including the tax treatment of the long-term mortgage loans.

Somewhere along the way our intent that the tax treatment of income from long-term mortgage loans continue unchanged was lost. The merger of a taxable entity, the short-term lender, with an exempt entity, the long-term lender, resulted in a new taxable entity. Mr. Speaker, this substantially increases the cost of operating this new entity.

Consequently, the option for the System's farmer-borrowers to merge land bank and production credit associations to form a single Agricultural Credit Association has been rendered less attractive.

This bill will clarify that the intent of the 1987 act was to continue the traditional tax treatment of long-term loans, including when such loans are made by Agricultural Credit Associations.

Mr. Speaker, I am pleased to inform the House that the chairman of the Committee on Agriculture, Mr. DE LA GARZA, and the ranking Republican of that committee, Mr. COLEMAN, both support this legislation.

In order to allow the farmer-borrowers-owners of the Farm Credit System to choose how to provide credit to the nation's agricultural community as they best see fit, as was originally intended in the 1987 act, I urge my col-

leagues to enthusiastically support H.R. 5642.

□ 1220

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill certainly needs no further explanation. It was not deemed to be controversial when it was considered in the Committee on Ways and Means, and we heard no objections since then.

Mr. GRANDY. Mr. Speaker, I rise in strong support of H.R. 5642 and urge its favorable adoption by the House and its eventual adoption into law. H.R. 5642 serves to remedy a unintended consequence of the tax provisions of the Agricultural Credit Act [ACA] of 1987. As a former member of the House Agriculture Committee who was intimately involved in the formulation of that act, I can assure you that increasing the tax burden on cooperatively owned farm credit banks was not the intent of that legislation. On the contrary, the principal purpose of that act was to restore the health of the Farm Credit System [FCS] which had suffered significantly in the mid-1980's.

It has been longstanding tax policy to not tax the income from long-term mortgage lending of Farm Credit System institutions. Prior to the 1987 act, these institutions consisted primarily of Land Bank Associations. On the other hand, the income from short-term lending for operational expenses, provided by Production Credit Associations in the FCS, has always been taxable. One of the principal means of reestablishing the Farm Credit System on firm financial footing under the ACA was to permit the merger of the long- and short-term lending arms of the System in order to improve efficiencies, spread risk, and cut costs.

Unfortunately, due to the legislative timing of the ACA, while the House bill addressed the differential taxation of merged short- and long-term institutions—known as Agricultural Credit Associations—the final act was silent on how they were to be taxed. Since that time, rulings by the Internal Revenue Service have ruled that all the income—both from long-term mortgage lending and short-term operational lending—of a merged Agricultural Credit Association is taxable. Such a ruling violates longstanding, wise tax policy and frustrates one of the means by which the act tried to improve the health of the FCS—the merger of associations with identical or substantially similar lending territories.

H.R. 5642 serves to right this oversight and to restore to their full effect the provisions of the Agricultural Credit Act for insuring the continued availability of affordable and adequate farm and ranch financing. I want to stress that the tax exemption provided in H.R. 5642 is strictly limited to income derived by merged associations from long-term real estate mortgage loans of the type that were formerly exempt.

I urge my colleagues to pass this bill and I look forward to its adoption into law.

Mr. MCGRATH. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5642.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill was passed.

A motion to reconsider was laid on the table.

EXEMPTING FROM UBIT THE CONDUCT OF CERTAIN GAMES OF CHANCE BY TAX-EXEMPT ORGANIZATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5660) to amend the Internal Revenue Code of 1986 to provide that the conducting of certain games of chance shall not be treated as an unrelated trade or business, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5660

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

SECTION 1. CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS.

(a) IN GENERAL.—Paragraph (1) of section 513(f) of the Internal Revenue Code of 1986 (relating to certain bingo games) is amended by inserting before the period "or other qualified games of chance".

(b) OTHER QUALIFIED GAMES OF CHANCE.—Subsection (f) of section 513 of such Code is amended by adding at the end thereof the following new paragraph:

"(3) OTHER QUALIFIED GAMES OF CHANCE.—For purposes of paragraph (1), the term 'other qualified game of chance' means any game of chance (other than bingo) if—

"(A) the conducting of such game by the organization does not violate State or local law,

"(B) the conducting of such game by organizations which are not nonprofit organizations would violate such law, and

"(C) no substantial part of the work in conducting such game is performed by individuals principally engaged in performing gaming services for hire."

(c) CLERICAL AMENDMENT.—The subsection heading of section 513(f) of such Code is amended by striking "BINGO GAMES" and inserting "GAMES OF CHANCE".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to games conducted after the date of the enactment of this Act.

SEC. 2. INCREASE IN RATE OF WITHHOLDING TAX ON CERTAIN GAMBLING WINNINGS.

(a) IN GENERAL.—Paragraph (1) of section 3402(q) of the Internal Revenue Code of 1986 (relating to extension of withholding to certain gambling winnings) is amended by striking "20 percent" and inserting "28 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proceeds from wagers placed after December 31, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

Mr. BILBRAY. Mr. Speaker, I rise in opposition to H.R. 5660, as amended.

The SPEAKER pro tempore. Is the gentleman from New York [Mr. MCGRATH] opposed to this legislation?

Mr. MCGRATH. I am not opposed, Mr. Speaker, but we have a Member who is.

The SPEAKER pro tempore. Because the gentleman from Nevada [Mr. BILBRAY] has risen in opposition to H.R. 5660, as amended, he will be recognized for 20 minutes.

Mr. BILBRAY. Mr. Speaker, I will yield time to my colleague, the gentlewoman from Nevada [Mrs. VUCANOVICH], and, if the Speaker will so allow, we can split the time between the proponents and opponents.

The SPEAKER pro tempore. The Chair concurs.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS] for 20 minutes in favor of this legislation, and the gentleman from Nevada [Mr. BILBRAY] for 20 minutes in opposition to this legislation.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I thank the distinguished ranking Member, the gentleman from Florida [Mr. GIBBONS], my friend, who does such an outstanding job on the Committee on Ways and Means. I also want to thank the gentleman from New York [Mr. MCGRATH], my very good friend by way of Prince George's County, MD. He lived in my district for a period of time, and he has worked very hard on this legislation, as well as being very concerned about the objectives.

Mr. Speaker, I rise in strong support of H.R. 5660, as amended.

This legislation, I think frankly, is not opposed by anybody in terms of its objective and the tax treatment that it will give to certain charitable organizations. My friends from Nevada, with whom I have discussed this matter, did have a great concern with the original formulation of the bill. I trust they are somewhat more sanguine about its present posture, but obviously, as I can see, they are still not pleased with the legislation, and they will speak for themselves.

I also, Mr. Speaker, want to say that the gentleman from Nebraska [Mr. HOAGLAND], my good friend, has introduced legislation. We have joined together in this effort, and he has been a yeoman leader on this effort, and I want to congratulate him.

Mr. Speaker, briefly this legislation is directed at the Federal Government's increasing focus on the burden of providing community services on charitable institutions. We talk about volunteerism. We talk about people be-

coming involved in doing good in our communities. In fact, many charitable organizations are doing that. These groups often must be creative in raising the funds necessary to their worthwhile projects because of shortage of efforts. Games like bingo have been used for years and have enjoyed exemption from taxation. Other games that have also been used, like raffles, casino nights, pull tabs and amusements are subject to taxation. What this means is that groups like the Jaycees, Knights of Columbus, volunteer fire departments, V.F.W. halls, and thousands of other charitable institutions must not only keep two separate accountings for taxable and nontaxable fund raising events, but they must also divert scarce resources from needy community projects.

My district and my county that I now represent, which is volunteer and career service professionals; all are not low-expense operations. The balance of my district is all volunteer service. A firepumper, Mr. Speaker, as you probably know, can run over $200,000 and a fire tractor to pull ladder trailers can run over $140,000. Just this past Saturday I was visiting the Berwyn Heights Volunteer Fire Department. They have a 106-foot ladder truck. The price is $527,000. In my district, in fact, over $12 million worth of fire equipment has been purchased since 1987 with the revenue, in some part, though not exclusively, but in part from revenues from games of chance.

In addition, the Jaycees have built and operate a community center for senior citizens; Jaycees of which I used to be a member, have built a senior citizen community center with revenues raised in this way.

H.R. 5660, exempts funds raised by these charities from the unrelated business income tax—only if the games of chance are operated by a 501(C)(3) charitable institutions. These are not private, profit-making/profit-diverting organizations. These funds go directly into public-good projects. Current law already allows this exemption already for any charitable organization within the State of North Dakota, showing how well represented the North Dakota folks have been. The North Dakota folks have been represented very well, even though their Representative is not listening to me currently.

I say to the gentleman from North Dakota, "Mr. DORGAN, I was just saying how well the folks of North Dakota have been represented, how these organizatons have already been taken care of in your State."

The IRS has recently started to enforce this law, cracking down in Maryland and Nebraska to collect unpaid taxes against these charities, and they plan to expand their crackdown, and my colleagues ought to take care of this, to over 30 States that allow such charity fundraisers. That is why we must act now to make clear that this exemption applies to everyone the same as it now does in North Dakota.

Mr. Speaker, there has been some concern raised by my friends in the Nevada delegation, as I have said, over the original bill's revenue raising proposal. Originally, this bill proposed to raise the excise tax on wagering from .25 percent to 1 percent. That caused a problem; we understood that, and I have assured my colleagues that we will work with them on that effort. We have substituted in this amended bill a new revenue offset. We have raised the withholding rate from 20 percent to 28 percent, and it only applies to winnings in excess of $1,000 and if the odds are 300 to 1. This bill would increase that withholding to 28 percent.

□ 1230

Mr. Speaker, one ought to understand why this revenue source raises funds. It raises funds because it provides for the collection of taxes that are due and owing to the Federal Government but which are now not paid. That is what needs to be understood with respect to this revenue source. It is revenue which is due and owing to the Federal Government but which is not paid. That is to say this revenue source speaks to tax avoidance. We all know what happens when we have tax avoidance. They ship the cost of that to the rest of us.

So this has two very positive aspects: First, it raises revenue, and second, it gets to that tax avoidance.

Mr. McGRATH. Mr. Speaker, will the gentleman yield?

Mr. HOYER. I am pleased to yield to the gentleman from New York.

Mr. McGRATH. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I support the efforts of my colleague, the gentleman from Maryland. Charitable fundraising activities should not be subject to the unrelated business income tax. The tax can completely eliminate proceeds from events that finance essential public services such as fire protection, health care, and education. The individuals running the fundraising events are not profiting from them. As long as the charities are complying with other State and Federal law, their fundraising events should not be treated as an unrelated business activity.

Mr. HOYER. Mr. Speaker, I thank the gentleman from New York [Mr. McGRATH] for his very worthwhile and cogent comments and also for the diligent work he has extended on behalf of this legislation. I am only sorry that next year when I have a similar problem, he will not be here to work with us. His retirement is going to result in a great loss to the Congress.

Mr. Speaker, I have letters from the National Multiple Sclerosis Society, the Jaycees, and the National Volunteer Fire Council, which, by the way, represents over 20,000 fire departments across this country, all writing in support of this legislation. I have also heard from the Knights of Columbus and from veterans groups, as I am sure many of my colleagues have who support this legislation.

Mr. Speaker, we all come to this well and speak on behalf of many worthwhile and critical community projects performed by charitable institutions in our districts. We have all engaged in ribbon-cuttings or ridden in parades with our local volunteer fire departments. Today, Mr. Speaker, we have an opportunity to do something for them to help them continue their work in our communities and thereby do something significant for our communities and our people. We can help them by treating them fairly and extending to all what a few have enjoyed for years.

Today we can pass H.R. 5660 and allow them to reinvest their hard-earned dollars back into our communities.

Mr. Speaker, I urge my colleagues to strongly support this legislation.

CRESCENT CITIES JAYCEES FOUNDATION, INC.,
Ozon Hill, MD, July 30, 1992.

Re H.R. 5660.

Hon. STENY HOYER,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE HOYER: On behalf of the Crescent Cities Jaycees Foundation, I respectfully request a favorable vote on H.R. 5660, which is currently scheduled for floor consideration on Monday.

Our organization is one of thousands of non-profits throughout the country that depend on revenue raised from charity games of chance. Because of the Tax Reform Act of 1986, organizations that conduct these games of chance are now subject to unrelated business income tax ("UBIT").

H.R. 5660, if passed, would once again restore the exemption from UBIT for qualified non-profit organizations.

By assuming a responsibility traditionally reserved to the federal, state, and local governments, non-profit organizations can once again be free to re-invest substantially more into our local communities and provide benefits through charitable programs for the elderly, needy, children and homeless.

Thank you for your attention to this matter.

Sincerely,

H. DAVID KROLL,
President.

NATIONAL MULTIPLE SCLEROSIS SOCIETY,
New York, NY, July 24, 1992.

Hon. PETER HOAGLAND,
House of Representatives,
Washington, DC.

DEAR MR. HOAGLAND: On behalf of the 400,000 members of the National Multiple Sclerosis Society, I write to express our strong support for H.R. 5660 and to urge its passage.

In states where it is legal for nonprofits to conduct fundraising through games of chance, there is opportunity for our chapters to raise significant funds. The bill would enhance our chapters' ability to achieve our mission goals of research, services, edu-

cation and advocacy on behalf of people who live with multiple sclerosis.

The best example we have is our chapter in Minnesota which raises funds through paper slots or pull tabs throughout the state. The chapter has plowed back large portions of the funds directly into the communities in which they were raised. For example, the chapter has used the revenue to put curb cuts in a small town in southern Minnesota.

Charitable gambling, like any other form of fundraising, provides nonprofit organizations with the ability to help those who cannot get help from anywhere else. America has a strong tradition of volunteerism. By eliminating the tax on charitable gaming fundraising, voluntary associations like the National Multiple Sclerosis Society can provide more service to those in need.

Please let us know if there is anything we can do to help pass H.R. 5660.

Sincerely,

MARTHA KEYS,
Vice President, Public Affairs
(Former Member of Congress).

NATIONAL VOLUNTEER FIRE COUNCIL,
Alexandria, VA, July 24, 1992.

Re H.R. 5560.

Hon. JERRY LEWIS,
Rayburn House Office Building,
Washington, DC.

DEAR CONGRESSMAN LEWIS: I am writing to ask your support for H.R. 5660, which is coming up Monday for floor consideration under suspension of the rules.

The National Volunteer Fire Council (28,000 fire departments and 1,500,000 firefighters) supports this Bill and strongly encourages you to vote favorable.

Many of our member organizations use charity gaming to purchase fire apparatus and equipment. In Prince George's County, Maryland alone, over $12 million in fire apparatus has been purchased since 1987. For many fire departments, charity gaming is their only source of funding.

Thank you very much for your attention to this matter and again I ask for your favorable vote on H.R. 5560.

Sincerely,

ROBERT MCKEON,
Chairman.

Mr. BILBRAY. Mr. Speaker, I yield 5 minutes to the gentlewoman from Nevada [Mrs. VUCANOVICH].

Mrs. VUCANOVICH. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in opposition to H.R. 5660 as amended. The bill exempts income derived from games of chance conducted by tax-exempt organizations from the unrelated business income tax. In order to offset the revenue losses due to the expansion of the unrelated business income tax [UBIT] exemption, the bill increases the withholding on gambling winnings. Under present law, proceeds from a wagering transaction are subject to withholding at a rate of 20 percent if such proceeds exceed $1,000 and if the amount of such proceeds is at least 300 times as large as the amount wagered. Under H.R. 5660 the rate of withholding on proceeds from a wagering transaction would be increased to 28 percent.

The bill defines "other games of chance" as any game that does not require a substantial amount of paid work, that is conducted by a tax-exempt organization, and that is conducted in accordance with State and local laws.

Mr. Speaker, if you were to look in the paper you would find ads for casino nights sponsored by local fire departments and other organizations. These casino nights offer roulette, poker, black jack, Caribbean stud poker among other games. Atlantic City rules are in force all night. These nights are very well organized and well run.

Mr. Speaker, first, the current law, 20 percent is a fair effective tax rate. A 28-percent rate will result in over-withholding with the taxpayers entitled to a refund at a later date. Second, this is not real revenue, it is just an accelerated collection—and in some cases an over-collection.

Mr. Speaker, I have no problem with charities and volunteer fire departments raising money. These are good causes. However, I have a problem with bringing an important tax bill such as this to the House floor under suspension of the rules.

This bill is ill advised and has been rushed to the floor without hearings. Members, such as myself, who have an interest in this bill were given no opportunity to present our views before the Ways and Means Committee. This is not the way the House of Representatives should operate.

I am pleased that no withholding tax is imposed on winnings from slot machines, bingo, or keno. However, Members should be aware that H.R. 5660 does hit State-conducted lotteries. In the case of State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20 percent is such proceeds exceed $5,000, regardless of the odds of the wager. H.R. 5660 will increase this rate to 28 percent. I doubt that the representatives of these State lotteries are even aware that this bill exists, let alone being considered on the floor today.

Mr. Speaker, I appreciate the intent of the bill, however, I have a problem with the process. This bill should be sent back to committee and hearings should be held and all interested parties should have an opportunity to express their views.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska [Mr. HOAGLAND].

Mr. HOAGLAND. Mr. Speaker, I am, of course, very pleased that the House today is considering H.R. 5660, a bill brought to us with the cooperation of Chairman Rostenkowski and the senior majority member of his committee, the gentleman from Florida [Mr. GIBBONS], and through the efforts of the gentleman from Maryland [Mr. CARDIN], the gentleman from Maryland [Mr. HOYER], and the gentleman from New York [Mr. MCGRATH], whose skills and talents we will sorely miss in the next Congress.

Let me try to explain briefly what has happened in the recent history of Federal taxation of charitable gaming in States like Nebraska and the consequences this has had for a number of Nebraska charities.

In early 1990, due to a technical change contained in the 1986 Tax Reform Act, a number of Nebraska charities began receiving large tax bills, with back taxes, interest, and penalties going back to 1986, for conducting fundraising activities using so-called pickle cards—we call them pickle cards in Nebraska—which had previously been tax-exempt.

Pickle cards are small pull-tab gambling cards. When the tabs are pulled back, slot machine symbols are revealed. They are called pickle cards because they used to be stored in jars that contained pickles on counters. I do not know that they are called pickle cards anywhere else in the country, but they are in Nebraska.

What is important is that this has customarily been low-stakes gaming in Nebraska. These pickle cards cost 50 cents, maybe a dollar, and if you are lucky, you will win $5, maybe $10, and the proceeds go the charity that is selling the cards. In Nebraska they are used by Catholic parishes to raise funds for their schools. At spaghetti dinners and pancake breakfasts, representatives of the church will sell the cards to parishioners as a traditional recreational way of raising funds. This makes a difference in some cases whether Catholic schools can stay open or not in the State of Nebraska.

Other nonprofit organizations have used them extensively for many years. They are used by organizations like the Jaycees. The gentleman from Maryland [Mr. HOYER] in his comments earlier talked about the various things the Jaycees in Maryland have funded with the proceeds of this low-stakes charitable gambling. Similarly, in Nebraska the Jaycees through the years have funded a number of worthwhile projects.

□ 1240

Volunteer fire departments in Nebraska, the Fraternal Order of Police, private schools like Roncalli and Mercy in Omaha, American Legion posts and Veterans of Foreign Wars chapters, events like the Septemberfest Salute to Labor, and athletic clubs for children, like the Viking Ship and Little Tykes, just to name a few, have raised funds for years by selling these pickle cards, and found out to their surprise in the spring of 1990, nearly 4 years after the new tax had been levied, that they in fact have been subjected to the tax for several years.

As a result, we found out in the spring of 1990 that many of these char-

ities owed large amounts of back taxes, penalties and interest. We have many charitable groups in eastern Nebraska that owe tens of thousands of dollars in back taxes, penalties and interest. Some are threatened with bankruptcy.

The over 200 charities in Nebraska, that have been affected by this have subject to confusing changes in the law and inconsistent enforcement by the Internal Revenue Service. A lot of volunteers who have given enormous amounts of time to these organizations are trying to figure out exactly what they owe and how to react to the notices from the Internal Revenues Service that these very large amounts are due.

It is important that we get this straightened out for the sake of these charities. This particular bill does that in part by repealing the tax prospectively for charities which engage in this low stakes fundraising gaming, and where that gaming is made legal by State law.

Let me just briefly summarize the recent changes in the law that have resulted in this unfavorable situation.

In 1978, Congress created the bingo exemption, which allows nonprofit charitable organizations which qualify for 501(c) tax exempt status, to conduct bingo games to raise funds.

In 1984, Congress decided that charities should be allowed to raise funds through games of chance other than bingo without being subject to taxation. The tax exemption was granted only if State law allowed nonprofit organizations, and only nonprofit organizations, to conduct such games, if such State law prohibited for-profit organizations from conducting such games. If state laws did not allow it, then the tax exemption did not apply.

Then in 1986 a technical correction was added to the 1986 Tax Reform Act. We are still somewhat bewildered today as to the origin of this technical correction. But what it did was repeal the tax exemption for nonprofit charities in all States except North Dakota.

In 1988 Congress responded to this problem by reducing back tax liability by changing the effective date after which such games could be taxed up to the date of the 1986 change in the law.

When we found out about it in the spring of 1990, Senator EXON and Senator KERREY from Nebraska introduced legislation in the Senate and I introduced legislation in the House designed to remedy the situation.

Congress has elsewhere recognized that the long-standing tradition of charitable gaming does not constitute an unrelated activity of the charity for taxable purposes. Many charities use games, like Friday night bingo, as a way to raise funds for community projects. Gaming encourages people to make contributions, and also introduces an element of fun and a feeling of participation. The games may be raffles, bingo games, pull-tab games such as pickle cards in Nebraska, or other variations depending on local custom and law. The bingo exemption, the expanded 1984 exemption, and the 1988 reduction of liability all indicate that Congress recognizes that these games raise funds for valuable activities in our communities.

IRS POLICY INCONSISTENT

It is not clear that the record of IRS enforcement has been consistent. It appears to vary form State to State. For instance, in Nebraska they tax the charities who sell pickle cards through State licensed operators whose commission is fixed by the State, allegedly because it constitutes a business. In Maryland, however, IRS appears to be mounting a far more extensive challenge, asserting that the games of chance of whatever kind, whether conducted by volunteers or not, whether all the proceeds go to charity or not, are unrelated to the tax exempt function, and therefore taxable.

I have asked the IRS to clarify its position on these issues. The Service is conducting a review of policy towards tax-exempt organizations, as well as reviewing these issues in particular. Fortunately, enforcement activities against Nebraska charities have been held pending the review.

This bill will resolve these doubts. This bill is consistent with the direction Congress has been moving in and obviates the North Dakota special exception.

DISCOURAGES PROFESSIONAL GAMBLING

We recognize and share the concerns of Members who do not want professional gamblers to come in and take advantage of charitable status, either by manipulating legitimate charities or establishing fraudulent charities. We have included a provision that would exclude from the tax exemption games in which a substantial part of the work is conducted by people whose principal occupation is running gambling operations.

The bill also does not supersede any State law. Games conducted in violation of State or local law are explicitly excluded form the tax exemption. We have tried to strike a balance between the legitimate and traditional activities that the community accepts and exclude anyone who would abuse this fundraising privilege.

H.R. 5660 will allow those thousands of community organizations across the country in those states which allow it to continue the tradition of charitable giving to their nonprofit organizations through low-stakes games of chance. I urge my colleagues to vote "yes."

Mr. Speaker, let me just say in conclusion that it really makes a great deal of sense for us to do that so that nonprofit organizations, including religious organizations that have traditionally raised funds in this fashion can continue those operations. It is a good bill and I would urge my colleagues to enact it.

Mr. BILBRAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is kind of hard to fight against this bill. The gentleman has talked about the Catholic Church, which I am a member of, the Knights of Columbus, which I am a member of, and the Jaycees, which I am a former member of. The only organization I am not a member of is a volunteer fire department, coming from an urban area. So I guess I am opposing three out of the four groups I belong to.

Mr. Speaker, this measure at first glance seems not a controversial piece of legislation. It proposes to exclude games of chance conducted by nonprofit organizations from the definition of unrelated trade or business. However, when one looks closely at this bill and how it is being paid for, it should never have been on the suspension calendar.

When the legislation was considered in the Committee on Ways and Means, no source of revenues were proposed to offset the cost, which is $100 million.

So where did they find the revenues? H.R. 5660 proposes to increase the withholding on certain gaming winnings from 20 to 28 percent. Under current law, proceeds from a wagering transaction are subject to withholding at a rate of 20 percent if such proceeds exceed $1000.

In the case of State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20 percent if such proceeds exceed $5,000. Under H.R. 5660, the withholding tax will rise to 28 percent. This provision will cover the State lotteries in 32 States and the District of Columbia. In fact, I am amazed that Members from those States that have state-conducted lotteries are not here really inquiring what this will do. Will this discourage people from buying lottery tickets, the proceeds of which are also used for educational purposes, used for public works projects in those States, and they are a very vital need and actually create a lot of good in those States that have these kinds of lotteries, and help with the deficits that so many of these States are having?

If people know that nearly one-third of that revenue is going to be taken out and withheld from them, I think a lot of people will be discouraged from buying those tickets. They also do very, very worthy charitable works and educational programs within those States.

The main beneficiaries of this bill are the numerous nonprofit organizations, such as volunteer fire departments that run Las Vegas Nights several times a week.

While I do not disagree with the efforts of the fire departments to raise funds to help the citizens of their communities, it should not be at the ex-

pense of the legal gaming industry, for several reasons.

One would think that these Las Vegas Nights are small time mom and pop events. This is hardly the case. Just last week in the Washington Post was an advertisement by a volunteer fire department in the State of the gentleman from Maryland [Mr. HOYER], advertising, "Casino Nights: Caribbean stud poker, $1,000 bonus; $1,000 royal high hand every two hours; roulette; poker; blackjack; free food."

Mr. Speaker, if you would ask the gentleman from Maryland [Mr. HOYER] what kind of liabilities these people have brought up, they are in the millions of dollars. These are not nights that the local Catholic charity is having bingo or something and raising $2,000, $3,000, or maybe even $5,000 to help their local Catholic school or to help some senior group. This is big business. These are big events. They are well-run, they are well-financed, and they make immense profits. Those are the people crying.

Mr. Speaker, this bill is not retroactive. The gentleman from Nebraska [Mr. HOAGLAND] said some of the churches are facing bankruptcy because of these tremendous liabilities. This does not remove, as I understand the bill, any of that liability. This does not take away the penalty that they had in the past, the interest that has accrued, and the taxes that were not paid. So this bill does not save those churches in those groups tens of thousands of dollars.

The Knights of Columbus that owe over $1 million in the district of the gentleman from Maryland [Mr. HOYER] are not going to be saved that way. They have to pay it. The volunteer fire department that owes nearly $2 million has to pay it. It is just removing all future liability. Those penalties and interest would not be there if these people had paid them timely.

Mr. Speaker, I sympathize that these people did not read the 1986 Tax Code. I can say I was not here and did not vote on the 1986 Tax Code. I was not part of that fiasco. Therefore, a lot of people have been hit with high taxes and interest and so forth because they did not read the code and did not know what was going on.

Mr. Speaker, second, it is very important that by adding more taxes on the legal gaming industry and doing these things, like I said, you get people that do not want to participate. Maybe some people feel that is great, that maybe they should not participate in the lotteries, maybe they should not participate in legalized gambling. But the fact is there are illegal operations going on all over this country that are not paying their fair share of taxes. We should be going out and encouraging the IRS and Justice Department to find these people and collect their taxes from them. I think we could raise a lot more than $100 million a year. We would raise hundreds of millions of dollars a year in additional money.

□ 1250

I urge that we look at this measure very closely, that we understand what it does. And then those Members out there that have States that have legalized lotteries, this is going to hurt them. It is going to cut back the take that they are receiving on those lotteries. Because people, if they look and they find out that they are going to have withheld from their taxes a good portion of that tax, of that winning, if they have a big winning, it is going to be very detrimental.

I urge that on this motion the Members here vote no when the voice vote comes in a few minutes.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore [Mr. MONTGOMERY]. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5660, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CLARIFYING TAX TREATMENT OF INTERMODAL CONTAINERS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5674) to clarify the tax treatment of intermodal containers, to revise the tax treatment of small property and casualty insurance companies, and for other purposes.

The Clerk read as follows:

H.R. 5674

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

TITLE I—TAX TREATMENT OF CERTAIN CARGO CONTAINERS

SEC. 101. TREATMENT OF CERTAIN CARGO CONTAINERS.

(a) GENERAL RULE.—A qualified intermodal cargo container shall be treated as property described in section 48(a)(2)(B)(v) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

(b) QUALIFIED INTERMODAL CARGO CONTAINER.—

(1) GENERAL RULE.—For purposes of this section, the term "qualified intermodal cargo container" means any intermodal cargo container of a United States person which, after being placed in service, at all times during the taxable year either—

(A) is subject to a qualifying lease, or

(B) is being—

(i) held for lease,

(ii) moved for purposes of leasing or being available for lease, or

(iii) maintained or repaired for subsequent lease,

by the taxpayer, a lessee or agent of the taxpayer or any other person.

(2) DEFINITIONS.—For purposes of this subsection—

(A) QUALIFYING LEASE.—The term "qualifying lease" means—

(i) any lease to a container user that has one or more trade routes that contact the United States, or

(ii) any short-term lease to a container user.

(B) CONTAINER USER.—The term "container user" means—

(i) a person that is in the business of using intermodal cargo containers to ship or transport cargo for other persons, or

(ii) with respect to an intermodal cargo container, a person that uses the container to ship or transport its own cargo.

(C) U.S. TRADE ROUTES.—A container user shall be deemed to have one or more trade routes that contact the United States if at any time during the taxable year such person—

(i) owns, operates, or charters any vessel that receives or delivers any intermodal cargo container in the United States, or

(ii) uses any intermodal cargo container to ship cargo to or from the United States.

(D) SHORT-TERM LEASE.—The term "short-term lease" means—

(i) any lease the stated term of which is not more than 50 percent of the class life (within the meaning of section 168(i)(1) of the Internal Revenue Code of 1986) of the container, and

(ii) any lease under a lease agreement under which the lessee is not required to use or hold the container for a specified term.

(E) LEASE.—The term "lease" means lease or sublease.

SEC. 102. NO INFERENCE.

No inference shall be drawn from this title as to the application of section 48(a)(2)(B)(v) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) or section 168(g)(4)(E) of the Internal Revenue Code of 1986 to containers that are not qualified intermodal cargo containers or to containers placed in service after December 31, 1989.

SEC. 103. REVOCATION OF PRIOR ELECTION.

(a) GENERAL RULE.—Any election made under Internal Revenue Service Revenue Procedure 90-10 prior to the date of enactment of this Act may be revoked without the consent of the Secretary of the Treasury or his delegate. An election revoked under this section shall be treated as never having been made.

(b) TIME AND MANNER OF REVOCATION.—Any revocation under subsection (a) shall be made within 180 days after the date of enactment of this Act by filing with the Secretary of the Treasury or his delegate—

(1) a statement describing the election being revoked and indicating that the election is revoked, and

(2) an amended return consistent with such revocation.

SEC. 104. EFFECTIVE DATE.

(a) GENERAL RULE.—Section 101 shall apply to all intermodal cargo containers placed in service before January 1, 1990.

(b) REVOCATION OF ELECTION.—Section 103 shall take effect on the date of the enactment of this Act.

TITLE II—OTHER PROVISIONS

SEC. 201. DEDUCTION FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 832(c) of the Internal Revenue Code of 1986 is amended by

striking "and" at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting "; and", and by adding at the end thereof the following new paragraph:

"(14) the small insurance company deduction allowed under subsection (h)."

(b) SMALL INSURANCE COMPANY DEDUCTION DEFINED.—Section 832 of such Code is amended by adding at the end thereof the following new subsections:

"(h) SMALL INSURANCE COMPANY DEDUCTION.—

"(1) IN GENERAL.—The small insurance company deduction allowed under this subsection for any taxable year is the applicable deduction percentage of so much of the tentative taxable income for such taxable year as does not exceed $3,000,000.

"(2) PHASEOUT BETWEEN $3,000,000 AND $15,000,000.—The amount of the small insurance company deduction determined under paragraph (1) for any taxable year shall be reduced (but not below zero) by the applicable phaseout percentage of so much of the tentative taxable income for such taxable year as exceeds $3,000,000.

"(3) PERCENTAGES.—For purposes of this subsection—

In the case of taxable years beginning in calendar year:	The applicable deduction percentage is:	The applicable phaseout percentage is:
1992	0	0
1993	0	0
1994	3	0.75
1995	7	1.75
1996	9	2.25
1997 and thereafter	15	3.75

"(4) SMALL INSURANCE COMPANY DEDUCTION NOT ALLOWABLE TO COMPANY WITH ASSETS OF $500,000,000 OR MORE.—

"(A) IN GENERAL.—The small insurance company deduction shall not be allowed for any taxable year to any insurance company which, at the close of such taxable year, has assets equal to or greater than $500,000,000.

"(B) ASSETS.—For purposes of this paragraph, the term 'assets' means all assets of the company.

"(C) VALUATION OF ASSETS.—For purposes of this paragraph, the amount attributable to—

"(i) real property and stock shall be the fair market value thereof, and

"(ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

"(D) SPECIAL RULE FOR INTERESTS IN PARTNERSHIPS AND TRUSTS.—For purposes of this paragraph—

"(i) an interest in a partnership or trust shall not be treated as an asset of the company, but

"(ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

"(i) TENTATIVE TAXABLE INCOME.—For purposes of subsection (h)—

"(1) IN GENERAL.—The term 'tentative taxable income' means taxable income determined without regard to the small insurance company deduction.

"(2) EXCLUSION OF ITEMS ATTRIBUTABLE TO NONINSURANCE BUSINESSES.—The amount of the tentative taxable income for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

"(3) NONINSURANCE BUSINESSES.—

"(A) IN GENERAL.—The term 'noninsurance business' means any activity which is not an insurance business.

"(B) CERTAIN ACTIVITIES TREATED AS INSURANCE BUSINESSES.—For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

"(i) it is of a type traditionally carried on by insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

"(ii) it involves the performance of administrative services in connection with plans providing property or casualty insurance benefits.

"(j) SPECIAL RULE FOR CONTROLLED GROUPS.—

"(1) SMALL INSURANCE COMPANY DEDUCTION DETERMINED ON CONTROLLED GROUP BASIS.—For purposes of subsections (h) and (i)—

"(A) all insurance companies which are members of the same controlled group shall be treated as 1 insurance company, and

"(B) any small insurance company deduction determined with respect to such group shall be allocated among the insurance companies which are members of such group in proportion to their respective tentative taxable incomes.

"(2) NONINSURANCE MEMBERS INCLUDED FOR ASSET TEST.—For purposes of subsection (h)(4), all members of the same controlled group (whether or not insurance companies) shall be treated as 1 company.

"(3) CONTROLLED GROUP.—For purposes of this subsection, the term 'controlled group' means any controlled group of corporations (as defined in section 1563(a)).

"(4) ADJUSTMENTS TO PREVENT EXCESS DETRIMENT OR BENEFIT.—Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this subsection to prevent any excess detriment or benefit (whether from year-to-year or otherwise) arising from the application of this subsection."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

SEC. 202. PENALTY FREE WITHDRAWALS FROM ANNUITIES FOR HIGHER EDUCATION EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(q) of the Internal Revenue Code of 1986 (relating to 10-percent penalty for premature distributions from annuity contracts) is amended by striking "or" at the end of subparagraph (I), by striking the period at the end of subparagraph (J) and inserting ", or", and by inserting after subparagraph (J) the following new subparagraph:

"(K) which is a qualified higher education expense distribution (as defined in paragraph (4))."

(b) QUALIFIED HIGHER EDUCATION EXPENSE DISTRIBUTION.—Subsection (q) of section 72 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) QUALIFIED HIGHER EDUCATION EXPENSE DISTRIBUTION.—

"(A) IN GENERAL.—For purposes of paragraph (2)(K), the term 'qualified higher education expense distribution' means any distribution from a designated higher education expense annuity to the taxpayer if such distribution is used within 90 days of the date of the distribution to pay qualified tuition and related expenses (as defined in section 117(b)) required for the enrollment or attendance of such taxpayer, the taxpayer's spouse, or a child (as defined in section 151(c)(3)) or grandchild of such taxpayer at an eligible educational institution (as defined in section 135(c)(3)); except that such expenses shall be reduced by any amount excluded from gross income under section 135 by reason of such expenses.

"(B) DESIGNATED HIGHER EDUCATION EXPENSE ANNUITY.—

"(i) IN GENERAL.—The term 'designated higher education expense annuity' means any annuity purchased after December 31, 1992, and designated for purposes of this paragraph by the purchaser at the time of purchase as an annuity to which this paragraph applies.

"(ii) CERTAIN ANNUITIES RECEIVED IN AN EXCHANGE NOT ELIGIBLE.—Such term shall not include any annuity acquired in an exchange to which section 1035 applies unless the annuity given up by the taxpayer in the exchange was a designated higher education expense annuity."

(c) GIFT TAX TREATMENT.—Subsection (e) of section 2503 of such Code is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF PREMIUMS PAID UNDER DESIGNATED HIGHER EDUCATION EXPENSE ANNUITIES.—

"(A) IN GENERAL.—Any premium paid for a designated higher education expense annuity shall not be treated as transfer of property by gift for purposes of this chapter.

"(B) RECAPTURE RULES.—If any premium paid by any person for a designated higher education expense annuity is not treated as a taxable gift solely by reason of subparagraph (A)—

"(i) LIFETIME DISTRIBUTIONS NOT USED FOR EDUCATIONAL PURPOSES.—Any disqualified lifetime distribution from the portion of any annuity attributable to such premium shall be treated as a transfer by gift by such person.

"(ii) INCLUSION IN GROSS ESTATE.—The gross estate of such person shall include the value (as of the date of the decedent's death or applicable valuation date set forth in section 2032) of the portion of any annuity attributable to such premium.

"(C) DISQUALIFIED LIFETIME DISTRIBUTION.—For purposes of subparagraph (B), the term 'disqualified lifetime distribution' means any distribution which is not a qualified higher education distribution and which is made during the life of the person referred to in subparagraph (B) to or for the benefit of another person.

"(D) OTHER DEFINITIONS.—For purposes of this paragraph, the terms 'designated higher education expense annuity' and 'qualified higher education expense distribution' have the respective meanings given such terms by section 72(q)(4)."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

SEC. 203. REPEAL OF STOCK FOR DEBT EXCEPTION IN DETERMINING INCOME FROM DISCHARGE OF INDEBTEDNESS.

(a) IN GENERAL.—Subsection (e) of section 108 of the Internal Revenue Code of 1986 is amended—

(1) by striking paragraph (10) and redesignating paragraph (11) as paragraph (10), and

(2) by amending paragraph (8) to read as follows:

"(8) INDEBTEDNESS SATISFIED BY CORPORATION'S STOCK.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to stock transferred after July 9, 1992, in satisfaction of any indebtedness.

(2) EXCEPTION.—The amendments made by this section shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before July 9, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, this is a bill sponsored by the gentleman from Michigan [Mr. VANDER JAGT].

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5674 was sponsored by a distinguished member of the Ways and Means Committee, Mr. VANDER JAGT, to accomplish a number of worthwhile tax changes.

First, it would clarify the proper tax treatment of intermodal containers used in the transport of goods to and from the United States. This clarification is necessary to undo the harm to numerous taxpayers caused by a 1990 Internal Revenue Service ruling on the investment tax credit. That ruling reversed practices relied on by taxpayers since 1962 when the investment tax credit became available.

Second, the bill would promote education savings by eliminating the penalty tax on premature withdrawals from certain annuities which are specially designated as education savings annuities.

Third, the bill contains a provision which would provide a special deduction for small property and casualty insurance companies to give those companies treatment similar to that accorded to small life insurance companies.

This deduction would encourage the growth of surplus of small companies, thereby increasing the competitive balance in the property and casualty industry, and could help to prevent another coverage crisis such as we suffered in the mid-1980's.

To raise offsetting revenue for these changes, the bill would repeal the rule that gives special treatment to exchanges of stock for debt in bankrupt and insolvent corporations.

Mr. MATSUI. Mr. Speaker. I rise today in support of H.R. 5674, a bill which contains two measures of which I was an original cosponsor; a clarification of the proper tax treatment of intermodal cargo containers and tax relief for small property and casualty companies.

Title I of H.R. 5674 contains legislation that I have been working on for several years which addresses the investment tax credit and accelerated depreciation provisions of the Internal Revenue Code as applied to intermodal containers. In general, the credit and accelerated depreciation deductions would be allowed under this proposal for containers placed in service by U.S. lessor prior to January 1, 1991 and which were or are leased to container users such as shipping companies that have trade routes that touch the United States.

This proposal is intended to resolve a controversy which has affected the entire leasing community since the mid-1980's when the IRS began to change its interpretation of the provision applying the credit and depreciation to containers. Prior to the mid-1980's, domestic container lessors claimed the credit and deductions on substantially all of their containers. This practice was consistently confirmed in tax audits.

After 20 years of such practice, the IRS suddenly began to disallow the credit and deductions because the lessors could not prove specifically which containers entered or left a U.S. port each year—a tall order when such proof had never before been required. This approach was formalized in a revenue ruling in January 1990, and that ruling now requires the container owner to trace each container's activity to document that it is used substantially in transportation to and from the United States.

The most egregious part about this revenue ruling is that it is being retroactively applied, in some cases back as far as 1974. Such retroactive application is not only unfair, but practicably impossible to comply with. The alternative safe harbor offered to electing companies in the revenue ruling regards them with only slightly more than half of the credits claimed by container lessors in prior years.

The bottom line here is that a whole industry now faces the unpalatable options of entering into protracted and costly litigation, or accepting the half-a-loaf offered by the Service. Neither alternative is acceptable.

Title I provides a standard which would confirm the long-standing practices of the U.S. container leasing industry by overruling the Service's 1990 revenue ruling, and I strongly support its enactment.

Equally important, Mr. Speaker, is title II of H.R. 5674 which provides shall property and casualty companies with a deduction which is currently only available to small life insurance companies. The deduction was granted to small life insurance companies in 1984 on the theory that small companies in early stages of development need help getting through the startup phase. The theory is particularly applicable in the insurance industry where the well-established companies are so large.

In the property and casualty industry, as in many other industries, competition is enhanced by the existence of smaller companies. The small property and casualty companies often provide much needed coverage in times of crisis when coverage is otherwise unavailable, as was the case in the mid-1980's when there was a coverage shortage period.

Small companies also provide an important check on the industry. They provide the much needed competitive balance which helps to keep premium costs from escalating unnecessarily.

The enactment of the Tax Reform Act of 1986 included provisions which dramatically increased the tax burden of small property and casualty companies. Those changes have brought Treasury double the revenues estimated, but much of that tax burden has impacted the ability of small companies to be formed, grow, and compete with the larger companies. The double whammy is that they cannot even compete against small general insurance companies because the latter have this deduction that small property and casualty companies do not have.

Enactment of title II is important because it will level the playing field between all small insurance companies, and it will allow small companies to form and grow and thereby provide a check on the premium costs and activities of the larger companies.

Mr. Speaker, I urge my colleagues to vote in favor of H.R. 5674.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5674.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RESTORING PRIOR LAW TREATMENT OF CORPORATE REORGANIZATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5655) to amend the Internal Revenue Code of 1986 to restore the prior law treatment of corporate reorganizations through the exchange of debt instruments, and for other purposes.

The Clerk read as follows:

H.R. 5655

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

SECTION 1. RESTORATION OF PRIOR LAW TREATMENT OF CORPORATE REORGANIZATIONS THROUGH EXCHANGE OF DEBT INSTRUMENTS.

(a) IN GENERAL.—Subsection (a) of section 1275 of the Internal Revenue Code of 1986 (relating to original issue discount special rules) is amended by redesignating paragraph (4) as paragraph (5), and by inserting after paragraph (3) the following new paragraph:

"(4) Special rule for determination of issue price in case of exchange of debt instruments in reorganizations.—

"(A) *In General.—If*—

"(i) any debt instrument is issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) for another debt instrument (hereinafter in this paragraph referred to as the 'old debt instrument'), and

"(ii) the amount which (but for this paragraph) would be the issue price of the debt

instrument so issued is less than the adjusted issue price of the old debt instrument, then the issue price of the debt instrument so issued shall be treated as equal to the lesser of the stated principal amount of the debt instrument so issued or the adjusted issue price of the old debt instrument.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) DEBT INSTRUMENT.—The term 'debt instrument' includes an investment unit.

"(ii) ADJUSTED ISSUE PRICE.—

"(I) IN GENERAL.—The adjusted issue price of the old debt instrument is its issue price, increased by the portion of any original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(7) or (b)(4) of section 1272 (or corresponding provisions of prior law)).

"(II) SPECIAL RULE FOR APPLYING SECTION 163(e).—For purposes of section 163(e), the adjusted issue price of the old debt instrument is its issue price, increased by any original issue discount previously allowed as a deduction."

(b) CONFORMING AMENDMENT.—Subparagraph (B) of section 108(e)(11) of such Code (relating to issue price) is amended by striking "1273 and 1274" and inserting "1273, 1274, and 1275".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act, in satisfaction of any indebtedness.

SEC. 2. INCREASE IN MILEAGE REQUIREMENT FOR DEDUCTION FOR MOVING EXPENSES.

(a) GENERAL RULE.—Paragraph (1) of section 217(c) of the Internal Revenue Code of 1986 (relating to condition, for allowance) is amended by striking "35 miles" each place it appears and inserting "60 miles".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. MOODY], the author of this legislation.

Mr. MOODY. Mr. Speaker, H.R. 5655, introduced by Mr. MCGRATH and myself, restores the pre-OBRA 1990 tax treatment of exchanges of corporate debt instruments. An exchange in this context merely means renegotiating the terms of an existing outstanding debt—either by switching the interest rate, the length, or any other terms of the instrument.

Only two years ago OBRA 1990 levied a tax on the phantom income—called cancellation of indebtedness income, or COD—created by such an exchange unless the exchange takes place in bankruptcy. That is the fatal flow of this OBRA 1990 provision. It encourages bankruptcy.

The goal of H.R. 5655 is to facilitate debt workouts without forcing debtor firms into bankruptcy. Bankruptcy hurts creditors, debtors, consumers, investors, and, most importantly, the firms' workers.

Bankruptcy also increases transaction costs, such as lawyer's fees, financing costs, etc., and results in tremendous uncertainties to all concerned. The social costs of bankruptcy—in terms of laid off workers, broken lives, unemployment, etc.—are even greater.

Healthy companies are able to refinance their debts to take advantage of lower interest rates without any tax consequences by simply going to the marketplace for new loans. Ironically, it is only troubled companies who are unable to take advantage of lower rates by renegotiating existing debts without triggering significant tax payments.

The New York Bar Association and the American Bar Association tax section both support the changes advocated by the Moody-McGrath bill.

Finally, a recent appeals court decision makes it clear that the face value of exchanged debt is what is important in determining the debtor's liability, not the face interest rate. Court law now holds that the phantom income concept is not good bankruptcy law, and supports the bill's premiss that there is no legal reduction of indebtedness. Therefore, no tax on cancellation of indebtedness should apply.

In sum, this legislation allows businesses that are in trouble to work their way out without going into bankruptcy and destroying jobs and lives.

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation. It was not deemed to be controversial when it was considered by the Ways and Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GIBBON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5655.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SOCIAL SECURITY AND SUMMER CAMP COUNSELORS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5656) to amend the Internal Revenue Code of 1986 to exempt services performed by full-time students for seasonal children's camps from social security taxes, and for other purposes.

The Clerk read as follows:

H.R. 5656

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

SECTION 1. SERVICES PERFORMED BY FULL-TIME STUDENTS FOR SEASONAL CHILDREN'S CAMPS EXEMPT FROM SOCIAL SECURITY TAXES.

(a) IN GENERAL.—Subsection (b) of section 3121 of the Internal Revenue Code of 1986 (defining employment) is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(21) service performed by a full time student (as defined in section 3306(q)) in the employ of an organized children's camp—

"(A) is such camp—

"(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

"(ii) had average gross receipts for any 6 months in the proceeding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year, and

"(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year."

(b) CONFORMING AMENDMENT.—Subsection (a) of section 210 of the Social Security Act is amended by striking "or" at the end of paragraph (19), by striking the period at the end of paragraph (20) and inserting "; or", and by adding at the end thereof the following new paragraph:

"(21) Service performed by a full time student (as defined in section 3306(q) of the Internal Revenue Code of 1986) in the employ of an organized children's camp—

"(A) if such camp—

"(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

"(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year, and

"(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid on or after October 1, 1993.

SEC. 2. TREATMENT OF INDIAN TRIBAL GOVERNMENTS UNDER SECTION 403(b).

In the case of any contract purchased in a plan year beginning before January 1, 1993, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from

Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. MOODY], the author of this bill.

Mr. MOODY. Mr. Speaker, this legislation cosponsored by Representatives GUY VANDER JAGT and BARBARA KENNELLY, has two parts:

First, it extends FICA tax exemptions to full-time students employed in children's summer camps and their employers; and

Second, it ensures that the employees of Indian tribes that have set up certain deferred compensation pension plans have the same protections as 501(c)(3) tax-exempt organizations.

I. FICA EXEMPTION FOR CAMP COUNSELORS

The first part of the bill ensures that full-time students that work as summer camp counselors, and their employers, are not subject to FICA taxes.

This is consistent with a series of other laws that recognize the special status of camp counselors. They are exempt from minimum wage laws and the unemployment tax system, for example.

Moreover, full-time students that are employed by their colleges and universities are already exempt from FICA taxes. As a result, full-time student employees of the type this bill would cover who work in school-sponsored camps are already exempt. Most 4–H camps, for example, fit into this category.

It is not fair to exempt from FICA tax one group of people who are doing exactly the same work while taxing the others merely by virtue of the sponsorship of the camps.

Over 65 percent of the camps this bill would cover are run by nonprofits such as Girl Scouts, Christian Camping International/USA, the Easter Seal Society, Camp Fire Boys and Girls, the YMCA, and numerous other similar organizations. They will be able to use the savings of this bill to attract better staff and provide better programming for the youth of America—often disadvantaged and minority youth who need this experience the most.

II. INDIANS' PENSIONS

The second provision of this bill concerns several Indian tribes around the Nation that have set up deferred compensation pension plans for their employees under a provision of the Tax Code designed to help nonprofits set up these plans.

Unfortunately, the U.S. Tax Code specifies that such deferred compensation pension plans are eligible for statutorily exempt organizations, that is, organizations exempt by virtue of 501(c)(3) provisions. But Indian tribes are tax exempt by virtue of Federal treaties and case law, not statute by virtue of section 501(c)(3).

This bill would extend this same tax-exempt status to these existing tribal plans. They have acted in good faith and in accord with our policy to encourage pension savings. They should not be subject to tax.

□ 1300

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5656.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TREATMENT OF CERTAIN GAINS AND LOSSES OF FARMER CO-OPERATIVES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5650) to amend the Internal Revenue Code of 1986 to allow nonexempt farmer cooperatives to elect patronage-sourced treatment for certain gains and losses, and for other purposes.

The Clerk read as follows:

H.R. 5650

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

SECTION 1. TREATMENT OF CERTAIN GAINS AND LOSSES OF FARMER COOPERATIVES.

(a) GENERAL RULE.—Section 1388 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new subsection:

"(k) TREATMENT OF GAINS OR LOSSES ON THE DISPOSITION OF CERTAIN ASSETS.—For purposes of this title, in the case of any organization to which part I of this subchapter applies—

"(1) IN GENERAL.—An organization may elect to treat gain or loss from the sale or other disposition of any asset (including stock or any other ownership or financial interest in another entity) as ordinary income or loss and to include such gain or loss in net earnings of the organization from business done with or for patrons, if such asset was used by the organization to facilitate the conduct of business done with or for patrons.

"(2) ALLOCATION.—An election under paragraph (1) shall not apply to gain or loss on the sale or other disposition of any asset to the extent that such asset was used for purposes other than to facilitate the conduct of business done with or for patrons. For purposes of this paragraph, the extent of such use may be determined on the basis of any reasonable method for making allocations of income or expense between patronage and nonpatronage operations.

"(3) PERIOD OF ELECTION.—An election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked by the organization. Any such revocation shall be effective for taxable years beginning after the date on which notice of the revocation is filed with the Secretary.

"(4) ELECTION AFTER REVOCATION.—If an organization has made an election under paragraph (1) and such election has been revoked under paragraph (3), such organization shall not be eligible to make an election under paragraph (1) for any taxable year before its 3rd taxable year which begins after the 1st taxable year for which such revocation is effective, unless the Secretary consents to such election.

"(5) NO INFERENCE.—Nothing in this subsection shall be construed to infer that a change in the law is intended for organizations not having in effect an election under paragraph (1). Any gain or loss from the sale or other disposition of any asset by such organization shall be treated as if this subsection had not been enacted."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to dispositions after the date of the enactment of this Act.

SEC. 2. TREATMENT OF CERTAIN HIGH YIELD DISCOUNT OBLIGATIONS.

(a) GENERAL RULE.—Paragraphs (1)(A) and (2)(A) of section 163(i) of the Internal Revenue Code of 1986 (relating to applicable high yield discount obligations) are each amended by striking "5 years" and inserting "4 years".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to instruments issued after the date of the enactment of this Act.

SEC. 3. TREATMENT OF INTEREST ON RESERVES OF LIMITED EQUITY HOUSING CO-OPERATIVES.

(a) GENERAL RULE.—Section 277 of the Internal Revenue Code of 1986 (relating to deductions incurred by certain membership organizations in transactions with members) is amended by adding at the end thereof the following new subsection:

"(c) TREATMENT OF INTEREST ON RESERVES OF LIMITED EQUITY HOUSING CORPORATIONS.—

"(1) IN GENERAL.—For purposes of subsection (a), any interest received by a limited equity housing corporation on reasonable reserves established in connection with such corporation (including reserves required by a government agency or lender) shall be treated as income derived by such corporation from transactions with members.

"(2) LIMITED EQUITY HOUSING CORPORATION.—For purposes of paragraph (1), the term 'limited equity housing corporation' means any cooperative housing corporation (as defined in section 216(b)(1)) with respect to which the requirements of section 143(k)(9)(D)(i) are met."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, this is a bill sponsored by the gentleman from North Dakota [Mr. DORGAN], so I yield myself such time as I may consume and I yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. Mr. Speaker, I think Chairman GIBBONS has almost explained it. It is as simple as it sounds. We have some confusion in the treatment of patronage source income for tax-exempt cooperatives, farmer cooperatives, and this bill adopts the same test that the courts have applied consistently to determine whether an item of income is so-called patronage source income.

The second portion of this legislation deals with housing co-ops, and it clarifies the rules governing the treatment of transactions involving interest earned by housing cooperatives on its reserves. The small amount of money that is required to pay for this is raised by changing a threshold on the issuers of junk bonds, traditionally called payment-in-kind bonds, in which taxpayers have deducted interest that they had not really paid because they had simply issued more bonds.

We had a 5-year threshold on that. This moves it to 4 years, which I think is good tax policy, and also, coincidentally, raises a small amount of money which is sufficient to pay for both of these provisions that would clarify the tax treatment for the farmers' cooperatives and also for the housing cooperatives.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill was not controversial in committee, and we have heard no objection since then. H.R. 5650 would allow farmer co-ops and low- and moderate-income housing co-ops to elect patronage dividend treatment in certain instances. Currently, some technical provisions in the Tax Code can create problems for these co-ops, and this bill would help alleviate some of those problems.

Mr. GRANDY. Mr. Speaker, I rise today in strong support of H.R. 5650 and urge its adoption by the House. H.R. 5650, introduced by Representative DORGAN and myself, has broad bipartisan support as evidenced by the 98 cosponsors on H.R. 2361, the basis for H.R. 5650, and the 54 cosponsors of the Senate version of this legislation.

Fundamentally, H.R. 5650 allows current tax practices to continue. Previous tax practice has allowed any of the over 5,100 farmer-owned cooperatives that sell an asset to treat the income from that sale as patronage-sourced—coming from an asset used for members—if the asset passes a test that it was "directly related to or facilitated business for or on behalf of its members." This test has been established and affirmed several times by the courts. If the asset was from mixed use—member and nonmember—then the income can be proportionately allocated. If the asset was purely nonmember related, then the income must be nonpatronage sourced.

Despite the consistent application of the patronage-source test by the courts and the test's establishment in Internal Revenue Service [IRS] regulations, the IRS continues to challenge the ability of farmer coops to make the election thereby causing cooperatives significant legal costs and adversely affecting their ability to make business decisions. H.R. 5650 prospectively seeks to remedy this situation by clearly establishing in law that cooperatives may elect to treat income as patronage-sourced if the sold asset meets the court-established test. Without the legislation, farmer coops will continue to be plagued by unnecessary, costly, and time-consuming litigation on the issue which wastes business resources as well as IRS resources.

Since this issue has been repeatedly and clearly ruled on by the courts, I would prefer that we were adopting H.R. 2361 today which provides for retroactive treatment for open tax years, but in the spirit of comity Representative DORGAN and I have amended that legislation to be prospective only. Finally, I want to emphasize that under H.R. 5650 no one is avoiding taxation, there is no room for manipulation, and it fundamentally and simply allows current tax practice, which is sensible and fair, to continue.

Mr. Speaker, I urge my colleagues to adopt H.R. 5650 and I look forward to its adoption into law.

Mr. RANGEL. Mr. Speaker, I rise in support of H.R. 5650, a bill affecting the taxation of cooperatives. This is a bill that modifies the rules for farm co-ops and limited equity housing co-ops. I have joined my colleague from North Dakota in cosponsoring this legislation because we both support one of the common threads that runs between rural and urban areas; the need for people to come together in cooperative arrangements to meet their needs. In the rural areas it is the farm co-op. In urban areas it is the housing co-op.

Currently co-operative housing corporations are in the midst of a vexatious litigation with the IRS over whether Internal Revenue Code section 277 applies to housing co-ops. The issue is whether the co-ops must consider their interest income from the reserves they keep patronage or nonpatronage income. The bottom lines is that if it is considered nonpatronage income that is, not from the members, the interest will be taxable. If it is patronage income the income will be offset by patronage deduction—depreciation on the building—and there will be no net income. If it is not patronage income as the IRS claims, then there will probably be no nonpatronage offsets and the co-op will have net income.

Many limited equity co-ops in New York City, where the co-operators are low- and moderate-income families, are required by the terms of their insured and HUD subsidized mortgages to keep a reserve. They earn interest on these reserves. The IRS has claimed that the co-ops owe taxes on this income. In many cases the IRS has made claims as high as $1,000 per family.

In my district alone there are 9,000 families living in limited equity co-ops.

To keep the revenue loss down the provisions of this bill do not apply to all housing co-ops. It will not apply to market rate co-ops on Park Avenue. It only applies to limited equity co-ops as defined in the Internal Revenue Code. These co-ops are generally only available to low- and moderate-income families and they usually do not allow the co-operator to make a profit on the sale of the co-operative stock.

This provision is designed to help keep the rents of these moderate- and low-income families down and allow them to own their own homes. The interest on the reserves is used to reduce the maintenance charges to the co-operators.

This bill is prospective because the retrospective cost is too great. The prospective cost is $12 million over 5 years. The bill is intended not to have any inference on the current litigation between the co-ops and the IRS. I want to add that an amendment providing the same relief as this bill that applied to all housing co-operatives, not just limited equity co-ops was included in H.R. 4210 as passed by Congress but vetoed by the President.

The same comprehensive amendment has been included in H.R. 11 as just reported by the Senate Finance Committee. I urge the passage of this bill.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5650.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TAX TREATMENT OF CERTAIN NONPROFIT ORGANIZATIONS PROVIDING HEALTH BENEFITS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5641) to amend the Internal Revenue Code of 1986 with respect to the treatment of certain nonprofit organizations providing health benefits, and for other purposes.

The Clerk read as follows:

H.R. 5641

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

SECTION 1. TREATMENT OF CERTAIN NONPROFIT ORGANIZATIONS PROVIDING HEALTH BENEFITS.

(a) GENERAL RULE.—Paragraph (2) of section 833(c) of the Internal Revenue Code (defining existing Blue Cross or Blue Shield organization) is amended by adding at the end thereof the following new sentence: "For purposes of this paragraph, an organization shall be treated as a Blue Cross or Blue Shield organization if such organization is not a health maintenance organization and is organized under and governed by State laws which are specifically and exclusively

applicable to not-for-profit health insurance or health service type organizations.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1991.

SEC. 2. TREATMENT OF CERTAIN SECURITIES TRANSFERRED TO ESOP FROM TERMINATED PENSION PLANS.

Subsection (b) of section 7302 of the Revenue Reconciliation Act of 1989 is amended by adding at the end thereof the following new paragraph:

"(3) SECURITIES ACQUIRED PURSUANT TO SECTION 4980(c)(3).—The amendment made by this section shall not apply to employer securities acquired before October 1, 1989, pursuant to section 4980(c)(3) of the Internal Revenue Code of 1986 with assets transferred from a defined benefit pension plan the termination of which was the subject of a determination letter issued by the Internal Revenue Service which was in effect on August 4, 1989, and at all times thereafter before such securities were acquired."

SEC. 3. CLASSIFICATION OF CERTAIN INTEREST AS STOCK OR INDEBTEDNESS.

(a) GENERAL RULE.—Section 385 of the Internal Revenue Code of 1986 (relating to treatment of certain interests in corporations as stock or indebtedness) is amended by adding at the end thereof the following new subsection:

"(c) EFFECT OF CLASSIFICATION BY ISSUER.—

"(1) IN GENERAL.—The characterization (as of the time of issuance) by the issuer as to whether an interest in a corporation is stock or indebtedness shall be binding on such issuer and on all holders of such interest (but shall not be binding on the Secretary).

"(2) NOTIFICATION OF INCONSISTENT TREATMENT.—Paragraph (1) shall not apply to any holder of an interest if such holder on his return for the first taxable year during which he held such interest discloses that he is treating such interest in a manner inconsistent with the characterization referred to in paragraph (1)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to instruments issued after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, this is a bill sponsored by the gentleman from New York [Mr. MCGRATH]. Therefore, I will defer to him to speak to this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill is designed to clarify two provisions of the Tax Code and to prevent a recurring abuse.

The first section makes clear that certain not-for-profit health insurance organizations are eligible to receive a tax deduction granted under section 833 of the Internal Revenue Code. Some insurers were inadvertently omitted from this provision, which we enacted in 1986, when we took away their tax exempt status.

The second section of my bill cures an inequity caused by the 1989 changes in pension law and the slow Internal Revenue Service approval of filings required by the Tax Code. While waiting for IRS determination letters on changes in their retirement plans some companies were disadvantaged by a 1989 change we made in the law. The change penalized companies in the midst of transactions, which were legal and would have been completed but for lengthy IRS reviews.

The IRS ultimately approved the transactions, but the law was changed while the taxpayers were waiting. In one case, IRS action took over 9 months.

The result has been a serious burden on retirement plans of thousands of individuals.

The third section of my bill is intended to finance this bill and several others.

It will help prevent an illegal tax avoidance scheme known among practitioners as the debt-equity whipsaw. Issuers of stock or bonds and holders of those interests classify their interests differently to maximize tax advantages. Under my bill, issuers would be required to define the interest they are selling and holders would be bound by that designation for tax purposes.

Mr. RANGEL. Mr. Speaker, I rise in support of H.R. 5641 a bill introduced by Mr. MCGRATH.

This amendment is designed to allow GHI the same tax status as the Blue Cross and Blue Shield organizations.

The Tax Reform Act ended the tax exemption of Blue Cross and Blue Shield organizations. In its place it allowed the Blue Cross and Blue Shield organizations partial tax relief. They would have to pay about a 21-percent rate instead of a 34-percent rate on income equal to 3 months reserve and 34 percent on amounts in excess of that amount.

The problem is that the repeal of the tax exemption covered any tax exempt organization operating like the Blues, but the partial tax exemption specifically named the Blue Cross and Blue Shield organizations. The result is then GHI unintentionally lost its tax exemption, but received none of the new substitute tax exemptions.

GHI operates as a nonprofit just like a Blue Cross and Blue Shield organization. It is organized and regulated under New York State law exactly as the Blue Cross and Blue Shield organizations in the State are organized and regulated.

GHI has over 2.2 million insureds many of whom work for New York City and other governments. Many of the insureds are covered as a result of union-negotiated contracts.

GHI is making an extensive effort to provide community rating and open enrollment as is now required in New York.

This amendment should cost no more than about $1 million per year.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5641.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

□ 1310

TREATMENT OF CERTAIN PORT AUTHORITY BONDS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5659) to permit the simultaneous reduction of interest rates on certain port authority bonds.

The Clerk read as follows:

H.R. 5659

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

SECTION 1. TREATMENT OF CERTAIN PORT AUTHORITY BONDS.

(a) IN GENERAL.—In the case of bonds described in subsection (b)—

(1) the simultaneous reduction of interest rates on such bonds shall not affect the tax-exempt status of the interest on such bonds, and

(2) such bonds shall not be treated as arbitrage bonds under section 148 of the Internal Revenue Code of 1986 by reason of the failure to reduce interest rates on loans made with the proceeds of such bonds before the date of such simultaneous reduction.

(b) BONDS DESCRIBED.—The bonds described in this subsection are bonds issued—

(1) by or on behalf of a port authority created on August 17, 1932,

(2) pursuant to a resolution adopted on February 14, 1974, that established a common bond security fund program, and

(3) after September 3, 1980, and before May 30, 1991.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Minnesota [Mr. VENTO], the sponsor of this bill.

Mr. VENTO. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise today in support of my legislation, H.R. 5659, that will assist the St. Paul Port Authority. My thanks to Chairman ROSTENKOWSKI and the members of the Ways and Means Committee for permitting this legislation to be considered today in the House. Special thanks are due to the gentleman from Ohio [Mr. PEASE], my friend and colleague serving on the Ways and Means Committee, for placing this matter at my request before

the committee and carrying forward my concerns for the needs of St. Paul, MN, in an effective and credible manner.

This special legislation addresses a unique and urgent matter which is essential to the viability of the economy of St. Paul. I know of no opposition to this bill. This is a noncontroversial measure.

The St. Paul Port Authority's common revenue bond fund program consists of approximately 168 separate bond issues totaling over $332 million in outstanding bonds. These bonds have been issued over a period of 18 years, and have provided financing to industrial, residential, and commercial projects in the City of St. Paul and its immediately surrounding areas. The program has been the main industrial engine of the city of St. Paul, and has been responsible for creating and preserving over 38,000 industrial jobs over the past two decades.

Due to a number of factors, including a deterioration in the general economic conditions and the problem plaguing commercial properties generally, the reserves supporting these bonds, are at risk of being depleted in the year 2000. Unless this program is restructured, bonds maturing after that date would then be paid solely from project cash flow which without this change may not be sufficient to pay the principal and interest in the outyears.

The purpose of the measure being considered today, H.R. 5659, would eliminate technical restrictions that currently impede the St. Paul Port Authority's plan to restructure the common revenue bond program to avoid this potential default. The bill also allows the port authority to use the anticipated interest rate differential from reissuance and place such savings into the St. Paul Port Authority bond reserved fund to safeguard future payments to bond holders. The bill applies solely to St. Paul. We know of no other municipal bond issuer in a similar situation.

I would like to insert for the RECORD, a letter from the mayor of St. Paul and from the president of the St. Paul Port Authority regarding the necessity of this legislation.

Mr. Speaker, I urge my colleagues to support this bill. I thank the gentleman from Florida [Mr. GIBBONS] for the time and would be happy to yield for any questions.

The letter referred to follows:

CITY OF SAINT PAUL,
Saint Paul, MN, July 21, 1992.

Hon. BRUCE VENTO,
House of Representatives, Washington, DC.

Re: Port Authority of the city of Saint Paul Proposed Tax Law Change

DEAR CONGRESSMAN VENTO: I understand that you have been instrumental recently in helping the Port Authority of the City of Saint Paul to obtain federal tax law changes that would help with restructuring of its common revenue bond fund program.

Please know that the City of Saint Paul is very anxious that the Port Authority succeed in its proposed restructuring, so that it can continue to provide financing to industrial and other projects in the City of Saint Paul and its immediate surrounding areas. To date, the Port Authority's Common Revenue Bond Fund program has been responsible for creating and preserving over 38,000 industrial jobs which are very important to the City of Saint Paul.

Your efforts in helping the Port Authority achieve the federal tax law changes that it has proposed is very much appreciated, and your continued support for this proposal is respectfully requested.

Very truly yours,
Mayor JAMES SCHEIBEL.

PORT AUTHORITY OF THE
CITY OF SAINT PAUL,
St. Paul, MN, July 21, 1992.

Hon. BRUCE VENTO,
House of Representatives, Washington, DC.

Re: Port Authority of the City of Saint Paul Proposed Tax Law Change

DEAR CONGRESSMAN VENTO: As you know, the Port Authority is seeking some federal tax law changes as part of a proposed restructuring of its Common Bond Fund program. We understand that you have been instrumental in moving this proposed change forward, and want to thank you very much for your efforts.

As I am sure you have already been told, the Port Authority's Common Revenue Bond Fund program consists of approximately 168 separate bond issues, totalling $322,870,000 in outstanding bonds. These bonds have been issued over a period of 18 years.

Due to a number of factors, including a general deterioration in general economic conditions, the reserves supporting these bonds (currently funded at over $63,000,000) are likely to be depleted in the year 2000. Unless this program is restructured, bonds maturing after that date would then be paid solely from project cash flow. It is estimated that this cash flow will not be sufficient to pay the accruing interest much less the more than $200,000,000 in principal still outstanding at that date. In addition the Port Authority would no longer be able to fund economic recovery projects.

The adoption of the proposed federal tax legislation will eliminate technical restrictions that currently impede the Port Authority's plan to restructure the common revenue bond fund program to avoid this potential default, while at the same time resulting in a large present value reduction in tax exempt interest. This result is certainly beneficial to the treasury, while it also provides relief to the many holders of the Port Authority's common revenue bond fund program bonds, and finally, allows the Port Authority to continue to fund economic recovery projects.

For these reasons, we respectfully ask that you continue your full support of the proposed federal tax legislation. We stand ready to provide you with any additional information or help that you might need in this regard.

Very truly yours,
KENNETH R. JOHNSON,
President.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, The bill needs no further explanation. It was not deemed to be controversial when it was considered by the Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5659.

The question was taken; and (two-thirds having voted in favor thereof) the rules suspended and the bill was passed.

A motion to reconsider was laid on the table.

TREATMENT OF CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5644) to provide that certain costs of private foundations in removing hazardous substances shall be treated as qualifying distributions.

The Clerk read as follows:

H.R. 5644

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

SECTION 1. CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTION.

(a) IN GENERAL.—In the case of any taxable year beginning after the date of the enactment of this Act, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1986 shall be reduced (but not below zero) by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall only apply to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation by only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1990, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1990, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a nonconsensual judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recog-

nized for 20 minutes, and the gentleman from Kentucky [Mr. BUNNING] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, this is a bill sponsored by the gentleman from Kentucky [Mr. BUNNING].

Mr. Speaker, I reserve the balance of my time.

Mr. BUNNING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to urge passage of H.R. 5644—a bill that I believe is noncontroversial and has been judged by the Joint Tax Committee to have a negligible revenue effect on the Treasury.

It is an issue that has been around for a while. Legislation similar to this has been adopted in the Senate three times and was the subject of a 1986 Select Revenue Subcommittee hearing here in the House.

The problem that this bill will correct involves a situation where a charitable foundation is bequeathed property that is later found to be the subject of a Superfund cleanup.

A good example is the Brown Foundation of Louisville, KY.

In 1969, the Brown Foundation was bequeathed the bulk of its assets under the will of James Graham Brown. Among these assets were several operating businesses, including three facilities which were engaged in the treatment of wooden poles with creosote and other chemicals in order to preserve them for extended use.

The foundation dissolved the wood treatment companies and liquidated the assets.

Nearly 15 years later the foundation was advised by the EPA of a hazardous cleanup problem at one of the sites.

The foundation, trying to fulfill its responsibility to the public health and welfare of the area surrounding the pole treatment facility entered into a voluntary consent order with the EPA to clean up the site. That cleanup is ongoing and the foundation is looking at two other sites that may need cleaning up.

Now the problem.

A charity must, by law, disburse a certain amount of money each year for so-called charitable purposes in order to maintain its nonprofit status. Section 4942 of the Internal Revenue Code requires a charity to annually disburse charitable payments which are qualifying distributions equivalent to at least 5 of the fair market value of its assets.

Unfortunately, the costs associated with the study and cleanup of a Superfund site do not qualify as qualified disbursements under section 4942 of the Internal Revenue Code.

As a result, the combination of the 5 percent requirement and the substantial cleanup costs that have been voluntarily assumed could result in the foundation seriously depleting its corpus.

This could not only threaten the ability of the foundation to support worthy charitable activities, in the future, but would also threaten the very existence of the foundation.

The bill I'm asking you to support, H.R. 5644 provides that study and cleanup expenditures, voluntarily assumed by a charitable foundation, would constitute a charitable payment for the purposes of the qualifying distribution requirement of section 4942 of the Code.

The provisions of the bill will only apply if the property in question was acquired and subsequently disbursed before the enactment of the Superfund law. Therefore, someone cannot set up a new foundation in order to evade their existing legal obligations under Superfund.

Furthermore, the bill is prospective in application and only applies to costs incurred after the date of enactment.

I truly believe that this legislation will aid environmental cleanup by encouraging charities, such as the Brown Foundation, to voluntarily assist the Government in cleaning of Superfund sites.

Also, this bill will ensure that good, worthwhile charities won't be forced out of business because they owned tainted property long before the enactment of Superfund.

I urge passage of the bill.

JAMES GRAHAM BROWN FOUNDATION, INC. CUMULATIVE GRANT HISTORY 1954–90

Organization:	Amount
	Amount
Adults of the Community Organization	8,000
Alabama Baptist Children's Homes	35,000
Alabama Four-H Club Foundation, Inc.	100,000
Alabama Institute for Deaf and Blind Foundation, Inc	17,000
Alabama Sheriffs Boys and Girls Ranches, Inc.	180,600
Alabama Society For Crippled Children and Adults, Inc	20,000
Alice Lloyd College	775,000
American Cancer Society	67,500
American Cave Conservation Association, Inc	250,000
American Council of Young Political Leaders	2,000
American Printing House for the Blind, Inc	232,000
American Red Cross, Gulf Coast Region	30,000
American Red Cross, Louisville Area Chapter	1,078,849
American Red Cross, North Baldwin County Chapter	876
Arthritis Foundation, Alabama Chapter	25,000
Arthritis Foundation, Kentucky Chapter	20,000
Arts Center Association (Friends of the Water Tower)	75,000
Asbury College	350,000
Association for Retarded Citizens of Baldwin County	40,000
Auburn University	150,000
Baldwin County, Alabama	81,660
Baptist Hospital East	3,750
Bayside Academy	85,000
Beautification League of Louisville & Jefferson County	5,000
Behringer-Crawford Museum	50,000
Bellarmine College	5,488,070
Belle of Louisville Operating Board	35,000
Bellewood Presbyterian Home for Children	15,000
Berea College	404,000
Beth Haven Christian School	25,000
Better Business Bureau of Greater Louisville	20,000
Birmingham Southern College	275,000
Bishop State Junior College	50,000
Blue Coats of Louisville	1,000
Bound for Kentucky	1,000
Boy Scouts of America, Audubon Council	5,000
Boy Scouts of America, Black Warrior Council	176,000
Boy Scouts of America, Blue Grass Council	500
Boy Scouts of America, Dan Beard Council	50,000
Boy Scouts of America, Gulf Coast Council	68,700
Boy Scouts of America, Mobile Area Council	80,851
Boy Scouts of America, National Scouting Museum	250,000
Boy Scouts of America, Old Kentucky Home Council	1,291,500
Boy Scouts of America, Pine Burr Area Council	170,000
Boy Scouts of Tuscaloosa County, Alabama	25,200
Boys' Haven	33,750
Brescia College	865,000
Bridgehaven	171,000
Broadway Project Corporation	1,075,000
Brooklawn, Inc	75,000
Brown's Lane Christian School	34,000
Buckhorn College Association	8,500
Buechel Little League, Inc	600
Cabbage Patch Settlement House, Inc	25,000
Cain Center for the Disabled, Inc	50,000
Caledonia Cemetery Association	10,000
Camp Shenandoah	4,000
Campbell Lodge	50,500
Campbellsville College	325,000
Catholic Youth Organization	77,750
Cedar Lake Lodge, Inc	340,000
Central Presbyterian Church	4,500
Centre College	4,290,521
Century Club of Kentucky	1,000
Cerebral Palsy School	65,000
Children's Hospital Foundation, Inc. (Kosair)	452,000

	Amount
Choice, Inc.	25,000
City of Bancroft, Kentucky	6,100
City of Bay Minette, Alabama	594,166
City of Covington, Kentucky	10,000
City of Fairhope, Alabama	3,000
City of Fayette, Alabama	150,000
City of Hills and Dales, Kentucky	10,000
City of Live Oak, Florida	216
City of Louisville, Kentucky	419,000
City of Mobile, Alabama	35,000
City of Northport, Alabama	32,124
City of St. Matthews, Kentucky	1,150,000
Clark County Historical Society	7,000
Come-Unity Cooperative Care, Inc.	75,000
Coon Public Library	12,000
Council for Retarded Citizens of Jefferson Co., Kentucky	5,000
Council of Independent Kentucky Colleges & Universities	587,500
Crusade for Children	2,000
Cumberland College	1,125,000
Danville and Boyle County Fdn on Historic Preservation	31,000
Dare to Care!	70,000
The David School	75,000
De Paul School	875,200
Dessie Scott Children's Home	6,500
Dinsomore Homestead Foundation, Inc.	221,000
Diocesan Catholic Children's Home	270,000
Downtown Development Corporation	2,350,000
Drug Abuse Center	50,000
Druid City Hospital	100,000
Dumas Wesley Community Center	25,000
East End Boys Club, Inc	35,000
Environmental Alternatives, Inc	12,500
Episcopal Church Home and Infirmary	100,000
Exploreum, Inc	150,000
Eye Foundation, Inc	300,000
Family and Children's Agency, Inc	115,000
Farnsley-Moremen Historic Home, Inc	200,000
Faulkner University	400,000
Fayette County Memorial Library	50,000
Fifteen Telecommunications, Inc	359,000
Filson Club	451,500
First Christian Church of Louisville	2,000
First Presbyterian Church	5,250
Florida Sheriffs Boys Ranch	35,000
Focus on Senior Citizens of Tuscaloosa County, Inc	37,400
Fort Thomas Heritage League, Inc	50,000
Fourth Avenue Presbyterian Church	15,000
Frazier Rehabilitation Center	705,000
Friedman Library	120,000
Friends of Kentucky Four-H	210,000
Friends of Kentucky Public Archives, Inc	25,000
Friends of Searcy Hospital Foundation, Inc	35,000
Fund for the Kentucky School for the Blind Art, Inc	30,000
Georgetown College	4,578,521
God's Pantry-Crisis Food Center, Inc	50,000
Goodwill Industries of Kentucky	158,017
Governor's Scholars Program, Inc	200,000
Greater Louisville Swim Foundation, Inc	175,000
Greater Louisville-National Multiple Sclerosis Society	10,000
Greenspace, Inc	10,000
Habitat for Humanity	44,000
Hanover College	4,261,416
Harrison County, Mississippi	94,700
Haskins Herrington Corporation	75,000
Hays Kennedy Park Foundation	25,000
Heart Fund of Kentucky	15,500
Heart of the Parks Foundation, Inc	20,000
Hindman Settlement School	50,000
Historic Homes Foundation, Inc	186,500
Historic Mobile Preservation Society	45,000
Historic Properties Endowment Fund	5,000
Home of the Innocents	800,000
Honorable Order of Kentucky Colonels	1,000
Hospice of Louisville, Inc	40,000
Huntingdon College	550,000
Independent Industries, Inc	100,000
Iroquois Child Care Center	6,000
Isaac W. Bernheim Foundation	55,000
J.B. Speed Art Museum	850,000
Jefferson County Crimestoppers	90,000
Jefferson County Fiscal Court	1,080,000
Jefferson County Police Department	3,870
Jefferson County Public Education Foundation	246,200
Jewish Community Center	261,735
Jewish Hospital, Inc	55,000
John Sherman Cooper Commemoration Fund, Inc	2,000
Judson College	250,000
Julius T. Wright School for Girls	250,000
Junior League of Louisville, Inc	209,000
Junior Achievement of Kentuckiana, Inc	544,789
Junior Achievement of Mobile, Alabama	75,000
Junior League of Tuscaloosa, Inc	25,000
Kentuckiana Children's House	20,000
Kentuckiana Girl Scout Council	101,975
Kentuckiana Interfaith Community	85,000
Kentuckiana Metroversity	124,000
Kentucky Art and Craft Foundation	25,000
Kentucky Baptist Hospitals	125,000
Kentucky Bar Foundation, Inc.	50,000
Kentucky Bicentennial Commission	1,992
Kentucky Center for Public Issues	150,000
Kentucky Council on Economic Education	337,000
Kentucky Country Day School	250,050
Kentucky Derby Museum Corporation	6,904,000
Kentucky Easter Seals Society, Inc	142,500
Kentucky Education Foundation, Inc	150,000
Kentucky Harvest	15,200
Kentucky Hill Industries, Inc	25,000
Kentucky Historical Society	10,000
Kentucky Independent College Foundation, Inc	55,000
Kentucky Library Association	2,800
Kentucky Lions Eye Foundation, Inc	54,000
Kentucky Lung Association	8,700
Kentucky Quilt Project, Inc	10,000
Kentucky Railway Museum, Inc	22,000
Kentucky Science & Technology Council, Inc	275,000
Kentucky Sheriffs' Association	5,000
Kentucky State University	500,000
Kentucky Synod Educational Campaign	10,000
Kentucky Tennis Patrons Foundation	200
Kentucky Tomorrow, Inc	30,000
Kentucky Wesleyan College	4,564,260
KentuckyShow	300,000
The King's Daughters and Sons Home, Inc	7,500
Kiwanis Children's Cancer Clinic Fund	10,000
KMI Memorial Chapel Foundation	500
Lake Cumberland Four-H Club Center, Inc	25,000
Land Between the Lakes Association	8,000
Leadership Kentucky, Inc	50,000
Leadership Louisville Foundation, Inc	60,000
Lees College	544,000
Leukemia Society of Kentucky, Inc	2,000
Liberty Hall, Inc	40,000
Life Span, Inc	350,000
Lilly Woods Forest Association	23,779
Lindsey Wilson College	425,000
Little Sisters of the Poor, Louisville	255,500
Little Sisters of the Poor, Mobile, Alabama	25,000
Living Arts and Sciences Center	25,000
Louisville Area Chamber of Commerce	265,000

	Amount
Louisville Bar Foundation, Inc	25,000
Louisville Board of Education	1,125,000
Louisville Civic Ventures, Inc	335,833
Louisville Collegiate School	205,000
Louisville Community Foundation, Inc	25,000
Louisville Dance Council, Inc	750
Louisville Deaf Oral School	310,052
Louisville Development Foundation, Inc	2,250,750
Louisville Free Public Library Foundation, Inc	970,000
Louisville Fund	27,500
Louisville Jaycees	117,000
Louisville Medical Research Foundation, Inc	15,000
Louisville Presbyterian Theological Seminary	100,000
Louisville Red Shield Boys Club, Inc	11,000
Louisville School for Autistic Children	13,353
Louisville Seahawks	30,000
Louisville Tennis Center, Inc	250
Louisville Urban League	121,033
Louisville Waterfront Development Corporation	250,000
Louisville Zoological Foundation	2,050,000
Louisville/Jefferson County Clean Community System	9,125
National Conference of Christians and Jews	13,000
Madonna Manor, Inc	155,000
March of Dimes	6,000
Maria Products, Inc	5,000
Marion Military Institute	175,000
Maryhurst School	116,300
McDowell House	50,000
McGill-Toolen High School	100,000
Medical Center Hospitality House, Inc	15,500
Medical Foundation of Jefferson County Medical Society, Inc	720,000
Medical Oncology Research Fund	100
Mercy Medical, Inc	50,000
Methodist Evangelical Hospital, Inc	55,000
Metro Brothers and Sisters, Inc	40,000
Metro React Team, Inc	5,700
Metro United Way	5,057,750
Midway College	325,000
Miscellaneous Contributions (in the South) Mission House	50,000
Mississippi State University	250,000
Mobile Association for Retarded Citizens, Inc	150,000
Mobile Baptist Association	12,000
Mobile College	50,000
Mobile Rehabilitation Association, Inc	35,000
Monroe County Public Library	20,000
Mountain Association for Community Economic Development	5,000
Museum of History and Science	2,500,000
National Conference of Christians and Jews	7,050
National Foundation (Polio, Birth Defects) Ky Chapter	1,000
National Foundation for Infantile Paralysis, Louisville Chpt	6,000
National Municipal League's 84th Conference	5,000
National Society to Prevent Blindness	51,000
Nature Conservancy	956,000
New Directions, Inc	5,000
Northern Ky. Association for Retarded Citizens, Inc	30,000
Notre Dame University	25,000
Old Bardstown Village	108,000
Old Dauphin Way School	50,000
Old Ladies Home	2,750
Our Lady of Peace Hospital	440
Owensboro Area Museum	25,000
Park DuValle Neighborhood Health Center	4,500
Parkhill Family Health Center	50,000
Patton Museum Development Fund	25,000
Penelope House	50,000
Pikeville College	450,500
Pioneer Opportunity Workshop	25,000
Planned Parenthood Inc	16,500
Portland Christian School	25,000
Portland Museum	975,000
Possibilities Unlimited, Inc	50,000
Presbyterian Child Welfare Agency	20,000
Presbyterian Community Center	22,556
Presbyterian Home for Children, Inc	50,000
Presbyterian Hospital	2,500
Presbyterian Sunday School Building Fund	1,000
Preservation Alliance, Inc	100,000
The Prichard Committee for Academic Excellence	50,000
Project Find Child Abuse Treatment Center	25,000
Providence Hospital	168,864
Quicksand Crafts Center	14,000
Recording for the Blind, Inc	24,000
Recovery Inc. of Kentucky	55,000
Red Cross Hospital	58,500
Redwood School & Rehabilitation Center	75,000
Regional Cancer Center Corporation	5,505,250
Roosevelt School Relief Fund	2,000
Rose Polytechnic Institute	12,000
Saint Anthony Hospital	50,000
Saint Benedict's Center for Early Childhood Education	25,000
Saint Benedict's School	10,000
Saint Catharine College	180,000
Saint Charles Care Center & Village	100,000
Saint Charles Montessori Schools	25,000
Saint Francis High School	150,000
Saint Francis School	150,000
Saint John's Center	60,000
Saint Joseph Catholic Orphan Society	92,600
Saint Patrick's Center	310,000
Saint Paul's Episcopal School	125,000
Saint Vincent DePaul Society	100,000
Saint Xavier High School	150,000
Saints Mary and Elizabeth Hospital	50,000
Salvation Army of Louisville	1,704,524
Salvation Army of Mobile, Alabama	100,000
Salvation Army of Owensboro	100,000
Salvation Army of Tuscaloosa, Alabama	10,500
Samford University	10,560
Save the Mansion	35,000
Schizophrenia Foundation, Kentucky, Inc	215,000
Senior House, Inc	30,000
Service Corps of Retired Executives	3,500
Shakertown at Pleasant Hill, Kentucky, Inc	762,500
Shakertown at South Union	10,000
Southern Baptist Theological Seminary	350,000
Southern Police Institute	1,500
Southern Research Institute	200,000
Spalding University	2,150,650
Spina Bifada Association of Kentucky	10,000
Spring Hill College	85,000
Springdale Cemetery Association	117,500
Stillman College	200,000
Stockton Civic Association and Volunteer Fire Department	16,700
Talbot House, Inc	12,000
Telford Community Center, Inc	45,000
Thomas Hospital	100,000
Thomas More College	4,578,521
Thruston B. Morton Fund	30,000
Transylvania University	2,000,000
Tri-State Drug Rehabilitation and Counseling Program	50,000
Trinity High School	150,000
Troy State University	73,787
Tuscaloosa Academy	127,000
U.S.A. Harvest	35,000
Union College	550,000
Cerebral Palsy KIDS Center	85,850
United Jewish Campaign of Louisville	73,750
United States Olympic Committee	5,000
United States Sports Academy	25,022
University Military School	350,000
University of Alabama	1,116,389
University of Cincinnati	63,000
University of Kentucky	1,039,000
University of Louisville	4,713,918
University of Miami—Law and Economics Center	25,000
University Press of Kentucky	50,000

	Amount
Ursuline Society and Academy of Education, Inc	305,000
Ursuline-Pitt School	30,000
Vietnam Veterans Kentucky Leadership Program, Inc	75,000
Villa Madonna Academy	50,000
Visually Impaired Preschool Services	30,000
Volunteers of America of Kentucky, Inc	117,750
Walden School	125,000
Washington and Lee University	300,000
Wayside Christian Mission	254,768
Wendell Foster Center	136,000
Wesley Community House	50,000
Wilmer Hall Episcopal Children's Home	65,000
Wood Hudson Cancer Research Laboratory, Inc	40,000
Woodbury Forest School	500
YMCA of Frankfort, Kentucky	50,000
YMCA of Greater Louisville	1,977,325
YMCA of Kentucky	3,750
YMCA of Northern Kentucky at Covington	50,000
YMCA of Owensboro Daviess Co	50,000
YMCA of Paris-Bourbon County	100,000
YMHA of Louisville	2,000
YWCA of Louisville	1,069,000
Zoneton Fire District	300
Total: 472 organizations	118,794,051

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. BUNNING. I yield to the gentleman from Louisville.

Mr. MAZZOLI. Mr. Speaker, I thank my dear friend from Kentucky for yielding, my colleague on the committee and in the delegation, and also thank him for his excellent work on this bill. This is something he and I have been working on for a long time. The gentleman from Kentucky has been able to fashion this bill, and I salute him for it.

As he very well knows, and has very aptly pointed out, one of the charitable foundations that would qualify under the bill, the Brown Foundation in Louisville, has over the past 30 years roughly, almost 40 years actually, distributed over $118 million to various charities.

□ 1320

So any kind of a bill like this that would help the Brown Foundation do two things, clean up environmentally unsound areas and, at the same time, contribute money to worthy charities is a good bill, and I join my friend, the gentleman from Kentucky, in urging support for the bill.

Mr. BUNNING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House *suspend the rules and pass the bill*, H.R. 5644.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

EXEMPTING CERTAIN FERRY TRANSPORTATION FROM EXCISE TAX

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5661) to amend the Internal Revenue Code of 1986 to exempt transportation on certain ferries from the excise tax on transportation of passengers by water.

The Clerk read as follows:

H.R. 5661

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

SECTION 1. EXEMPTION FOR TRANSPORTATION ON CERTAIN FERRIES.

(a) GENERAL RULE.—Subparagraph (B) of section 4472(1) of the Internal Revenue Code of 1986 (relating to exception for certain voyages on passenger vessels) is amended to read as follows:

"(B) EXCEPTION FOR CERTAIN VOYAGES.—The term 'covered voyage' shall not include—

"(i) a voyage of a passenger vessel of less than 12 hours between 2 ports in the United States, and

"(ii) a voyage of less than 12 hours on a ferry between a port in the United States and a port outside the United States.

For purposes of the preceding sentence, the term 'ferry' means any vessel if normally no more than 50 percent of the passengers on any voyage of such vessel return to the port where such voyage began on the 1st return of such vessel to such port."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to voyages beginning after December 31, 1989; except that no refund of any tax paid before the date of the enactment of this Act shall be made by reason of such amendment.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from Kentucky [Mr. BUNNING] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maine [Mr. ANDREWS], who introduced this bill originally.

Mr. ANDREWS of Maine. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this particular legislation is created to correct a provision that was established in law in 1989 that was a so-called international departure tax on ship passengers.

As you know, the international law provides for gambling in international waters and, as a result of that, we saw the increase of cruise lines specifically for the purpose of offering recreation and gambling in international waters, *so-called cruises to nowhere*. So this international departure tax or head tax was established for passengers getting on board that kind of a service. Well, unfortunately, that bill extended to basic passenger service, ferry service, to those who were getting on board a *ferry not for the purpose of gambling* or recreation but for the purpose of going from one port to another port.

Now, the law in 1989 exempted those ferries that would go from U.S. ports, from point a to point b, that were both within the United States and that were *voyages of 12 hours or less between* those two U.S. ports. However, it did not extend that exemption to those ferries, again, of less than 12 hours in length but extended from an American port to a foreign port.

So if you live in the State of Maine, as I do, or if you live in the Great Lakes area of you live in Washington State and you have people who take ferry service from your home over to Canada, you found yourself confronted with this tax because a provision was not put into the law that would exempt *those people from taking a ferry for* that purpose.

Mr. Speaker, this bill very simply corrects the inequity, takes care of those people using ferry service for that purpose, and would extend the provision to voyages of passenger vessels *of less than 12 hours on a ferry* between a port in the United States and a port outside of the United States, similar to what the Prince of Fundy cruise lines, for example, extends ferry service between Portland, ME, and Yarmouth, NS.

Mr. BUNNING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation. It was not deemed to be controversial when it was considered by the Ways and Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5661.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

APPLICATION OF WAGERING TAXES TO CHARITABLE ORGANIZATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5648) to amend the Internal Revenue Code of 1986 to revise the application of the wagering taxes to charitable organizations.

The Clerk read as follows:

H.R. 5648

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

SECTION 1. CHANGES IN APPLICATION OF WAGERING TAXES TO CHARITABLE ORGANIZATIONS.

(a) EXEMPTION FROM OCCUPATIONAL TAX FOR CHARITABLE ORGANIZATIONS.—Section 4411 of the Internal Code of 1986 (relating to occupational tax on wagering) is amended by adding at the end thereof the following new subsection:

"(c) EXCEPTION FOR CHARITABLE ORGANIZATIONS, ETC.—No tax shall be imposed by subsection (a) on—

"(1) any organization exempt from tax under section 501 or 521, and

"(2) any person who is engaged in receiving wagers only for or on behalf of such an organization,

if the only wagers accepted by such organization (and such person) are authorized under the law of the State in which accepted."

(b) EXCEPTION FROM WAGERING TAX FOR CHARITABLE ORGANIZATIONS.—Section 4402 of such Code (relating to exemptions for tax on wagers) is amended by inserting "(a) IN GENERAL.—" before "No tax" and by adding at the end thereof the following new subsection:

"(b) CHARITABLE ORGANIZATIONS, ETC.—

"(1) EXEMPTION WHERE CHARITABLE EXPENDITURES EXCEED WINNINGS.—If the amount of charitable expenditures of any organization described in section 4411(c) for any calendar quarter equals or exceeds the amount of wagering winnings of such organization for such quarter, no tax shall be imposed by this subchapter on wagers placed during such calendar described in section 4411(c)(2) with respect to such organization.

"(2) REDUCTION OF TAX WHERE WINNINGS EXCEED CHARITABLE EXPENDITURES.—

"(A) IN GENERAL.—If paragraph (1) does not apply to an organization or person described in section 4411(c) for any calendar quarter, the tax imposed by this subchapter on wagers placed with such organization or person during such quarter shall be the applicable percentage of the tax which would (but for this paragraph) be imposed on such wagers during such quarter.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage for any calender quarter is the excess of 100 percent over the percentage which the charitable expenditures of such organization for such quarter is of the wagering winnings of such organization for such quarter.

"(3) DEFINITIONS AND SPECIAL RULE.—For purposes of this subsection—

"(A) CHARITABLE EXPENDITURES.—The term 'charitable expenditures' means, for any calendar quarter, the sum of—

"(i) the amount paid by such organization during such quarter to accomplish 1 or more of the purposes described in section 170(c)(2)(B) or to acquire an asset used (or held for use) directly in carrying out 1 or more of such purposes, and

"(ii) the amount permanently setaside by such organization during such quarter for 1 or more of such purposes.

"(B) WAGERING WINNING.—The term 'wagering winnings' means, with respect to any calendar quarter, the excess of the wagers which would (but for this subsection) be subject to tax under this subchapter and which are placed with the organization during such calender quarter over the winnings paid on such wagers.

"(C) SPECIAL RULE.—Wagers received by any person for or on behalf of an organization shall be treated as received by such organization."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxes imposed for periods beginning after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to wagers placed in calendar quarters beginning after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, charitable organizations are vital to our society. Through the use of local and private funds, these nonprofit organizations are able to mobilize the Nation's volunteers to provide relief to the needy.

Congress has long recognized the invaluable service of charitable organizations by providing them an exemption from Federal income tax.

Nevertheless, there are two taxes in the Internal Revenue Code which are imposed on charitable and noncharitable entities alike. The first is an annual occupational stamp tax of $50 imposed on each and every volunteer who helps with activities such as jar raffles and pull tabs. The second is a wagering excise tax imposed on gross income from these same activities.

These two taxes impose an undue burden upon nonprofit organizations that conduct games of chance as fundraising activities. It is hard to imagine what tax policy is served by imposing an occupational stamp tax on volunteers. The wagering excise tax is also counterproductive because it doesn't discriminate between income that inures to the benefit of the membership and income that goes for truly charitable activities. In both cases, the result is that resources are drained from our charitable organizations.

H.R. 5648 would exempt from the occupational tax organizations exempt from income tax under code section 501 or 521, and individuals engaged in receiving wagers on behalf of such organizations.

H.R. 5648 would also exclude from the base of the wagering excise tax any amounts which are used for charitable purposes. Thus, if the amount of an organization's charitable expenditures equals or exceeds the amount of the net proceeds from gambling conducted by the organization, then no wagering excise tax would be imposed. If the amount of charitable expenditures is less than the gambling proceeds, the amount of the wagering excise tax would be proportionately reduced. Consequently, funds which go to provide benefits to the organization's membership would remain subject to the excise tax, while amounts spent for youth counseling, for example, would be exempt from tax.

These reforms should have been enacted long ago. They were not addressed until now because the two taxes generally were not collected from charitable groups in the past. However, in recent years, several IRS districts have begun to vigorously enforce collection. Unless reformed, the taxes will soon be collected nationally. It would certainly help our Nation's charitable organizations if we would provide an exemption before, rather than after, the damage is done.

Mr. Speaker, I reserve the balance of my time.

□ 1330

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us addresses a problem caused by two little-known sections of the Internal Revenue Code. For many years, charities and individuals working for charities have unknowingly violated these provisions.

One requires each person engaged in the business of accepting wagers to register with the IRS and to pay an excise tax equal to .25 percent of the amount of such wagers.

The second section at issue here imposes an occupational tax of $50 a year on each person who accepts wagers on behalf of an organization. An annual tax of $500 is imposed on the organization. These taxes are aimed at commercial gambling entities, and they are very unfair when imposed on short-term charitable fundraising activities.

The IRS has recently utilized these laws to impose taxes on nonprofit charitable institutions which raise money through bazaars, raffles, and similar activities.

Most citizens are unaware of the existence of these Federal taxes. A recent surge in IRS enforcement activite has caused charitable groups in several States to pay steep fines and penalties.

Hospitals, schools, fire departments, drug and pregnancy counseling centers, and other vital institutions are assisted through fundraising efforts that could be construed as wagering under the Internal Revenue Code. I do not think that we should discourage or limit this type of activity throught he Internal Revenue Code if it is legal under the law of a particular State.

Consistent and fair enforcement of existing law would likely cost more

than the income produced for the Federal Treasury.

H.R. 5648 would exempt charitable organizations and individuals acting on their behalf of from these occupational and excise taxes.

The amendment contains language to ensure that the proceeds from the gambling activity are permanently dedicated for charitable purposes. This bill will protect our constituents who volunteer for local charities. It will also extricate the IRS from a difficult enforcement area, which produces little revenue and terrible public relations.

Mr. ROSTENKOWSKI. Mr. Speaker, charitable and fraternal organizations raise significant funds for charitable purposes through the conduct of games of chance. For the most part, these games are run by volunteers and patronized by members of the organization or the public.

Since 1989, the Internal Revenue Service [IRS] has taken the position in some districts that these organizations and their volunteers are subject to an annual occupational tax on wagering of $50 per volunteer. In addition, the IRS has sought to impose a wagering excise tax of .25 percent on gross receipts from these same activities.

When these two taxes were first enacted, I doubt that many Members of Congress envisioned that they would be imposed on volunteers or volunteer-run organizations. In any event, it is now clear that the taxes impose an undue burden upon nonprofit organizations that raise money for charity by conducting games of chance. The taxes reduce the income that is available for truly charitable activities.

H.R. 5648 would exempt from the occupational tax organizations exempt from income tax under Code section 501 or 521, and individuals engaged in receiving wagers on behalf of such organizations.

H.R. 5648 would also exclude from the base of the wagering excise tax any amounts which are used for charitable purposes.

During times when we are asking our volunteer and charitable agencies to perform more and more services because of government's inability to afford to do them, it is counterproductive to seek to penalize them by imposing multiple taxes and related paperwork. H.R. 5648 would certainly ease these burdens for groups that use all of the proceeds from games of chance to fund charitable activities.

Mr. MCGRATH. Mr. Speaker, I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5648.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

FEDERAL PROGRAM IMPROVEMENT ACT OF 1992

Mr. PICKLE. Mr. Speaker, by direction of the Committee on Ways and Means, I move to suspend the rules and pass the bill (H.R. 3837) to make certain changes to improve the administration of the Medicare Program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans, as amended.

The Clerk read as follows:

H.R. 3837

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 "Federal Program Improvement Act of 1992".

TITLE I—PROVISIONS RELATING TO THE MEDICARE PROGRAM

Subtitle A—Durable Medical Equipment

SEC. 101. RESTRICTIONS ON CERTAIN MARKETING AND SALES ACTIVITIES.

(a) PROHIBITING UNSOLICITED TELEPHONE CONTACTS FROM SUPPLIERS OF DURABLE MEDICAL EQUIPMENT TO MEDICARE BENEFICIARIES.—

(1) IN GENERAL.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

"(17) PROHIBITION AGAINST UNSOLICITED TELEPHONE CONTACTS BY SUPPLIERS.—

"(A) IN GENERAL.—A supplier of a covered item under this subsection may not contact an individual enrolled under this part by telephone regarding the furnishing of a covered item to the individual (other than a covered item the supplier has already furnished to the individual) unless—

"(i) the individual gives permission to the supplier to make contact by telephone for such purpose; or

"(ii) the supplier has furnished a covered item under this subsection to the individual during the 15-month period preceding the date on which the supplier contacts the individual for such purpose.

"(B) PROHIBITING PAYMENT FOR ITEMS FURNISHED SUBSEQUENT TO UNSOLICITED CONTACTS.—If a supplier knowingly contacts an individual in violation of subparagraph (A), no payment may be made under this part for any item subsequently furnished to the individual by the supplier.

"(C) EXCLUSION FROM PROGRAM FOR SUPPLIERS ENGAGING IN PATTERN OF UNSOLICITED CONTACTS.—If a supplier knowingly contacts individuals in violation of subparagraph (A) to such an extent that the supplier's conduct establishes a pattern of contacts in violation of such subparagraph, the Secretary shall exclude the supplier from participation in the programs under this Act, in accordance with the procedures set forth in subsections (c), (f), and (g) of section 1128.".

(2) REQUIRING REFUND OF AMOUNTS COLLECTED FOR DISALLOWED ITEMS.—Section 1834(a) of such Act (42 U.S.C. 1395m(a)), as amended by paragraph (1), is amended by adding at the end the following new paragraph:

"(18) REFUND OF AMOUNTS COLLECTED FOR CERTAIN DISALLOWED ITEMS.—

"(A) IN GENERAL.—If a nonparticipating supplier furnishes to an individual enrolled under this part a covered item for which no payment may be made under this part by reason of paragraph (17)(B), the supplier shall refund on a timely basis to the patient (and shall be liable to the patient for) any amounts collected from the patient for the item, unless—

"(i) the supplier establishes that the supplier did not know and could not reasonably have been expected to know that payment may not be made for the item by reason of paragraph (17)(B), or

"(ii) before the item was furnished, the patient was informed that payment under this part may not be made for that item and the patient has agreed to pay for that item.

"(B) SANCTIONS.—If a supplier knowingly and willfully fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against the supplier in accordance with section 1842(j)(2).

"(C) NOTICE.—Each carrier with a contract in effect under this part with respect to suppliers of covered items shall send any notice of denial of payment for covered items by reason of paragraph (17)(B) and for which payment is not requested on an assignment-related basis to the supplier and the patient involved.

"(D) TIMELY BASIS DEFINED.—A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a supplier who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the supplier receives a denial notice under subparagraph (C), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the supplier receives notice of an adverse determination on reconsideration or appeal.".

(b) CONFORMING AMENDMENT.—Section 1834(h)(3) of such Act (42 U.S.C. 1395m(h)(3)) is amended by striking "Paragraph (12)" and inserting "Paragraphs (12) and (17)".

SEC. 102. CERTIFICATION OF PROVIDERS OF DURABLE MEDICAL EQUIPMENT.

(a) CERTIFICATION OF DURABLE MEDICAL EQUIPMENT AND OTHER SUPPLIERS; APPLICATION FOR SUPPLIER NUMBERS.—

(1) MANDATORY SUPPLIER CERTIFICATION.—

(A) IN GENERAL.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by section 101(a), is further amended by adding at the end the following new paragraph:

"(19) CERTIFICATION OF SUPPLIERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this Act (except as provided in subparagraph (D)), no payment may be made under this part for covered items furnished on or after January 1, 1994, unless the supplier furnishing the item meets the standards for certification described in subparagraph (B).

"(B) STANDARDS FOR CERTIFICATION.—A supplier meets the standards for certification described in this subparagraph if (in accordance with regulations of the Secretary) the supplier—

"(i) is in compliance with all applicable State and Federal licensure and regulatory requirements;

"(ii) maintains a physical facility and inventory on an appropriate site;

"(iii) has appropriate liability insurance.

"(iv) meets such other appropriate standards as the Secretary may establish by regulation.

"(C) PROHIBITION AGAINST DELEGATION OF CERTIFICATIONS.—The Secretary may not delegate the responsibility to certify suppliers under subparagraph (A) to any non-governmental entity.

"(D) EXCEPTION FOR SUPPLIERS WITH EXISTING PROVIDER AGREEMENTS.—Subparagraph (A) shall not apply with respect to covered items furnished by a supplier that is a provider of services that has in effect an agreement with the Secretary under section 1866(a).".

(B) REQUIRING REFUNDS OF AMOUNTS COLLECTED.—Section 1834(a)(18) of the Social Security Act (as added by section 101(a)(2)) is amended by striking "paragraph (17)(B)" each place it appears and inserting "paragraph (17)(B) or paragraph (19)(A)".

(C) PUBLICATION OF STANDARDS.—Not later than July 1, 1993, the Secretary shall publish in the Federal Register the certification standards for suppliers of covered items established under section 1834(a)(19)(B) of the Social Security Act (as added by subparagraph (A)).

(2) APPLICATIONS FOR SUPPLIER NUMBERS.—

(A) CRITERIA; INFORMATION REQUIRED.—Not later than July 1, 1993, the Secretary of Health and Human Services shall establish criteria for the application for and issuance of supplier numbers for suppliers of durable medical equipment, prosthetic devices, and urological and ostomy care supplies under part B of the medicare program, and shall include in such criteria a requirement that the supplier disclose to the Secretary the following information (to the extent that the information is not otherwise required to be disclosed under section 1124A of the Social Security Act):

(i) Information relating to the ownership of the supplier and the identity of managing employees.

(ii) The identity and billing number of other entities providing items or services for which payment may be made under the medicare program with respect to which an owner or managing employee of the supplier has or has had an ownership or control interest within the previous 3 years.

(iii) Whether any penalties (including exclusion from participation) have been assessed against any owner or managing employee of the supplier under the medicare or medicaid programs.

(iv) The identity and existence of any subcontracting or subsidiary business entities with which the provider is affiliated or doing business which are advertising or marketing firms directly or indirectly involved in sales of durable medical equipment or other supplies to medicare beneficiaries.

(v) Information on the supplier's sales and billing practices, including whether the supplier engages in telemarketing and whether items are directly purchased, warehoused, and shipped by the entity or supplied under arrangements with other suppliers.

(vi) Documentation regarding whether the supplier is certified as a durable medical equipment supplier by the Secretary.

(vii) Any other information the Secretary considers appropriate.

(B) PROHIBITION AGAINST MULTIPLE BILLING NUMBERS.—The Secretary may not issue more than one billing number to any supplier described in subparagraph (A), unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

(C) EXCEPTION FOR PROVIDERS OF SERVICES.—The standards established pursuant to subparagraph (A) and the prohibition described in subparagraph (B) shall not apply with respect to any supplier described in subparagraph (A) that is a provider of services that has in effect an agreement with the Secretary under section 1866(a) of the Social Security Act.

(b) STUDY OF CERTIFICATION AND QUALITY CRITERIA.—

(1) STUDY.—The Secretary of Health and Human Services (in consultation with representatives of suppliers of durable medical equipment under the medicare program and such other individuals or organizations as the Secretary considers appropriate) shall conduct a study of the feasibility and desirability of establishing and implementing additional certification and quality assurance criteria for suppliers of durable medical equipment, prosthetic devices, and urological and ostomy care supplies under part B of the medicare program, and shall include in the study an analysis of standards relating to safety, patient records and rights, equipment management and maintenance, qualifications of employees (including the appropriate use of certified respiratory therapists in providing home oxygen therapy services), and internal quality assurance programs.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit a report on the study conducted under paragraph (1) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate.

SEC. 103. REFORM OF PROCEDURES FOR FILING, PROCESSING, AND REVIEWING CLAIMS.

(a) PROHIBITION AGAINST CARRIER SHOPPING.—

(1) IN GENERAL.—Section 1834(a)(12) of the Social Security Act (42 U.S.C. 1395m(a)(12)) is amended to read as follows:

"(12) USE OF CARRIERS TO PROCESS CLAIMS.—

"(A) DESIGNATION OF REGIONAL CARRIERS.—The Secretary may designate, by regulation under section 1842, one carrier for one or more entire regions to process all claims within the region for covered items under this section.

"(B) PROHIBITION AGAINST CARRIER SHOPPING.—(i) No supplier of a covered item may present or cause to be presented a claim for payment under this part unless such claim is presented to the appropriate carrier.

"(ii) For purposes of clause (i), the term 'appropriate carrier' means the carrier having jurisdiction over the geographic area that includes the location where the item was directly furnished to the patient.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to items furnished on or after July 1, 1993.

(3) CLARIFICATION OF AUTHORITY TO DESIGNATE CARRIERS FOR OTHER ITEMS AND SERVICES.—Nothing in this subsection or the amendment made by this subsection may be construed to restrict the authority of the Secretary of Health and Human Services to designate regional carriers or modify claims jurisdiction rules with respect to items or services under part B of the medicare program that are not covered items under section 1834(a) of the Social Security Act or prosthetic devices or orthotics and prosthetics under section 1834(h) of such Act.

(b) CERTIFICATES OF MEDICAL NECESSITY FOR ITEMS OF DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, AND ORTHOTICS AND PROSTHETICS.—Not later than July 1, 1993, the Secretary of Health and Human Services shall, in consultation with carriers under part B of the medicare program, develop one or more standardized certificates of medical necessity for durable medicare equipment, prosthetic devices, and orthotics and prosthetics to be completed by each physician who prescribes such an item for any medicare beneficiary and transmitted to the carrier processing the claim for payment for the item under the program and to the beneficiary receiving the item.

(c) COVERAGE AND REVIEW CRITERIA.—

(1) DEVELOPMENT AND ESTABLISHMENT.—Not later than July 1, 1993, the Secretary of Health and Human Services, in consultation with representatives of suppliers of durable medical equipment, individuals enrolled under part B of the medicare program, and appropriate medical specialty societies, shall develop and establish uniform national coverage and utilization review criteria for 200 items of durable medical equipment, prosthetic devices, orthotics and prosthetics, and surgical dressings selected in accordance with the standards described in paragraph (2). The Secretary shall publish the criteria as part of the instructions provided to fiscal intermediaries and carriers under the medicare program.

(2) STANDARDS FOR SELECTING ITEMS SUBJECT TO CRITERIA.—The Secretary may select an item for coverage under the criteria developed and established under paragraph (1) if the Secretary finds that—

(A) the item is frequently purchased or rented by beneficiaries;

(B) the item is frequently subject to a determination that it is not medically necessary; or

(C) the coverage or utilization criteria applied to the item (as of the date of the enactment of this Act) is not consistent among carriers.

(3) ANNUAL REVIEW AND EXPANSION OF ITEMS SUBJECT TO CRITERIA.—The Secretary shall annually review the coverage and utilization of items of durable medical equipment, prosthetic devices, orthotics and prosthetics, and surgical dressings to determine whether items not included among the items initially selected under paragraph (1) should be made subject to uniform national coverage and utilization review criteria, and, if appropriate, shall apply such criteria to such additional items.

(4) REPORT ON EFFECT OF UNIFORM CRITERIA ON UTILIZATION OF ITEMS.—Not later than January 1, 1994, the Secretary shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate analyzing the impact of the uniform criteria established under paragraph (1) on the utilization of items of durable medical equipment, prosthetic devices, orthotics and prosthetics, and surgical dressings by individuals enrolled under part B of the medicare program, and shall include in the report recommendations regarding the development and establishment of uniform coverage and utilization criteria for additional items under the program.

SEC. 104. ADJUSTMENTS FOR INHERENT REASONABLENESS.

(a) ADJUSTMENTS MADE TO FINAL PAYMENT AMOUNTS.—Section 1834(a)(10)(B) of the Social Security Act (42 U.S.C. 1395m(a)(10)(B)) is amended by adding at the end the following: "In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.".

(b) ADJUSTMENT REQUIRED FOR CERTAIN ITEMS.—

(1) IN GENERAL.—In accordance with section 1834(a)(10)(B) of the Social Security Act (as amended by subsection (a)), the Secretary of Health and Human Services shall determine whether the payment amounts for the items described in paragraph (2) are not inherently reasonable, and shall adjust such amounts in accordance with such section if the amounts are not inherently reasonable.

(2) ITEMS DESCRIBED.—The items referred to in paragraph (1) are decubitus care equipment, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary.

SEC. 105. ADVANCED DETERMINATION REQUIREMENTS FOR POTENTIALLY OVERUSED ITEMS.

(a) TREATMENT OF POTENTIALLY OVERUSED ITEMS AND ADVANCED DETERMINATIONS OF COVERAGE.—

(1) IN GENERAL.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by sections 101 and 102, is further amended by adding at the end the following new paragraph:

"(20) SPECIAL TREATMENT FOR POTENTIALLY OVERUSED ITEMS.—

"(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that

are potentially overused, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, motorized scooters, decubitus care mattresses, and any such other item determined by the Secretary to be potentially overused on the basis of any of the following criteria—

"(i) the item is marketed directly to potential patients;

"(ii) the item is marketed with an offer to potential patients to waive the costs of coinsurance associated with the item or is marketed as being available at no cost to policyholders of a medicare supplemental policy (as defined in section 1882(g)(1));

"(iii) the item has been subject to a consistent pattern of overutilization; or

"(iv) a high proportion of claims for payment for such item under this part may not be made because of the application of section 1862(a)(1).

"(B) ITEMS SUBJECT TO SPECIAL CARRIER SCRUTINY.—Payment may not be made under this part for any item contained in the list developed by the Secretary under subparagraph (A) unless the carrier has subjected the claim for payment for the item to special scrutiny or has followed the procedures described in paragraph (11)(C) with respect to the item.".

(2) ADVANCE CARRIER DETERMINATIONS FOR CUSTOMIZED ITEMS.—Section 1834(a)(11) of such Act (42 U.S.C. 1395m(a)(11)) is amended by adding at the end the following new subparagraph:

"(C) CARRIER DETERMINATIONS FOR CERTAIN ITEMS IN ADVANCE.—Upon the request of a supplier, a carrier shall determine in advance whether payment for an item may not be made under this subsection because of the application of section 1862(a)(1) if—

"(i) the item is a customized item (other than inexpensive items specified by the Secretary); or

"(ii) the item is subject to special carrier scrutiny under paragraph (20)(B).".

(3) REQUIRING CARRIERS TO MEET CRITERIA RELATING TO TIMELY RESPONSE TO REQUESTS.—Section 1842(c) of such Act (42 U.S.C. 1395u(c)) is amended by adding at the end the following new paragraph:

"(4) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall require the carrier to meet criteria developed by the Secretary to measure the timeliness of carrier responses to requests for payment of items described in section 1834(a)(11)(C).".

(4) TECHNICAL AMENDMENT.—Section 1834(h)(3) of such Act is amended by striking "paragraph (10) and paragraph (11)" and inserting "paragraphs (10) and (11)".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items furnished on or after July 1, 1993.

(b) REPORT ON IMPLEMENTATION AND REVIEW OF POTENTIALLY OVERUSED ITEMS.—Not later than July 1, 1993, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate describing the steps the Secretary has taken to carry out the provisions of section 1834(a) of the Social Security Act requiring advance coverage determinations or special carrier scrutiny for certain items, together with an analysis of the effectiveness of such requirements in reducing unnecessary utilization of items of durable medical equipment under part B of the medicare program.

SEC. 106. PHYSICIAN OWNERSHIP REFERRAL ARRANGEMENTS REGARDING DURABLE MEDICAL EQUIPMENT SUPPLIERS.

(a) IN GENERAL.—Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by sections 101(a), 102(a), and 105(a), is further amended by adding at the end the following new paragraph:

"(21) LIMITATION ON CERTAIN PHYSICIAN REFERRALS.—

"(A) PROHIBITION OF CERTAIN REFERRALS.—

"(i) IN GENERAL.—Except as provided in subparagraph (B), if a physician (or immediate family member of such physician) has a financial relationship with an entity specified in clause (ii), then—

"(I) the physician may not make a referral to the entity for the furnishing of covered items for which payment otherwise may be made under this part, and

"(II) the entity may not present or cause to be presented a claim under this part or bill to any individual, third party payor, or other entity for covered items furnished pursuant to a referral prohibited under subclause (I).

"(ii) FINANCIAL RELATIONSHIP SPECIFIED.—For purposes of this paragraph, a financial relationship of a physician (or immediate family member) with an entity specified in this clause is—

"(I) except as provided in subparagraphs (C) and (D), an ownership or investment interest in the entity; or

"(II) except as provided in subparagraph (E), a compensation arrangement (as defined in subparagraph (H)(i)(a)) between the physician (or immediate family member) and the entity.

An ownership or investment interest described in subclause (I) may be through equity, debt, or other means.

"(B) GENERAL EXCEPTIONS TO BOTH OWNERSHIP AND COMPENSATION ARRANGEMENT PROHIBITIONS.—Subparagraph (A)(i) shall not apply in the following cases:

"(i) PHYSICIANS' SERVICES.—In the case of physicians' services (as defined in section 1861(q)) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subparagraph (H)(iv)) as the referring physician.

"(ii) IN-OFFICE ANCILLARY SERVICES.—In the case of services—

"(I) that are furnished—

"(a) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are employed by such physician or group practice and who are personally supervised by the physician or by another physician in the group practice, and

"(b)(1) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of covered items, or

"(2) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice for the centralized provision of the group's covered items, and

"(II) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(iii) PREPAID PLANS.—In the case of services furnished—

"(I) by an organization with a contract under section 1876 to an individual enrolled with the organization,

"(II) by an organization described in section 1833(a)(1)(A) to an individual enrolled with the organization, or

"(III) by an organization receiving payments on a prepaid basis, under a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization.

"(iv) HOSPITAL FINANCIAL RELATIONSHIP UNRELATED TO THE PROVISION OF COVERED ITEMS.—In the case of a financial relationship with a hospital if the financial relationship does not relate to the provision of covered items.

"(v) OTHER PERMISSIBLE EXCEPTIONS.—In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

"(C) GENERAL EXCEPTION RELATED ONLY TO OWNERSHIP OR INVESTMENT PROHIBITION FOR OWNERSHIP IN PUBLICLY-TRADED SECURITIES.—Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which were purchased on terms generally available to the public and which are in a corporation that—

"(i) is listed for trading on the New York Stock Exchange or on the American Stock Exchange, or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and

"(ii) had, at the end of the corporation's most recent fiscal year, total assets exceeding $100,000,000,

shall not be considered to be an ownership or investment interest described in subparagraph (A)(ii)(a).

"(D) ADDITIONAL EXCEPTIONS RELATED ONLY TO OWNERSHIP OR INVESTMENT PROHIBITION.—The following, if not otherwise excepted under subparagraph (B), shall not be considered to be an ownership or investment interest described in subparagraph (A)(ii)(a):

"(i) HOSPITALS IN PUERTO RICO.—In the case of covered items provided by a hospital located in Puerto Rico.

"(ii) RURAL PROVIDER.—In the case of covered items if the supplier furnishing the items is in a rural area (as defined in section 1886(d)(2)(D)).

"(iii) HOSPITAL OWNERSHIP.—In the case of covered items furnished by a hospital (other than a hospital described in clause (1)) if—

"(I) the referring physician is authorized to furnish equipment at the hospital, and

"(II) the ownership or investment interest is in the hospital itself (and not merely in a subdivision thereof).

"(E) EXCEPTIONS RELATING TO OTHER COMPENSATION ARRANGEMENTS.—The following shall not be considered to be a compensation arrangement described in subparagraph (A)(ii)(II):

"(i) RENTAL OF OFFICE SPACE.—Payments made for the rental or lease of office space if—

"(I) there is a written agreement, signed by the parties, for the rental or lease of the space, which agreement—

"(a) specifies the space covered by the agreement and dedicated for the use of the lessee,

"(b) provides for a term of rental or lease of at least one year;

"(c) provides for payment on a periodic basis of an amount that is consistent with fair market value;

"(d) provides for an amount of aggregate payments that does not vary (directly or indirectly) based on the volume or value of any referrals of business between the parties; and

"(e) would be considered to be commercially reasonable even if no referrals were made between the parties;

"(II) in the case of rental or lease of office space in which a physician who is an interested investor (or an interested investor who is an immediate family member of the physician) has an ownership or investment interest, the office space is in the same building as the building in which the physician (or group practice of which the physician is a member) has a practice; and

"(III) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(ii) EMPLOYMENT AND SERVICE ARRANGEMENTS WITH HOSPITALS.—An arrangement between a hospital and a physician (or immediate family member) for the employment of the physician (or family member) or for the provision of administrative services, if—

"(I) the arrangement is for identifiable services;

"(II) the amount of the remuneration under the arrangement—

"(a) is consistent with the fair market value of the services, and

"(b) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician;

"(III) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the hospital; and

"(IV) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(iii) OTHER SERVICE ARRANGEMENTS.—Remuneration from an entity (other than a hospital) under an arrangement if—

"(I) the arrangement is—

"(a) for specific identifiable services as the medical director or as a member of a medical advisory board at the entity pursuant to a requirement of this title,

"(b) for specific identifiable physicians' services to be furnished to an individual receiving hospice care if payment for such services may only be made under this title as hospice care,

"(c) for specific physicians' services furnished to a nonprofit blood center, or

"(d) for specific identifiable administrative services (other than direct patient care services), but only under exceptional circumstances specified by the Secretary in regulations;

"(II) the requirements described in subclauses (I) and (III) of clause (ii) are met with respect to the entity in the same manner as they apply to a hospital; and

"(III) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(iv) PHYSICIAN RECRUITMENT.—In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—

"(I) the physician is not required to refer patients to the hospital,

"(II) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

"(III) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(v) ISOLATED TRANSACTIONS.—In the case of an isolated financial transaction, such as a one-time sale of property, if—

"(I) the requirements described in subclauses (I) and (III) of clause (ii) are met with respect to the entity in the same manner as they apply to a hospital, and

"(II) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(vi) SALARIED PHYSICIANS IN A GROUP PRACTICE.—A compensation arrangement involving payment by a group practice of the salary of a physician member of the group practice.

"(F) REPORTING REQUIREMENTS.—Each entity providing covered items or services for which payment may be made under this part shall provide the Secretary with the information concerning the entity's ownership arrangements, including—

"(i) the covered items and services provided by the entity, and

"(ii) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subparagraph (A)(ii)(a)) in the entity, or whose immediate relatives have such an ownership or investment.

Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. Such information shall first be provided not later than 1 year after the date of the enactment of this paragraph. The requirement of this subparagraph shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provide services for which payment may be made under this title very infrequently. The Secretary may waive the requirements of this subparagraph (and the requirements of chapter 35 of title 44, United States Code, with respect to information provided under this subparagraph) with respect to reporting by entities in a State (except for entities providing covered items) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.

"(G) SANCTIONS.—

"(i) DENIAL OF PAYMENT.—No payment may be made under this part for a covered item which is provided in violation of subparagraph (A)(i).

"(ii) REQUIRING REFUNDS FOR CERTAIN CLAIMS.—If a person collects any amounts that were billed in violation of subparagraph (A)(i), the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.

"(iii) CIVIL MONEY PENALTY AND EXCLUSION FOR IMPROPER CLAIMS.—Any person that presents or causes to be presented a bill or a claim for an item that such person knows or should know is for an item for which payment may not be made under clause (i) or for which a refund has not been made under clause (ii) shall be subject to a civil money penalty of not more than $15,000 for each such item. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(iv) CIVIL MONEY PENALTY AND EXCLUSION FOR CIRCUMVENTION SCHEMES.—Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this paragraph, shall be subject to a civil money penalty of not more than $100,000 for each such arrangement or scheme. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

"(v) FAILURE TO REPORT INFORMATION.—Any person who is required, but fails, to meet a reporting requirement of subparagraph (F) is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A.

"(H) DEFINITIONS.—For purposes of this paragraph:

"(i) COMPENSATION ARRANGEMENT; REMUNERATION.—(I) The term 'compensation arrangement' means any arrangement involving any remuneration between a physician (or immediate family member) and an entity.

"(II) The term 'remuneration' includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

"(ii) EMPLOYEE.—An individual is considered to be 'employed by' or an 'employee' of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

"(iii) FAIR MARKET VALUE.—The term 'fair market value' means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

"(iv) GROUP PRACTICE.—The term 'group practice' means a group of two or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association—

"(I) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides (including medical care, consultation, diagnosis, or treatment) through the joint use of shared office space, facilities, equipment, and personnel;

"(II) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed in the name of the group and amounts so received are treated as receipts of the group;

"(III) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group; and

"(IV) which meets such other standards as the Secretary may impose by regulation.

In the case of a faculty practice plan associated with a hospital with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group (as well as perform other tasks such as research), the previous sentence shall be applied only with respect to the services provided within the faculty practice plan.

"(v) INTERESTED INVESTOR; DISINTERESTED INVESTOR.—The term 'interested investor' means, with respect to an entity, an investor who is a physician in a position to make or to influence referrals or business to the entity (or who is an immediate family member of such an investor), and the term 'disinterested investor' means an investor other than an interested investor.

"(vi) INVESTOR.—The term 'investor' means, with respect to an entity, a person with a finan-

cial relationship specified in subparagraph (A)(ii) with the entity.

"(vii) REFERRAL; REFERRING PHYSICIAN.—

"(I) PHYSICIANS' SERVICES.—In the case of an item or service for which payment may be made under this part, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a 'referral' by a 'referring physician'.

"(II) OTHER ITEMS.—The request or establishment of a plan of care by a physician which includes the provision of the covered item constitutes a 'referral' by a 'referring physician'.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to covered items of durable medical equipment furnished on or after January 1, 1994.

SEC. 107. REPORTS AND STUDIES.

(a) ITEMS REQUIRING IMPROVED DEFINITIONS.—The Secretary of Health and Human Services (in consultation with the Inspector General of the Department of Health and Human Services, manufacturers of durable medical equipment, and entities that establish quality standards for items of durable medical equipment) shall prepare a list of items of durable medical equipment that require improved definitions, including improvements relating to the incorporation of updated quality considerations for the items, for purposes of part B of the medicare program, and shall submit a report on changes made to improve the definitions of items on such list to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1993.

(b) GEOGRAPHIC VARIATION AMONG SUPPLIER COSTS COMPARED TO PAYMENT AMOUNTS.—

(1) COLLECTION AND ANALYSIS OF SUPPLIER COST DATA.—The Administrator of the Health Care Financing Administration shall, in consultation with appropriate organizations, collect data on supplier costs of durable medical equipment for which payment may be made under part B of the medicare program, and shall analyze such data to determine the proportions of such costs attributable to the service and product components of furnishing such equipment and the extent to which such proportions vary by type of equipment and by the geographic region in which the supplier is located.

(2) DEVELOPMENT OF GEOGRAPHIC ADJUSTMENT INDEX; REPORTS.—Not later than July 1, 1993, the Administrator shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the data collected and the analysis conducted under subparagraph (A), and shall include in such report—

(A) an analysis on a geographic basis of the supplier costs of durable medical equipment under the medicare program;

(B) the Administrator's recommendations for a geographic cost adjustment index for suppliers of durable medical equipment under the medicare program and an analysis of the impact of such proposed index on payments under the medicare program; and

(C) an analysis of the feasibility and desirability of establishing a national fee schedule for determining the amount of payment for items of durable medical equipment under the medicare program, together with recommendations regarding the design of such a fee schedule (including whether fees should be based on the average or median of current payment amounts or on another basis).

(3) DURABLE MEDICAL EQUIPMENT DEFINED.—In this subsection, the term "durable medical equipment" means covered items under section 1834(a) of the Social Security Act, prosthetic devices, orthotics and prosthetics, ostomy bags and supplies, and surgical dressings.

(c) CRITERIA FOR TREATMENT OF ITEMS AS PROSTHETICS DEVICES OR ORTHOTICS AND PROSTHETICS.—Not later than July 1, 1993, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate describing items of durable medical equipment treated as prosthetic devices or orthotics and prosthetics for purposes of determining the amount of payment for such items under part B of the medicare program that do not require individualized or custom fitting and adjustment to be used by a patient, and shall include in such report recommendations for an appropriate methodology for determining the amount of payment for such items under such program.

Subtitle B—Secondary Payer Identification and Enforcement

SEC. 111. IMPROVING IDENTIFICATION OF MEDICARE SECONDARY PAYER SITUATIONS.

(a) SURVEY OF BENEFICIARIES.—

(1) IN GENERAL.—Section 1862(b)(5) of the Social Security Act (42 U.S.C. 1395y(b)(5)) is amended by adding at the end the following new subparagraph:

"(D) OBTAINING INFORMATION FROM BENEFICIARIES.—Before an individual applies for benefits under part A or enrolls under part B, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.".

(2) DISTRIBUTION OF QUESTIONNAIRE BY CONTRACTOR.—The Secretary of Health and Human Services shall enter into an agreement with an entity to distribute the questionnaire described in section 1862(b)(5)(D) of the Social Security Act (as added by paragraph (1)) not later than January 1, 1993.

(b) MANDATORY SCREENING BY PROVIDERS AND SUPPLIERS UNDER PART B.—

(1) IN GENERAL.—Section 1862(b) of such Act (42 U.S.C. 1395y(b)) is amended by adding at the end the following new paragraph:

"(6) SCREENING REQUIREMENTS FOR PROVIDERS AND SUPPLIERS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this title, no payment may be made for any item or service furnished under part B unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

"(B) PENALTIES.—An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed $2,000 for each such incident. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to items and services furnished on or after January 1, 1993.

SEC. 112. IMPROVEMENTS IN RECOVERY OF PAYMENTS FROM PRIMARY PAYERS.

(a) SUBMISSION OF REPORTS ON EFFORTS TO RECOVER ERRONEOUS PAYMENTS.—

(1) FISCAL INTERMEDIARIES UNDER PART A.—Section 1816 of the Social Security Act (42 U.S.C. 1396h) is amended by adding at the end the following new subsection:

"(k) An agreement with an agency or organization under this section shall require that such agency or organization submit an annual report to the Secretary describing the steps taken to recover payments made for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(2) CARRIERS UNDER PART B.—Section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is amended—

(A) by striking "and" at the end of subparagraphs (G) and (H); and

(B) by inserting after subparagraph (H) the following new subparagraph:

"(I) will submit annual reports to the Secretary describing the steps taken to recover payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(b) REQUIREMENTS UNDER CARRIER PERFORMANCE EVALUATION PROGRAM.—

(1) FISCAL INTERMEDIARIES UNDER PART A.—Section 1816(f)(1)(A) of such Act (42 U.S.C. 1396h(f)(1)(A)) is amended by striking "processing" and inserting "processing (including the agency's or organization's success in recovering payments made under this title for services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)))".

(2) CARRIERS UNDER PART B.—Section 1842(b)(2) of such Act (42 U.S.C. 1395u(b)(2)) is amended by adding at the end the following new subparagraph:

"(D) In addition to any other standards and criteria established by the Secretary for evaluating carrier performance under this paragraph relating to avoiding erroneous payments, the Secretary shall establish standards and criteria relating to the carrier's success in recovering payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1862(b)(2)(A)).".

(c) DEADLINE FOR REIMBURSEMENT BY PRIMARY PLANS.—

(1) IN GENERAL.—Section 1862(b)(2)(B)(i) of such Act (42 U.S.C. 1395y(b)(2)(B)(i)) is amended by adding at the end the following sentence: "If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).".

(2) CONFORMING AMENDMENT.—The heading of clause (i) of section 1862(b)(2)(B) of such Act is amended to read as follows: "REPAYMENT REQUIRED.—".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments for items and services furnished on or after January 1, 1993.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act for years beginning with 1993.

SEC. 113. STUDY OF EFFECTIVENESS OF SECONDARY PAYER REFORMS.

(a) IN GENERAL.—The Comptroller General shall conduct a study of the effectiveness of the amendments made by this subtitle in improving

collections from primary plans for expenditures under the medicare program for which medicare is a secondary payer, and shall include in the study—

(1) an evaluation of the feasibility and desirability of providing incentives to entities serving as carriers and fiscal intermediaries under the medicare program to recover amounts paid under the program for items and services for which payment should not have been made under the program because of the medicare secondary payer requirements; and

(2) an analysis of the feasibility and desirability of permitting entities that are not engaged in providing, paying for, or reimbursing the cost of medical or other health services under group insurance policies or contracts or similar agreements or arrangements to serve as fiscal intermediaries and carriers under the medicare program.

(b) REPORTS.—Not later than July 1, 1993, the Comptroller General shall submit interim findings on the study conducted under subsection (a) to the Committee on Ways and Means of the House of Representatives. Not later than March 1, 1994, the Comptroller General shall submit a final report on the study to the Committee, and shall include in the report any recommendations the Comptroller General considers appropriate for actions to improve collections from primary plans for expenditures for which medicare is a secondary payer.

Subtitle C—Payment for Interpretation of Electrocardiograms

SEC. 121. PERMITTING SEPARATE PAYMENT FOR INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) DEVELOPMENT OF SEPARATE FEE SCHEDULE AMOUNTS FOR ELECTROCARDIOGRAM INTERPRETATIONS.—Effective for services furnished on or after January 1, 1993—

(1) IN GENERAL.—The Secretary of Health and Human Services—

(A) shall make separate payment, under the fee schedule established under section 1848 of the Social Security Act, for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and

(B) shall adjust the relative values established for medical visits and consultations under subsection (c) of such section so as not to include relative value units for electrocardiogram interpretation in the relative value for medical visits and consultations.

(2) CONFORMING AMENDMENT.—Section 1848(b) of the Social Security Act (42 U.S.C. 1395w-4(b)) is amended by striking paragraph (3).

(b) BUDGET NEUTRALITY.—Effective for services furnished on or after January 1, 1993—

(1) the Secretary shall reduce the relative values for all services established under section 1848(c)(2) of the Social Security Act by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the provisions of this section would not result in expenditures under section 1848 of such Act that exceed the amount of such expenditures under such section that would have been made if this section had not been enacted, and

(2) the Secretary shall reduce the amount determined under section 1848(a)(2)(B)(i)(I) of such Act by such percentage as the Secretary determines to be required to assure that, taking into account the reduction in relative values made under paragraph (1), the provisions of this section do not result in expenditures under section 1848 of such Act in 1993 that exceed the amount of such expenditures under such section that would have been made if this section had not been enacted.

TITLE II—CUSTOMS OFFICER PAY REFORM

SEC. 201. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

(a) IN GENERAL.—Section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267) is amended to read as follows:

"SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

"(a) OVERTIME PAY.—

"(1) IN GENERAL.—Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

"(2) SPECIAL PROVISIONS RELATING TO OVERTIME WORK ON CALLBACK BASIS.—

"(A) MINIMUM DURATION.—Any work for which compensation is authorized under paragraph (1) and for which the customs officer is required to return to the officer's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment.

"(B) COMPENSATION FOR COMMUTING TIME.—

"(i) IN GENERAL.—Except as provided in clause (ii), in addition to the compensation authorized under paragraph (1) for work to which subparagraph (A) applies, the customs officer is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of basic pay of the officer.

"(ii) EXCEPTION.—Compensation for commuting time is not payable under clause (i) if the work for which compensation is authorized under paragraph (1) commences within 2 hours of the next regularly scheduled work assignment of the customs officer.

"(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

"(1) NIGHT WORK DIFFERENTIAL.—

"(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occur during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

"(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occur during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

"(2) SUNDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 50 percent of that basic rate.

"(3) HOLIDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

"(4) TREATMENT OF PREMIUM PAY.—Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose.

"(c) LIMITATIONS.—

"(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) and premium pay under subsection (b) that a customs officer may be paid in any fiscal year may not exceed $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

"(2) EXCLUSIVITY OF PAY UNDER THIS SECTION.—A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) for time worked may not receive pay or other compensation for that work under any other provision of law.

"(d) REGULATIONS.—The Secretary of the Treasury shall prescribe such regulations as are necessary or appropriate to carry out this section, including regulations—

"(1) to ensure that callback work assignments are commensurate with the overtime pay authorized for such work; and

"(2) to prevent the disproportionate assignment of overtime work to customs officers who are near to retirement.

"(e) DEFINITIONS.—As used in this section:

"(1) The term 'customs officer' means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.

"(2) The term 'holiday' means any day designated as a holiday under a Federal statute or Executive order.".

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Act of June 3, 1944 (19 U.S.C. 1451a), is repealed.

(2) Section 450 of the Tariff Act of 1930 (19 U.S.C. 1450) is amended—

(A) by striking out "AT NIGHT" in the section heading and inserting "DURING OVERTIME HOURS";

(B) by striking out "at night" and inserting "during overtime hours"; and

(C) by inserting "aircraft," immediately before "vessel".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply to customs inspectional services provided on or after October 1, 1992.

SEC. 202. FOREIGN LANGUAGE PROFICIENCY AWARDS FOR CUSTOMS OFFICERS.

Cash awards for foreign language proficiency may, under regulations prescribed by the Secretary of the Treasury, be paid to customs officers (as referred to in section 5(e)(1) of the Act of February 13, 1911) to the same extent and in the same manner as would be allowable under subchapter III of chapter 45 of title 5, United States Code, with respect to law enforcement officers (as defined by section 4521 of such title).

SEC. 203. APPROPRIATIONS REIMBURSEMENTS FROM THE CUSTOMS USER FEE ACCOUNT.

Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended—

(1) by amending clause (i) of subparagraph (A) to read as follows:

"(i) in—

"(I) paying overtime compensation and premium pay under section 5(a) and (b) of the Act of February 13, 1911,

"(II) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I), and

"(III) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and"; and

(2) by striking out "except for costs described in subparagraph (A)(i)(I) and (II)," in subparagraph (B)(i).

SEC. 204. TREATMENT OF CERTAIN PAY OF CUSTOMS OFFICERS FOR RETIREMENT PURPOSES.

(a) IN GENERAL.—Section 8331(3) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by striking out the semicolon at the end of subparagraph (D) and inserting "; and";

(3) by adding after subparagraph (D) the following:

"(E) with respect to a customs officer (referred to in subsection (c)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;"; and

(4) by striking out "subparagraphs (B), (C), and (D) of this paragraph," and inserting "subparagraphs (B), (C), (D), and (E) of this paragraph".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date of the enactment of this Act and apply only with respect to service performed on or after such date.

SEC. 205. REPORTS.

(a) CUSTOMS USER FEE ACCOUNT REPORTS.—Subparagraph (D) of section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)(D)) is amended to read as follows:

"(D) At the close of each fiscal year, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives—

"(i) containing a detailed accounting of all expenditures from the Customs User Fee Account during such year, including a summary of the expenditures, on a port-by-port basis, for which reimbursement has been provided under subparagraph (A)(ii); and

"(ii) containing a listing of all callback assignments of customs officers for which overtime compensation was paid under section 5(a) of the Act of February 13, 1911, and that were less than 1 hour in duration.".

(b) OTHER REPORTS.—

(1) GAO REPORT.—The Comptroller General of the United States shall undertake—

(A) an evaluation of the appropriateness and efficiency of the customs user fee laws for financing the provision of customs inspectional services; and

(B) a study to determine whether cost savings in the provision of overtime inspectional services could be realized by the United States Customs Service through the use of additional inspectors as opposed to continuing the current practice of relying on overtime pay.

The Comptroller General shall submit a report on the evaluation and study required under this subsection to the Committees by no later than the 1st anniversary of the date of the enactment of this Act.

(2) TREASURY RECOMMENDATION.—On the day that the President submits the budget for the United States Government for fiscal year 1994 to the Congress under section 1105(a) of title 31, United States Code, the Secretary of the Treasury shall submit to the Committees recommended legislative proposals for improving the operation of customs user fee laws in financing the provision of customs inspectional services.

(3) DEFINITION OF COMMITTEES.—For purposes of this subsection, the term "Committees" means the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III—AVAILABILITY AND USE OF DEATH INFORMATION UNDER THE OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM

SEC. 301. IMPROVEMENTS IN PROGRAM FOR USE OF DEATH CERTIFICATES TO CORRECT PROGRAM INFORMATION.

(a) ELIMINATION OF STATE RESTRICTIONS ON USE OF INFORMATION.—Section 205(r)(1) of the Social Security Act (42 U.S.C. 405(r)(1)) is amended by adding at the end, after and below subparagraph (B), the following new sentence:

"Any contract entered into pursuant to subparagraph (A) shall not include any restriction on the use of information obtained by the Secretary pursuant to such contract, except to the extent that such use may be restricted under paragraph (6).".

(b) INFORMATION PROVIDED TO STATE AGENCIES FREE OF CHARGE.—

(1) IN GENERAL.—Section 205(r)(4) of such Act (42 U.S.C. 405(r)(4)) is amended to read as follows:

"(4)(A) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a State agency other than under this Act, the Secretary shall to the extent feasible provide such information free of charge through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals, if such arrangement does not conflict with the duties of the Secretary under paragraph (1).

"(B) The Secretary may enter into similar agreements with States to provide information free of charge for their use in programs wholly funded by the States if such arrangement does not conflict with the duties of the Secretary under paragraph (1).".

(2) CONFORMING AMENDMENT.—Section 205(r)(3) of such Act (42 U.S.C. 405(r)(3)) is amended by striking "or State".

(c) USE BY STATES OF SOCIAL SECURITY ACCOUNT NUMBERS CONTINGENT UPON PARTICIPATION IN PROGRAM.—Section 205(r)(2) of such Act (42 U.S.C. 405(r)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following new subparagraph:

"(B) Notwithstanding section 7(a)(2)(B) of the Privacy Act of 1974 and clauses (i) and (v) of subsection (c)(2)(C) of this section, any State which is not a party to a contract with the Secretary meeting the requirements of paragraph (1) (and any political subdivision thereof) may not utilize an individual's social security account number in the administration of any driver's license or motor vehicle registration law.".

SEC. 302. STUDY REGARDING IMPROVEMENTS IN GATHERING AND REPORTING OF DEATH INFORMATION.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of possible improvements in the current methods of gathering and reporting death information by the Federal, State, and local governments which would result in more efficient and expeditious handling of such information.

(b) SPECIFIC MATTERS TO BE STUDIED.—In carrying out the study required under this section, the Secretary shall—

(1) ascertain the delays in the receipt of death information which are currently encountered by the Social Security Administration and other agencies in need of such information on a regular basis,

(2) analyze the causes of such delays,

(3) develop alternative options for improving Federal, State, and local agency cooperation in reducing such delays, and

(4) evaluate the costs and benefits associated with the options referred to in paragraph (3).

(c) REPORT.—Not later than December 31, 1992, the Secretary shall submit a written report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of the study conducted pursuant to this section, together with such administrative and legislative recommendations as the Secretary may consider appropriate.

SEC. 303. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by section 301 shall take effect 1 year after the date of the enactment of this Act.

(b) PROMOTION OF ENTRY INTO NEW CONTRACTS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall take such actions as are necessary and appropriate to promote entry into contracts under section 205(r) of the Social Security Act which are in compliance with the requirements of the amendments made by section 301.

TITLE IV—PBGC REPORT ON EMPLOYERS WITH UNDERFUNDED PLANS

SEC. 401. REPORT ON EMPLOYERS WITH UNDERFUNDED PLANS.

(a) GENERAL RULE.—The Pension Benefit Guaranty Corporation shall, on January 31 of each calendar year after 1991, submit a report to the Congress setting forth—

(1) the name of each contributing sponsor of 1 or more applicable plans having unfunded liabilities aggregating $25,000,000 or more, and

(2) the name of each contributing sponsor with an applicable plan which has an unfunded liability in excess of $5,000,000 and with respect to which a minimum funding waiver in excess of $1,000,000 has been granted.

Information may be included in such report only if such information may be publicly disclosed by the Pension Benefit Guaranty Corporation.

(b) DETERMINATIONS OF UNFUNDED LIABILITY.—For purposes of subsection (a), determinations of the unfunded liability of any plan shall be made by the Pension Benefit Guaranty Corporation on the basis of the most recent information available to it.

(c) APPLICABLE PLAN.—For purposes of subsection (a), the term "applicable plan" means any employee pension benefit plan (as defined in paragraph (2) of section 3 of the Employee Retirement Income Security Act of 1974) covered under subtitle B of title IV of such Act; except that such term shall not include a multiemployer plan (as defined in section 4001(a)(3) of such Act).

(d) CONTRIBUTING SPONSOR.—For purposes of this section, the term "contributing sponsor" has the meaning given to such term by section 4001(a)(13) of such Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. PICKLE] will be recognized for 20 minutes, and the gentleman from Kentucky [Mr. BUNNING] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I yield myself such time as I may need.

Mr. Speaker, I rise to bring before the House, H.R. 3837, the Federal Program Improvement Act of 1992. This bill is pure good government and eliminates fraud, waste, and abuse in our Federal programs. Importantly, this bill makes a wide variety of programs under the jurisdiction of the Committee on Ways and Means more effective and efficient. I want every Member of

the House to know that a vote for this bill is a vote your constituents deserve and expect, H.R. 3837 will make five main changes:

First, stop the payment of Federal benefit checks to dead people. Federal agencies such as the Office of Personnel Management, Veterans Affairs, and Department of Labor have been sending millions of dollars each month in benefit checks, Social Security and others, to deceased individuals, some of whom have been dead for up to 6 years. H.R. 3837 stops this practice.

I might add that our colleague, the gentleman from Pennsylvania [Mr. SCHULZE], has been very active in this field. He is not here with us today, but he has taken a lead in this area of reform.

Second, stop scams involving the sale of durable medical equipment to Medicare beneficiaries. The Federal Government has been paying for equipment, such as paraffin wax baths, mattress pads, knee braces, and electrical nerve stimulators. Medicare beneficiaries don't want or need this equipment. They've been pressured into accepting it by high-pressure telephone salesmen who tell the beneficiaries that the equipment is free, and Medicare will pay for it. Often, the equipment is of very poor quality. The Medicare Program wastes millions of dollars on such equipment. H.R. 3837 stops this practice.

Third, stop Medicare from paying people's health bills when private insurance companies should be paying. The Medicare Program has been paying hundreds of millions of dollars for the health bills of beneficiaries who have other health insurance that is primary to Medicare. Worse, little has been done to recoup these erroneous Medicare payments for the Federal Government. H.R. 3837 stops future erroneous payments and makes it easier to recoup past mispayments.

Fourth, stop mismanagement of inspector overtime pay by the U.S. Customs Service. Customs management practices for paying inspectors overtime are vulnerable to abuse and the underlying law, enacted in 1911, is outdated. As a result of much negotiation and the support of Customs and Treasury, reform measures have been developed to better administer overtime pay (thorough basic, differential, and other pay rate adjustments) and to fairly compensate the inspectors (through increased pension and foreign language benefits). H.R. 3837 contains such balanced reform measures.

Fifth, provide the Congress with information on whether federally insured pension plans are being funded. The Federal Government is potentially liable for $40 billion is unfunded pension plan benefits that have been guaranteed by the Pension Benefit Guaranty Corporation. This amount has grown by $10 billion in just one year. It is important that the Congress have full information on which companies have failed to fund their pension liabilities and by how much. H.R. 3837 will require such reporting.

This bill, according to the CBO pay-go estimate, will result in over $40 million in direct savings over the next five years. In fact, this bill could save taxpayers hundreds of millions of dollars more, maybe billions. The final cost savings resulting from this bill will depend on the unknown magnitude of the problems we have identified and corrected with this legislation.

Most importantly, this bill saves the American people time and money by making Government programs more user-friendly and less susceptible to abuse. The beneficiary of this legislation is the average person on the street—your constituents. H.R. 3837 proves that our aggressive oversight of the laws Congress has enacted will result in the ferreting out of fraud, waste and abuse. The public needs to know that the Congress is out there protecting their pocketbook. This bill will protect the integrity of many programs within the committee's jurisdiction.

At the start of the 102d Congress, the Ways and Means Committee chairman announced that the committee would undertake a major oversight initiative. The initiative would involve a commitment by the committee to improve the efficiency and effectiveness of health, trade, tax, income security, and other laws within the committee's jurisdiction. As chairman of the Committee's Oversight Subcommittee, I was pleased to join the chairman in this initiative. I assure you that this oversight process will continue during succeeding Congresses, in an effort to achieve more savings and better government.

During the 1st session of this Congress, the Subcommittee on Oversight conducted numerous investigations, hearings and site visits, and issued reports, in furtherance of this major oversight initiative. This legislation reflects the bipartisan reform recommendations unanimously agreed to by the Subcommittee on Oversight, and approved by the Ways and Means Committee. I want to thank the chairmen and members of the Committee on Energy and Commerce and Committee on Post Office and Civil Service for their cooperation and support of the bill. Correspondence between the Committee on Ways and Means and the Committee on Post Office and Civil Service with regard to H.R. 3837 will be included in the RECORD.

In summary, the Federal Program Improvement Act of 1992 will:

First, eliminate abusive marketing practices by durable medical equipment [DME] suppliers seeking reimbursement under the Medicare program, and eliminate waste in the administration of the program. These provisions in title I subtitle A, will result in savings, according to the CBO, of at least $27 million over 5 years. The bill provides that:

Medicare carriers—health insurance companies under contract with the Federal Government to administer the Medicare program—will be required to deny Medicare provider numbers to DME suppliers who engage in telemarketing schemes, making unsolicited telephone calls to Medicare beneficiaries to induce them to buy equipment;

The Health Care Financing Administration [HCFA] will be required to establish standards for the certification of DME suppliers and deny the use of more than one provider number by DME suppliers;

Medicare carriers will be required to reimburse DME suppliers based on the fee schedule in effect for the residence or address of the beneficiary, rather than the fee schedule at the "point-of-sale," in order to eliminate "carrier shopping";

HCFA will be required to establish uniform coverage criteria for the most frequently purchased items of DME and to prepare a list of items of DME for which improved equipment definitions would be appropriate;

Medicare carriers will be authorized to use current, rather than historical, price information in determining the appropriate amount of Medicare payment for DME; and,

HCFA will be required to consider the appropriateness of a uniform, national fee schedule and review items classified as "prosthetics and orthotics."

Second, prevent Medicare from erroneously paying health bills when private insurance companies are responsible, and enhance erroneous Medicare payment recoveries under the Medicare Secondary Payer program. The Health and Human Services inspector general has estimated that the extent of such erroneous Medicare payments may be as high as $1 billion annually. To stop this waste of Federal dollars, title I, subtitle B, of the bill provides that:

Medicare beneficiaries will be screened regarding private health insurance coverage at the time of enrollment in the Medicare Program;

Sanctions will be authorized against providers, such as doctors and hospitals, who routinely and willfully fail to screen beneficiaries for private insurance coverage;

Medicare contractors—health insurance companies under contract with the Federal Government to administer the Medicare laws—will be required to submit quarterly reports to HCFA on their efforts to recover erroneous payments; and

The process of recovering erroneous payments from the primary private insurer will be streamlined.

Third, improve the U.S. Customs Service's administration of inspect-

ional overtime to ensure that resources are better managed. Title II of the bill amends the Customs overtime pay laws (the "1911 Act") to better parallel the Federal Employees Pay Act [FEPA] rules which generally apply to Federal workers. The bill will insure that overtime hours paid bear a more direct relationship to hours worked, by providing for:

Payment of overtime benefits only after 40 hours of work have been completed and only for actual time worked; pay rate differentials for night, Sunday, and holiday work performed as part of an inspector's regular work week schedule; a two hour minimum for callbacks; and, additional compensation for a second commute.

To offset income cuts occasioned by these reforms, and in recognition of the valuable services provided to our country by Customs inspectors, the bill would:

Authorize the Commissioner of Customs to pay foreign language bonuses; and

Increase Customs inspector retirement pay by including overtime pay in the calculation of retirement benefits.

In addition, to ensure proper oversight of the Customs management of overtime pay, the bill would provide that:

The definition of "inspectional services" will be clarified to limit 1911 Act overtime benefits to employees performing actual inspectional activities;

The General Accounting Office will report on the costs of covering night and weekend workloads with additional inspectors, rather than by covering such workload by use of inspector overtime; and

Customs will report annually on the use of overtime, including a breakdown of the use of short callback assignments and second commutes.

Fourth, prevent the flow of Federal benefit checks to deceased beneficiaries. The provisions in title II will result in savings, according to CBO, of at least $13 billion over 5 years. To stop Government agencies from paying Federal benefit checks to individuals whose death has already been reported to the Social Security Administration, the bill provides that:

The Social Security Administration will be authorized and required to share with all Federal agencies death certificate information purchased from State agencies; and

The States will allow for Federal Government-wide use of State death information, in exchange for the States' use of Social Security numbers in administering certain State programs.

Fifth, improve access to information about pension plans which are underfunded and for which the Federal Government may become liable. Title IV of the bill requires that:

The Pension Benefit Guaranty Corporation provide two annual reports to the Congress: One, listing plans with underfunding in excess of $25 million and the amount of such underfunding, and two, listing plans with underfunding in excess of $5 million that have been granted a minimum-funding waiver in excess of $1 million according to publicly disclosable information.

I urge my colleagues to support H.R. 3837.

Mr. Speaker, I include a letter from the gentleman from Missouri [Mr. CLAY], dated May 4, 1992, as follows:

COMMITTEE ON POST OFFICE
AND CIVIL SERVICE,
Washington, DC, May 4, 1992.

Hon. DAN ROSTENKOWSKI, *Chairman,*
Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This refers to your letter of April 10, 1992, concerning the bill H.R. 3837, the Federal Program Improvement Act of 1992, which was ordered reported, amended, by your Committee on April 1, 1992.

As explained in your letter, the bill includes provisions which pertain to matters that fall within the jurisdiction of the Committee on Post Office and Civil Service. You have requested our review and approval of those provisions in order to avoid a sequential referral of the bill and thereby expedite consideration of the bill by the House.

We have carefully reviewed the provisions in question—section 202 (foreign language proficiency awards for customs officers) and section 204 (treatment of overtime pay for civil service retirement purposes)—and we have no objection thereto.

As a result of the cooperation you and your Committee staff have provided, we see no need to seek sequential referral of this legislation. However, our agreement to forgo consideration of the legislation should not be construed as a waiver of this Committee's jurisdiction as established by House Rule X, clause 1(o).

I would appreciate your inserting copies of our correspondence relating to this matter in the Congressional Record during the consideration of H.R. 3837 by the House.

Sincerely,

WILLIAM L. CLAY,
Chairman.

COMMITTEE ON WAYS AND MEANS,
Washington, DC, April 10, 1992.

Hon. WILLIAM CLAY,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, DC.

DEAR BILL: As you may know, the Committee on Ways and Means recently reported H.R. 3837, the Federal Program Improvement Act of 1991, as amended. This bill is designed to improve the efficient operation of several programs within the jurisdiction of the Committee on Ways and Means. As reported, the bill includes matters within the jurisdiction of the Committee on Post Office and Civil Service.

Specifically, the Committee included provisions authorizing the Secretary of the Treasury to pay foreign language awards to Customs officials who use one or more foreign languages in the performance of their jobs and providing that overtime pay received by Customs officials, up to specific limits, be included in calculating their retirement benefits. The provisions were included to offset the cost to employees of reforms of the overtime system governing the Customs Service.

In order to ensure timely consideration by the House of H.R. 3837, I respectfully request that your Committee not request sequential referral of this legislation. In doing so, I fully acknowledge your Committee's exclusive jurisdiction over matters relating to the Federal Civil Service. I further state that action by the Committee on Ways and Means on this legislation in no way affects your Committee's jurisdiction in this area.

I am enclosing a copy of the Committee on Ways and Means report on H.R. 3837 for your information.

Thank you for your consideration of this request.

Sincerely,

DAN ROSTENKOWSKI,
Chairman.

□ 1340

Mr. Speaker, I reserve the balance of my time.

Mr. BUNNING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 3837, the Federal Program Improvement Act. The act implements five bipartisan reports issued last year by the Ways and Means Oversight Subcommittee.

The goal of the bill is simple: Eliminate waste, fraud, and abuse from our Federal health care, trade, income security, and pension programs. As a result of H.R. 3837, taxpayers will save millions of dollars, and important new safeguards will protect the integrity of Federal spending.

The bill protects the Medicare Program by banning abusive telemarketing of durable medical equipment, establishing minimum standards for DME suppliers, and giving HHS new authority to reduce outrageously high DME prices down to more reasonable levels.

H.R. 3837 further protects Medicare by reducing erroneous payments under the Medicare Secondary Payer Program. Under the bill, HHS would be required to screen beneficiaries for other primary health coverage at the time of enrollment, while doctors would have to screen patients or face new penalties.

The bill also eliminates longstanding abuse and mismanagement of U.S. Customs Service inspector overtime pay. It does this by revising the overtime pay system to pay only for actual time worked in excess of a 40-hour workweek or 8-hour day.

It also restores OMB's authority to oversee the Customs User Fee account that funds overtime.

In order to keep inspectors whole, the bill provides additional pay for second commutes and work performed at night, Sundays, and holidays. In addition, inspectors would get to count part of their overtime pay toward retirement, and receive foreign language bonuses if qualified.

Finally, H.R. 3837 would prevent the payment of Federal benefits to deceased individuals by encouraging cooperative efforts by the States, and

strengthen oversight of our pension system by requiring the Pension Benefit Guaranty Corp. to report on underfunded pension plans.

Mr. Speaker, I commend Chairman PICKLE and my fellow Oversight Subcommittee members, on both sides of the aisle, for the spirit of comity and cooperation on this bill. H.R. 3837 is good for the Federal Government, and good for the Federal taxpayer. I urge my colleagues to vote aye.

Mr. Speaker, I reserve the balance of my time.

Mr. PICKLE. Mr. Speaker, I want to commend the gentleman from Kentucky [Mr. BUNNING] and the minority on the subcommittee because they have worked with us very closely on this legislation. We passed this measure unanimously, on a bipartisan basis, out of the subcommittee, and I think that speaks well for the intent of the members of this subcommittee.

Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. WAXMAN], chairman of the Subcommittee on Health and the Environment of the Committee on Energy and Commerce.

Mr. WAXMAN. I thank the gentleman for yielding this time to me.

Mr. Speaker, H.R. 3837, the Federal Program Improvement Act of 1992, includes a number of changes in the administration of the Medicare Program, as well as other matters not within the jurisdiction of the Committee on Energy and Commerce.

Title I of the bill—which includes the Medicare provisions—is based on the oversight and investigative activities of the Committee on Ways and Means. These Medicare provisions are intended to reduce fraud and abuse in the coverage of durable medical equipment items and supplies, and to reduce erroneous payments under the Medicare secondary payor policy.

Key features of title I as reported by the Committee on Energy and Commerce are:

A ban of Medicare payment for covered durable medical equipment [DME] items marketed through unsolicited telephone contacts with beneficiaries;

Certification standards for DME suppliers including the assignment of unique identifying numbers;

Consolidation and standardization of claims processing and special scrutiny of claims for certain abused items; and

Prohibition on physician referrals to DME suppliers in which they have a financial relationship.

The bill also includes provisions related to Medicare's secondary payor policy. The Secretary would be directed to mail questionnaires to beneficiaries when they first become entitled to Medicare benefits in order to identify whether these individuals are covered under other health plans that are primary to Medicare. In addition, providers and practitioners submitting claims for Medicare services would also be required to include information about other health plan coverage.

The case for these provisions is presented in detail in the report on H.R. 3837—House Report 102-486—by the Committee on Ways and Means and the report of the Committee on Energy and Commerce. It is my understanding that the bill as reported is supported by organizations representing DME suppliers and other interested groups. The Congressional Budget Office has estimated that the bill would result in savings in Medicare outlays totalling $27 million over 5 years.

Mr. Speaker, our Committee did adopt one amendment to title I of H.R. 3837 which I offered on behalf of our colleague, Congressman TOM MCMILLEN, when the bill was considered by the Subcommittee on Health and the Environment.

This amendment—which was adopted unanimously—restores separate payments for physician interpretation of electrocardiograms [EKG's] under Medicare. It would reserve the policy included in OBRA 90 that prohibits such payments. The amendment assures Medicare patients access to this important diagnostic service, and does so in a budget-neutral manner.

Mr. Speaker, I want to thank the gentleman from Texas, Mr. PICKLE, for his leadership in developing this legislation, and for the valuable work of his Oversight Subcommittee in identifying the need for this legislation.

Mr. Speaker, I urge my colleagues to support the bill.

Mr. PICKLE. Mr. Speaker, I want to commend the chairman of the subcommittee, the gentleman from California [Mr. WAXMAN] for his cooperation in the passage of this bill. I would also commend the gentleman from Missouri, Mr. WILLIAM CLAY, the chairman of the Committee on Post Office and Civil Service, who has worked closely with us on this measure.

Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana [Mr. TAUZIN] for the purpose of a colloquy.

Mr. TAUZIN. Mr. Speaker, I thank the gentleman from Texas for yielding to me.

Mr. Speaker, section 106 of H.R. 3837 proposes to extend certain Medicare physician self-referral prohibitions to durable medical equipment. Now, when we think of DME, most of us think of wheelchairs, crutches, beds, and things of that nature, but DME also includes the external portable infusion pumps that medical oncologists use to treat their cancer patients on an ambulatory basis, that is, neither in the hospital nor the physician's office.

This provision would have a negative impact on medical oncologists who prescribe ambulatory chemotherapy and other drug therapies for their cancer patients. Additionally, the laws in some States governing the ability of a physician to dispense drugs prevent physicians from qualifying for the exception provided in current self-referral law for in-office ancillary service. So this provision in H.R. 3837 would allow some oncologists to qualify for the exception, but not others.

This limitation of physician involvement in ambulatory chemotherapy would force some cancer patients back to the more expensive and confining hospital setting, and would prevent them from continuing their work and home activities. Slow continuous infusion of chemotherapy tends to be easier on the patient than single injections of large doses, which have worse side effects.

Now, I am not aware of any studies that demonstrate that it is abusive for a physician to own an interest in a durable medical equipment supplier to which that physician refers patients. The studies of which I am aware, the 1989 study by the office of the inspector general of HHS, found no difference in utilization between physician owned and independently owned DME suppliers, and the more extensive and recent Florida study on physician ownership did not reach that conclusion either.

As a matter of fact, the most recently released report on home drug infusion therapy conducted by the Office of Technology Assessment concludes that the physician's active involvement in the ambulatory drug therapy is very important and results in a higher quality of care. Finally, in the widely heralded Florida self-referral legislation that was enacted unanimously earlier this year in response to the Florida study, not only was DME not singled out for special self-referral prohibition, but referrals by medical oncologists for equipment and drugs and solutions that are furnished or administered to their patients in the course of cancer treatment were specifically excepted from the application of the Florida legislation.

When we prohibited self-referrals for clinical laboratory services in 1989 we provided an exception for referral by pathologists because, after all, laboratory services are integrally related to a pathologist's medical practice. Similarly, the drug therapies administered through these portable infusion pumps are not only an integral part of the medical oncologist's practice, for all intents and purposes, they constitute the practice itself. Treating cancer through drug therapies is what a medical oncologist does.

I would like to see this language amended in conference or via some other vehicle, to the effect that a request by an oncologist for an external ambulatory infusion pump as well as the drugs which must be put into the pump, does not constitute a referral by a referring physician. I would ask the chairman if he agrees that there is a problem and if he would be willing to work with me on resolving this issue.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. TAUZIN. I am happy to yield to the gentleman from Texas.

Mr. PICKLE. I thank the gentleman for yielding to me.

Mr. Speaker, I hasten to assure the gentleman that I will be happy to work with him on this issue. The gentleman brings up an important point, and as we go forward I will certainly be in touch with the gentleman and will work with him.

Mr. TAUZIN. I thank the gentleman for his interest and cooperation.

Mr. PICKLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like at this time to commend the chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL] and the chairman of our full committee, the gentleman from Illinois [Mr. ROSTENKOWSKI] for helping us to advance this important issue. Mr. Speaker, I recommend passage of this bill.

Mr. SCHULZE. Mr. Speaker, I am pleased to speak today in strong support of the Federal Program Improvement Act of 1992. This act represents the bipartisan product of the Ways and Means Subcommittee on Oversight, of which I am the ranking Republican member.

I have long believed that Congress must be vigilant in looking over the shoulder of the far-flung bureaucracy. No stone should go unturned in the search for possible fraud and abuse. This bill is the product of the kind of sustained, long-term oversight effort that is essential to good government. The bill makes key changes to five Federal programs that will result in significant, tangible savings to the taxpayer through improved government operations.

First, Mr. Speaker, one of the most important sections of the bill addresses abusive telemarketing by unscrupulous durable medical equipment [DME] suppliers. Due to the high concentration of both elderly citizens and medical equipment companies in southeastern Pennsylvania, my home district has become a hotbed of this abuse.

During our investigation, the subcommittee traveled to West Chester, PA, and learned first hand how boiler room telemarketing operations make unsolicited calls to unsuspecting seniors, and induce them to buy equipment that they don't need and don't want.

The bill effectively puts an end to this practice by an outright ban on DME telemarketing under the Medicare Program.

I originally proposed such a ban in my bill, H.R. 3587, and I am pleased to say that my legislation has been incorporated in its entirety into this act. The act also gives the Department of Health and Human Services new authority to bring outrageously high DME prices down to current, more reasonable levels.

Second, the bill reduces erroneous payments under the Medicare Secondary Payer [MSP] Program.

Under the Medicare law, private insurers must pay claims before Medicare. However, doctors and hospitals often send claims to Medicare first, since Medicare pays more quickly. The Medicare contractors are then left to figure out who should really pay. As a result, the taxpayers lose up to $1 billion per year due to these erroneous payments.

This bill goes to the heart of the problem, by establishing new penalties for doctors and hospitals who repeatedly violate MSP screening requirements.

Third, the bill ends the abuses and mismanagement that have characterized the overtime pay system for U.S. Customs Service inspectors. Under the 80-year-old overtime law, inspectors get paid 4 hours pay for working just 1 minute past the end of the regular work day, or 16 hours pay for any work done on a Sunday.

Customs managers have treated the user fee fund that covers overtime expenses like free money, and Congress and OMB have exercised little or no oversight.

This bill changes that situation by modifying Customs Service compensation rules to make hours paid bear a more direct relationship to hours worked.

In return, inspectors would be able to include a portion of their overtime earnings toward retirement, and qualify for foreign language bonuses. However, the new retirement benefits would be subject to strict regulatory controls. Also, OMB would again be allowed to police spending on overtime from the Customs COBRA user fee account.

Fourth, the bill would reduce the erroneous payment of Federal benefits to persons who have died. It would do this by directing the Federal agencies to cross-check their beneficiary lists with death data compiled by the Social Security Administration. This screening process will identify deceased beneficiaries more quickly and thus allow the agencies to stop issuing benefit checks more quickly.

Fifth, the bill directs the Pension Benefit Guarantee Corporation to improve its management system for the collection and tracking of premium payments by pension plan sponsors. The Oversight Subcommittee found that the PBGC's premium collection system was under stress because it was based on an out-of-date computer system. The variable rate feature of the PBGC premium pushed the collection system beyond its capability and the system crashed.

Mr. Speaker, the five major features of this act will improve the efficiency of Federal programs. The details are neither glamorous nor flashy but they address the nitty-gritty operational features which are essential for good government. I am proud to be an original cosponsor of this bill, and urge my colleagues to support it.

Mr. ROSTENKOWSKI. Mr. Speaker, at the beginning of the 102d Congress, I announced that the Committee on Ways and Means would conduct a major oversight initiative to review programs within the jurisdiction of the committee focusing on the efficient administration of these programs and on their effectiveness in achieving their goals. In furtherance of the oversight initiative, during the first session of the Congress, the committee conducted more than 50 hearings and numerous site visits. These activities an the committee's findings were reported to the House in February.

H.R. 3837 contains the changes that are necessary to eliminate ineffective and inefficient administration within programs in the committee's jurisdiction as identified by the Subcommittee on Oversight. The subcommittee spent a great deal of time analyzing the operations of the Federal Government and identifying problems areas: Federal benefit payments to deceased individuals; abusive marketing practices by durable medical equipment suppliers; mismanagement overtime pay by the Customs Service; Government payment of medical costs which should have been paid by private insurers; and, weaknesses in the administration of the Pension Benefit Guaranty Corporation. H.R. 3837 shows the ongoing effort of the committee to look at the nuts and bolts of programs that we have enacted and I hope that the Congress will pass this important legislation. In the end, I believe that the American public will be better served as a result of the committee's major oversight initiative and the resulting legislation.

Mr. McMILLEN of Maryland. Mr. Speaker, I rise today in support of H.R. 3837, the Federal Program Improvement Act, introduced by my colleague Mr. PICKLE. This is an excellent piece of legislation, which makes several needed changes to the Medicare Program.

Of special importance to me are the provisions that were added during consideration of the legislation in the Energy and Commerce Committee dealing with electrocardiogram [EKG] interpretations. Last year I introduced H.R. 3373, the provisions of which are similar to the measures included in this bill.

H.R. 3373 sought to correct a problem that was created by the Omnibus Budget Reconciliation Act of 1990 [OBRA]. OBRA '90 prohibited a separate payment for EKG interpretations that were ordered or performed in conjunction with an office visit or consultation. The Health Care Financing Administration recognized that this created a situation where physicians would receive no reimbursement for a highly skilled procedure. Therefore, as part of its rulemaking for the RBRV fees schedule, HCFA increased the reimbursement level for office visits in order to compensate for a lack of a separate payment for EKG interpretations.

This addition to office visits provided insufficient reimbursement for EKG interpretations, while at the same time providing reimbursement to physicians who did not even perform EKG interpretations. In essence, this reimbursement system created an incentive for physicians not to perform EKG's on Medicare patients.

Clearly, this is an issue which is important to physicians who interpret EKG's. They want, and rightly so, to be fairly compensated for this service. However, it is important that we do not lose sight of the fact that this is also an issue that is very important to Medicare beneficiaries as well.

Cardiovascular diseases and strokes are the leading cause of death among older Americans. 84 percent of Americans over the age of 65 will experience some kind of heart disorder. EKG's are crucial for detection of these types of disorders. The American Heart Association has stated that it is concerned that the prohibition on reimbursement for EKG interpretations will reduce the appropriate utilization of this important diagnostic tool, and that there are defined circumstances where a skilled EKG interpretation is vital to the interest of patients.

The Congress has created a reimbursement system that discourages physicians from providing EKG's to those patients who are most likely to need and benefit from them—the elderly. We need to pass H.R. 3837 to fix this problem.

Also of concern to me, is that the prohibition on a separate payment for EKG interpretations found in OBRA '90 was penny wise and dollar foolish. In our efforts to reduce spending in the Medicare Program, it is quite probable that we accomplish the opposite result. By failing to detect heart disorders early through a properly interpreted EKG, the Medicare Program will incur greater expense through increased hospital and emergency room costs.

As I have already indicated, the measures contained in H.R. 3837, are very similar to H.R. 3373. These provisions are made budget neutral by splitting off the additional payments that HCFA attached to office visits. However, as this add-on was insufficient to compensate for the true value of this service, additional moneys are achieved through a small across the board reduction in all service still in transition under the RBRV fee schedule.

The EKG provisions in H.R. 3837 are supported by the American Society of Internal Medicine, the American Medical Association, the American College of Cardiology, the National Rural Health Association, the American Academy of Family Physicians, the American Academy of Neurology, the American College of Physicians, American Group Practice Association, the Association of Professors of Medicine, Medical Group Management Association, the Renal Physician Association, the American Osteopathic Association, the American College of Rheumatology, the American College of Chest Physicians, the American Association of Clinical Endocrinologists, the Society of Coronary Angiography and Interventions, and the North American Society of Pacing and Electrophysiology. H.R. 3373 has 239 cosponsors from this chamber and Secretary Sullivan has indicated that he has no problem with the provisions found in H.R. 3837.

To close today, I would like to thank Mr. PICKLE for his strong and early support for this legislation. I would like to thank both Chairman DINGELL and Chairman WAXMAN, who were instrumental in moving this legislation forward. While EKG reimbursement is only one part of H.R. 3837, it is an important one, and I would ask all of the Members who have supported H.R. 3373 to lend their support to the bill that is before us today.

Mr. RANGEL. Mr. Speaker, I rise in support of H.R. 3837. This bill includes five titles emanating from investigations undertaken by the Subcommittee on Oversight. While I support the Committee on Ways and Means Report on each of the titles, I am particularly interested in one. I have been very concerned about the investigations involving the alleged abuses in the application of the law enacted in 1911 affecting the overtime pay of Customs inspectors. I am particularly interested in the work of customs inspectors. As chairman of the Select Committee on Narcotics Abuse and Control I have come to learn they are front line against illegal drug importation.

The 1911 law is an anachronism. It produces anomalies in overtime pay not reflective of the current operations of Customs. In 1911 most inspections involved ships and some railroads. Today there are an enormous number of airplanes entering the United States through many more ports and airports than ships entered in 1911. Nevertheless, there is no reason just to change the overtime provisions for Customs inspectors without recognizing the extraordinary and often dangerous jobs so many of them do.

When this bill was reported by Subcommittee on Oversight of the Committee on Ways and Means, I objected along with my colleagues on the committee from New York, Mr. DOWNEY and Mr. MCGRATH, that the bill would reduce overall compensation for Customs inspectors by over $23 million per year. The committee came to recognize that the 1911 law needed revision, but that it did not want to reduce the overall compensation of Customs inspectors. I am happy to say that the committee reduced the cut in the overtime pay and took that reduced savings in overtime and used it in a revenue neutral manner to improve the retirement pay of the inspectors and the bonus pay provided to those with special language skills so useful to people who work with foreign travelers. I can support this rationalization of compensation for Customs inspectors.

I recognize some inspectors may lose some immediate cash compensation. However, I believe that in the long run an improved retirement package is good for the Customs Service and their inspectors.

I remain an advocate of law enforcement status for Customs inspectors. I recognize that the distinguished chairman of the Committee on Post Office and Civil Service, Mr. CLAY, is reluctant to make any changes affecting law enforcement status for Federal employees before the Office of Personnel Management makes it report to Congress on this matter next year. I am hopeful that the OPM will recognize the important law enforcement work that Customs inspectors have undertaken.

I will continue to support law enforcement status for the inspectors and I hope that the Senate in their consideration of this title of this bill will give consideration of the status of the inspectors.

I urge the passage of H.R. 3837.

Mr. PICKLE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. PICKLE] that the House suspend the rules and pass the bill, H.R. 3837, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 1350

PHASEOUT OF THE OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5649) to amend the Internal Revenue Code of 1986 to phaseout the occupational taxes relating to distilled spirits, wine, and beer and to impose the tax on diesel fuel in the same manner as the tax on gasoline.

The Clerk read as follows:

H.R. 5649

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

SECTION 1. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—PHASEOUT OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER

SEC. 101. REDUCTION IN RATES OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) PROPRIETORS OF DISTILLED SPIRITS PLANTS, ETC.—

(1) Subsection (a) of section 5081 is amended by striking "$1,000" and inserting "$500".

(2) Subsection (b) of section 5081 is amended by striking " '$500' for '$1,000' " and inserting " '$250' for '$500' ".

(b) BREWERS.—Subsection (a) of section 5091 is amended by striking "$1,000" and inserting "$500".

(c) WHOLESALE DEALERS.—Subsections (a) and (b) of section 5111 are each amended by striking "$500" and inserting "$250".

(d) RETAIL DEALERS.—Subsections (a) and (b) of section 5121 are each amended by striking "$250" and inserting "$125".

(e) NONBEVERAGE DRAWBACK.—Subsection (b) of section 5131 is amended by striking "$500" and inserting "$250".

(f) INDUSTRIAL USE.—Subsection (a) of section 5276 is amended by striking "$250" and inserting "$125".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1993, but shall not apply to taxes imposed for periods before such date.

SEC. 102. REPEAL OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

(A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 of such Code is amended by striking ", on payment of a special tax per annum.".

(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows:

"PART II—MISCELLANEOUS PROVISIONS

"Subpart A. Manufacturers of stills.

"Subpart B. Nonbeverage domestic drawback claimants.

"Subpart C. Recordkeeping by dealers.

"Subpart D. Other provisions."

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

"Part II. Miscellaneous provisions."

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

(ii) by striking "**and rate of tax**" in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended—

(i) by striking "and rate of tax" in the section heading,

(ii) by striking "(a) ELIGIBILITY FOR DRAWBACK.—", and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

"Subpart C—Recordkeeping by Dealers

"Sec. 5121. Recordkeeping by wholesale dealers.

"Sec. 5122. Recordkeeping by retail dealers.

"Sec. 5123. Preservation and inspection of records, and entry of premises for inspection."

(5)(A) Section 5114 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.",

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) WHOLESALE DEALERS.—For purposes of this part—

"(1) WHOLESALE DEALER IN LIQUORS.—The term 'wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

"(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

"(3) DEALER.—The term 'dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

"(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer."

(C) Paragraph (3) of section 5121(d), as so redesignated, is amended by striking "section 5146" and inserting "section 5123".

(6)(A) Section 5124 (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 and inserted after section 5121.

(B) Section 5124 is amended—

(i) by striking the section heading and inserting the following new heading:

"SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.",

(ii) by striking "section 5146" in subsection (c) and inserting "section 5123", and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c) RETAIL DEALERS.—For purposes of this section—

"(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

"(2) RETAIL DEALER IN BEER.—The term 'retail dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

"(3) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3)."

(7) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(8) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

"Subpart D—Other Provisions

"Sec. 5131. Packaging distilled spirits for industrial uses.

"Sec. 5132. Prohibited purchases by dealers."

(9) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections, redesignated as section 5131, and amended by inserting "(as defined in section 5121(c))" after "dealer" in subsection (a).

(10) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end thereof the following new section:

"SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

"(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

"(b) PENALTY AND FORFEITURE.—

"For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302."

(11) Subsection (b) of section 5002 is amended—

(A) by striking "section 5112(a)" and inserting "section 5121(c)(3)",

(B) by striking "section 5112" and inserting "section 5121(c)",

(C) by striking "section 5122" and inserting "section 5122(c)".

(12) Subparagraph (A) of section 5010(c)(2) is amended by striking "section 5134" and inserting "section 5114".

(13) Subsection (d) of section 5052 is amended to read as follows:

"(d) BREWER.—For purposes of this chapter, the term 'brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e)."

(14) The text of section 5182 is amended to read as follows:

"For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112, and by retail liquor dealers, see section 5122."

(15) Subsection (b) of section 5402 is amended by striking "section 5092" and inserting "section 5052(d)".

(16) Section 5671 is amended by striking "or 5091".

(17)(A) Part V of subchapter J of chapter 51 is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(18)(A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended—

(i) by striking "this part" each place it appears and inserting "this subchapter", and

(ii) by striking "this subpart" in section 5732(c)(2) (as so redesignated) and inserting "this subchapter".

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking "(except the tax imposed by section 5131)" each place it appears.

(C) Subsection (c) of section 5733, as redesignated by subparagraph (A), is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end thereof the following:

"Sec. 5732. Payment of tax.

"Sec. 5733. Provisions relating to liability for occupational taxes.

"Sec. 5734. Application of State laws."

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(19) Subsection (b) of section 6071 is amended by striking "section 5142" and inserting "section 5732".

(20) Paragraph (1) of section 7652(g) is amended—

(A) by striking "subpart F" and inserting "subpart B", and

(B) by striking "section 5131(a)" and inserting "section 5111(a)".

(21) The table of sections for subchapter D of chapter 51 is amended by striking the item relating to section 5276.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1994, but shall not apply to taxes imposed for periods before such date.

TITLE II—MODIFICATIONS TO TAX ON DIESEL FUEL

SEC. 201. MODIFICATIONS TO TAX ON DIESEL FUEL.

(a) IN GENERAL.—Subparts A and B of part III of subchapter A of chapter 32 (relating to manufacturers excise taxes) are amended to read as follows:

"Subpart A—Gasoline and Diesel Fuel

"Sec. 4081. Imposition of tax.
"Sec. 4082. Exemptions.
"Sec. 4083. Definitions and special rule.
"Sec. 4084. Cross references.

"SEC. 4081. IMPOSITION OF TAX.

"(a) TAX IMPOSED.—

"(1) TAX ON REMOVAL, ENTRY, OR SALE.—

"(A) IN GENERAL.—There is hereby imposed a tax at the rate specified in paragraph (2) on—

"(i) the removal of a taxable fuel from any refinery,

"(ii) the removal of a taxable fuel from any terminal,

"(iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and

"(iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

"(B) EXEMPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS.—The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk to a terminal if the person removing or entering the taxable fuel and the operator of such terminal are registered under section 4101.

"(2) RATES OF TAX.—

"(A) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(i) the Highway Trust Fund financing rate,

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate, and

"(iii) the deficit reduction rate.

"(B) RATES.—For purposes of subparagraph (A)—

"(i) the Highway Trust Fund financing rate is—

"(I) 11.5 cents per gallon in the case of gasoline, and

"(II) 17.5 cents per gallon in the case of diesel fuel,

"(ii) the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon, and

"(iii) the deficit reduction rate is 2.5 cents per gallon.

"(b) TREATMENT OF REMOVAL OR SUBSEQUENT SALE BY BLENDER.—

"(1) IN GENERAL.—There is hereby imposed a tax at the rate specified in subsection (a) on taxable fuel removed or sold by the blender thereof.

"(2) CREDIT FOR TAX PREVIOUSLY PAID.—If—

"(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

"(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

"(c) TAXABLE FUELS MIXED WITH ALCOHOL AT REFINERY, ETC.—

"(1) REDUCED RATES.—Under regulations prescribed by the Secretary, subsection (a) shall be applied by substituting rates which are 1% of the otherwise applicable rates in the case of the removal or entry of any taxable fuel for use in producing at the time of such removal or entry a qualified alcohol mixture. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing such a mixture after the time of such removal or entry.

"(2) LATER SEPARATION OF FUEL FROM QUALIFIED ALCOHOL MIXTURE.—If any person separates the taxable fuel from a qualified alcohol mixture on which tax was imposed under subsection (a) at the otherwise applicable Highway Trust Fund financing rate (or its equivalent) by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) OTHERWISE APPLICABLE RATES.—In the case of the Highway Trust Fund financing rate, the otherwise applicable rate is—

"(i) 6.1 cents per gallon in the case of gasoline, and

"(ii) 12.1 cents per gallon in the case of diesel fuel.

In the case of a qualified alcohol mixture none of the alcohol in which consists of ethanol, the preceding sentence shall be applied by substituting '5.5 cents' for '6.1 cents' and '11.5' for '12.1'.

"(B) QUALIFIED ALCOHOL MIXTURE.—The term 'qualified alcohol mixture' means any mixture of a taxable fuel if at least 10 percent of such mixture is alcohol.

"(C) ALCOHOL DEFINED.—The term 'alcohol' includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal (including peat). Such term does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

"(4) TERMINATION.—Paragraph (1) shall not apply to any removal or sale after September 30, 2000.

"(d) TERMINATION.—

"(1) HIGHWAY TRUST FUND FINANCING RATE.—On and after October 1, 1999, the Highway Trust Fund financing rate under subsection (a)(2) shall not apply.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after December 31, 1995.

"(3) DEFICIT REDUCTION RATE.—On and after October 1, 1995, the deficit reduction rate under subsection (a)(2) shall not apply.

"(e) REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"SEC. 4082. EXEMPTIONS.

"(a) IN GENERAL.—The tax imposed by section 4081 shall not apply to diesel fuel—

"(1) which the Secretary determines is destined for a nontaxable use,

"(2) which is indelibly dyed in accordance with regulations which the Secretary shall prescribe, and

"(3) which meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

"(b) NONTAXABLE USE.—For purposes of this section, the term 'nontaxable use' means—

"(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of the imposition of tax on any sale thereof,

"(2) any use in a train, and

"(3) any use described in section 6427(b)(1).

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

"(d) CROSS REFERENCE.—

"For tax on train and certain bus uses of fuel purchased tax-free, see section 4041(a)(1).

"SEC. 4083. DEFINITIONS AND SPECIAL RULE.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) gasoline, and

"(B) diesel fuel.

"(2) GASOLINE.—The term 'gasoline' includes, to the extent prescribed in regulations—

"(A) gasoline blend stocks, and

"(B) products commonly used as additives in gasoline.

For purposes of subparagraph (A), the term 'gasoline blend stock' means any petroleum product component of gasoline.

"(3) DIESEL FUEL.—The term 'diesel fuel' means any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

"(b) CERTAIN USES DEFINED AS REMOVAL.—If any person uses (other than in the production of gasoline, diesel fuel, or special fuels referred to in section 4041) taxable fuel, such use shall for the purposes of this chapter be considered a removal.

"SEC. 4084. CROSS REFERENCES.

"(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

"(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

"(3) For provisions to relieve purchasers from excise tax in the case of taxable fuel not used for taxable purposes, see section 6427.

"Subpart B—Aviation Fuel

"Sec. 4091. Imposition of tax.

"Sec. 4092. Exemptions.

"Sec. 4093. Definitions.

"SEC. 4091. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed a tax on the sale of aviation fuel by the producer or the importer thereof or by any producer of aviation fuel.

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be the sum of—

"(A) the Airport and Airway Trust Fund financing rate, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate.

"(2) AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Airport and Airway Trust Fund financing rate is 17.5 cents per gallon.

"(3) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

"(4) TERMINATION OF RATES.—

"(A) The Airport and Airway Trust Fund financing rate shall not apply on and after January 1, 1996.

"(B) The Leaking Underground Storage Tank Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR AVIATION FUEL IN ALCOHOL MIXTURE, ETC.—

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall be—

"(A) 4.1 cents per gallon in the case of the sale of any mixture of aviation fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the aviation fuel in such mixture was not taxed under subparagraph (B), and

"(B) 4.56 cents per gallon in the case of the sale of aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

In the case of a sale described in subparagraph (B), the Leaking Underground Storage Tank Trust Fund financing rate shall be ⅛ cent per gallon.

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which tax was imposed under subsection (a) at the Airport and Airway Trust Fund financing rate equivalent to 4.1 cents per gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such aviation fuel. The amount of tax imposed on any sale of such aviation fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 2000.

"(d) LOWER RATES OF TAX ON ALCOHOL MIXTURES NOT MADE FROM ETHANOL.—In the case of a mixture described in subsection (c)(1)(A)(i) none of the alcohol in which is ethanol—

"(1) subsections (c)(1)(A) and (c)(2) shall each be applied by substituting rates which are 0.6 cents less than the rates contained therein, and

"(2) subsection (c)(1)(B) shall be applied by substituting rates which are 1⅝ of the rates determined under paragraph (1).

"SEC. 4092. EXEMPTIONS.

"(a) NONTAXABLE USES.—The Airport and Airway Trust Fund financing rate under by section 4091 shall not apply to aviation fuel sold by a producer or importer for use by the purchaser in a nontaxable use (as defined in section 6427(l)(2)(A)).

"(b) SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply to aviation fuel sold to a producer of such fuel.

"(c) SUPPLIES FOR VESSELS AND AIRCRAFT.—Under regulations prescribed by the Secretary, the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)).

"SEC. 4093. DEFINITIONS.

"(a) AVIATION FUEL.—For purposes of this subpart, the term 'aviation fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

"(b) PRODUCER.—For purposes of this subpart—

"(1) CERTAIN PERSONS TREATED AS PRODUCERS.—

"(A) IN GENERAL.—The term 'producer' includes any person described in subparagraph (B) who elects to register under section 4101 with respect to the tax imposed by section 4091.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a refiner, blender, or wholesale distributor of aviation fuel, or

"(ii) a dealer selling aviation fuel exclusively to producers of aviation fuel.

"(C) REDUCED RATE PURCHASERS TREATED AS PRODUCERS.—Any person to whom aviation fuel is sold at a reduced rate under this subpart shall be treated as the producer of such fuel.

"(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells aviation fuel to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer."

(b) CIVIL PENALTY FOR USING UNTAXED FUEL FOR TAXABLE USE.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6714. EXEMPT-USE DIESEL FUEL SOLD FOR USE OR USED IN TAXABLE USE.

"(a) IMPOSITION OF PENALTY.—If diesel fuel which is dyed in accordance with section 4082—

"(1) is sold by any person for any use which such person knows or has reason to know is not a nontaxable use, or

"(2) is used by any person for a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed,

then, in addition to the tax, such person shall pay a penalty on such sale or use.

"(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) on any sale or use shall be the greater of—

"(1) $1,000, or

"(2) the product of the number of gallons so sold or used and twice rate of tax under section 4081 on diesel fuel.

"(c) DEFINITIONS.—For purposes of this section, the terms 'nontaxable use' and 'diesel fuel' have the respective meanings given such terms by sections 4082 and 4083."

(2) CLERICAL AMENDMENT.—The table of sections for such part I is amended by adding at the end thereof the following new item:

"Sec. 6714. Exempt-use diesel fuel sold for use or used in taxable use."

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended by striking ", section 4081(c), or section 4091(c)" and inserting "or section 4081(c)".

(2) Subsection (a) of section 4101 is amended by striking "4081" and inserting "4041(a)(1), 4081,".

(3) Section 4102 is amended by striking "gasoline" and inserting "any taxable fuel (as defined in section 4083)".

(4) Paragraph (1) of section 4041(a) is amended to read as follows:

"(1) TAX ON DIESEL FUEL IN CERTAIN CASES.—

"(A) IN GENERAL.—There is hereby imposed a tax on any diesel fuel (as defined in section 4083)—

"(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle or a diesel-powered train for use as a fuel in such vehicle or train, or

"(ii) used by any person as a fuel in a diesel-powered highway vehicle or a diesel-powered train unless there was a taxable sale of such fuel under clause (i).

"(B) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this paragraph on the sale or use of diesel fuel if there was a taxable sale of such fuel under section 4081 and the tax thereon was not credited or refunded.

"(C) RATE OF TAX.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the rate of the tax imposed by this paragraph shall be the sum of the Highway Trust Fund financing rate on diesel fuel and the deficit reduction rate in effect under section 4081 at the time of such sale or use.

"(ii) HIGHWAY RATE NOT TO APPLY TO TRAINS.—The Highway Trust Fund financing rate shall not apply to any sale for use, or use, of fuel in a train.

"(iii) CERTAIN BUS USES.—If the limitation in section 6427(b)(2)(A) applies to fuel sold for use or used in an automobile bus, the Highway Trust Fund financing rate shall be 3 cents per gallon and the deficit reduction rate shall not apply."

(5) Paragraph (2) of section 4041(a) is amended by striking "or paragraph (1) of this subsection" and by inserting "on gasoline" after "Highway Trust Fund financing rate".

(6) Paragraph (2) of section 4041(c) is amended by striking "any product taxable under section 4081" and inserting "gasoline (as defined in section 4083)".

(7) Paragraph (2) of section 4041(d) is amended—

(A) by striking "(other than a product taxable under section 4081)" and inserting "(other than gasoline (as defined in section 4083))", and

(B) by striking "section 4091" and inserting "section 4081".

(8) Paragraph (3) of section 4041(d) is amended by striking "(other than any product taxable under section 4081)" and inserting "(other than gasoline (as defined in section 4083))".

(9) Subparagraph (A) of section 4041(k)(1) is amended by striking "sections 4081(c) and 4091(c), as the case may be" and inserting "section 4081(c)".

(10) Subparagraph (B) of section 4041(m)(1) is amended by striking "section 4091(d)(1)" and inserting "section 4091(c)(1)".

(11) Section 6206 is amended by striking "4041 or 4091" and inserting "4041, 4081, or 4091".

(12) Paragraph (1) of section 6302(f) is amended by inserting "on gasoline" after "section 4081" and after "such tax".

(13) Paragraph (1) of section 6412(a) is amended by striking "gasoline" each place it appears (including the heading) and inserting "taxable fuel".

(14) The heading of paragraph (4) of section 6416(a) is amended by striking "GASOLINE" and inserting "GASOLINE AND DIESEL FUEL".

(15) Sections 6420(c)(5) and 6421(e)(1) are each amended by striking "section 4062(b)" and inserting "section 4083(a)".

(16) Subsection (b) of section 6427 is amended—

(A) by striking "if any fuel" in paragraph (1) and inserting "if any diesel fuel (as defined in section 4083(a))", and

(B) by striking "4091" each place it appears and inserting "4081".

(17)(A) Paragraph (1) of section 6427(f) is amended by striking "4091(c)(1)(A), or 4091(d)(1)(A)" and inserting "or 4091(c)(1)(A)".

(B) Paragraph (2) of section 6427(f) is amended to read as follows:

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline or diesel fuel, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof, and

"(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline or diesel fuel, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(1) thereof, and

"(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(1)(B) thereof."

(18) Subsection (h) of section 6427 is amended by striking "section 4082(b)" and inserting "section 4083(a)(2)".

(19) Paragraph (3) of section 6427(i) is amended—

(A) by striking "GASOHOL" in the heading and inserting "ALCOHOL MIXTURE", and

(B) by striking "gasoline used to produce gasohol (as defined in section 4081(c)(1))" in subparagraph (A) and inserting "gasoline or diesel fuel used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))".

(20) The heading of paragraph (4) of section 6427(i) is amended by inserting "4081 OR" before "4091".

(21) Subsection (l) of section 6427 is amended to read as follows:

"(l) NONTAXABLE USES OF AVIATION FUEL TAXED UNDER SECTION 4091.—

"(1) IN GENERAL.—Except as provided in subsection (k) and in paragraphs (3) and (4) of this subsection, if—

"(A) any diesel fuel on which tax has been imposed by section 4081, or

"(B) any aviation fuel on which tax has been imposed by section 4091,

is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4081 or 4091, as the case may be.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means—

"(A) in the case of diesel fuel, any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of the imposition of tax on any sale thereof, and

"(B) in the case of aviation fuel, any use which is exempt from the tax imposed by section 4041(c)(1) other than by reason of the imposition of tax on any sale thereof.

"(3) LIMIT ON REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—Paragraph (1) shall not apply to so much of the tax imposed by section 4081 or 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section in the case of—

"(A) fuel used in a diesel-powered train, and

"(B) fuel used in any aircraft (other than as supplies for vessels or aircraft, within the meaning of section 4221(d)(3)).

"(4) NO REFUND OF DEFICIT REDUCTION TAX ON FUEL USED IN TRAINS.—In the case of fuel used in a diesel-powered train, paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the deficit reduction rate imposed by such section unless such fuel was used by a State or any political subdivision thereof."

(22) Paragraph (1) of section 9503(b) is amended—

(A) by striking "gasoline)," in subparagraph (E) and inserting "gasoline and diesel fuel), and",

(B) by striking subparagraph (F), and

(C) by redesignating subparagraph (G) as subparagraph (F).

(23) Subparagraph (B) of section 9503(b)(4) is amended by striking ", 4081, and 4091" and inserting "and 4081".

(24) Subparagraph (D) of section 9503(c)(6) is amended by striking ", 4081, and 4091" and inserting "and 4081".

(25) Paragraph (2) of section 9503(e) is amended—

(A) by striking ", 4081, and 4091" and inserting "and 4081", and

(B) by striking ", 4081, or 4091" and inserting "or 4081".

(26) Subsection (b) of section 9508 is amended—

(A) by inserting "and diesel fuel" after "gasoline" in paragraph (2), and

(B) by striking "diesel fuel and" in paragraph (3).

(27) The table of subparts for part III of subchapter A of chapter 32 is amended by striking the items relating to subparts A and B and inserting the following new items:

"Subpart A. Gasoline and diesel fuel.

"Subpart B. Aviation fuel."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on April 1, 1993.

SEC. 202. FLOOR STOCKS TAX.

(a) IN GENERAL.—There is hereby imposed a floor stocks tax on diesel fuel held by any person on April 1, 1993.

(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the amount of tax which would be imposed under section 4081 of the Internal Revenue Code of 1986 if there were a taxable sale of such fuel on such date.

(c) LIABILITY AND PAYMENT OF TAX.—

(1) LIABILITY FOR TAX.—A person holding the diesel fuel on April 1, 1993, to which the tax imposed by this section applies shall be liable for such tax.

(2) METHOD OF PAYMENT.—The tax imposed by this section shall be paid in such manner as the Secretary shall prescribe.

(3) TIME FOR PAYMENT.—The tax imposed by this section shall be paid on or before September 30, 1993.

(d) DEFINITIONS.—For purposes of this section—

(1) DIESEL FUEL.—The term "diesel fuel" has the meaning given such term by section 4083(a) of such Code.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(e) EXCEPTIONS.—

(1) EXEMPT HOLDERS.—The tax imposed by this section shall not apply to fuel held by any person if no tax would have been imposed by section 4081 of such Code on any prior removal or entry of such fuel had such section 4081 applied to all prior removals and entries of such fuel.

(2) PERSONS ENTITLED TO CREDIT OR REFUND.—The tax imposed by this section shall not apply to fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 is allowable for such use.

(3) COMPLIANCE WITH DYING REQUIRED.—Paragraphs (1) and (2) shall not apply to the holder of any fuel if the holder of such fuel fails to comply with any requirement imposed by the Secretary with respect to dying or marking such fuel.

(f) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by this section to the same extent as if such taxes were imposed by such section 4081.

SEC. 203. AVAILABILITY OF AMOUNTS IN HIGHWAY TRUST FUND FOR TRANSITION ASSISTANCE.

The purposes for which amounts may be authorized and expended under section 1040 of the Intermodal Surface Transportation Efficiency Act of 1991 shall include grants to assist businesses having annual sales of less than 50,000,000 gallons of diesel fuel to defray the one-time costs of installing additional storage tanks to comply with the fuel dying requirements imposed by the amendments made by this title.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MATSUI] since it is his bill.

Mr. MATSUI. Mr. Speaker, I thank the gentleman from Florida [Mr. GIBBONS] for yielding this time to me, and, before I begin, I have two letters dated July 31, 1992; one from the gentleman from New Jersey [Mr. ROE], the chairman of the Committee on Public Works and Transportation; and the other is a response by myself to Mr. ROE, and basically these letters confirmed that the jurisdictional issue that Public Works might have had, does not exist because the coissue of authorization of the $40 million for conversion that is listed in this bill is subject to both authorization and appropriation at some future date by the Committee on Public Works and Transportation.

The letters referred to are as follows:

COMMITTEE ON PUBLIC WORKS
AND TRANSPORTATION,
Washington, DC, July 31, 1992.

Hon. ROBERT T. MATSUI,
House of Representatives, Washington, DC.

DEAR BOB: It is my understanding that the House will soon be considering H.R. 5649, a bill to amend the Internal Revenue Code of 1986 to phase-out the occupational taxes relating to distilled spirits, wine and beer, and to impose the tax on diesel fuel in the same manner as the tax on gasoline, under suspension of the House Rules.

Section 203 of the bill, as ordered reported, would provide a new purpose for which funds authorized and expended under section 1040 of the Intermodal Surface Transportation Efficiency Act of 1991 could be used. That purpose would "include grants to assist businesses having annual sales of less than 50,000,000 gallons of diesel fuel to defray the one-time costs of installing additional storage tanks to comply with certain fuel dyeing requests."

It is our understanding that while the language of section 203 itself could be read as to provide that authority immediately, it is the intent of your Committee that this section be subject to future authorization and appropriation action by the committees of jurisdiction. I respectfully request that you confirm that understanding and include our exchange of correspondence on this matter at

the point in the record on debate of H.R. 5649.

With warmest personal regards.

Sincerely,

ROBERT A. ROE,
Chairman.

HOUSE OF REPRESENTATIVES,
Washington, DC, July 31, 1992.

HON. ROBERT A. ROE,
Chairman, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR BOB: Thank you for your letter on H.R. 5649, a bill to amend the Internal Revenue Code of 1986 to phase-out the occupational taxes relating to distilled spirits, wine and beer, and to impose the tax on diesel fuel in the same manner as the tax on gasoline.

Your understanding is correct. It is the intent of our Committee that section 203 shall only take effect as authorized by the committees of jurisdiction of Congress in a law enacted after the date of the enactment of this bill. In fact, the Committee Report states that this provision is "subject to future authorization and appropriation by the Congressional committees of jurisdiction".

Per your request, I would by happy to include our letters in the record and I want to thank you for your cooperation on this matter.

Sincerely,

ROBERT T. MATSUI,
Member of Congress.

Mr. Speaker, I rise today to strongly encourage my colleagues to enact legislation that I have proposed, H.R. 5649. This legislation accomplishes two things: First, it repeals an antiquated and inequitable tax on producers, distributors, and retailers of licensed beverages. Second, it contains language that will improve the enforcement of the collection of Federal excise taxes on diesel fuel, thereby stamping out prevalent tax evasion by organized crime groups and tax cheats.

The special occupational tax was originally established in the 1860's to generate revenue for the Civil War. It is essentially a user fee imposed on businesses that manufacture, distribute, or sell alcohol. It is not an excise tax, and the taxpayer receives no license or other benefit for its payment. The SOT was basically forgotten and unenforced until the 1987 Budget Reconciliation Act, when, without any hearings, the tax was rediscovered and increased—in some cases by 1000 percent.

This tax has fallen exceptionally hard on small retail stores. Whether it is a seasonal restaurant, an Elks lodge, a convenience or grocery store, a campground, or florist that delivers wine with flowers, no one is spared the tax. These small businesses incur the fee at substantial cost as they have trouble passing the tax on to consumers because they have to price their products competitively. Large producers are probably better able to recoup some of the tax because they can increase their prices by only a small amount. However, the unfairness of this tax is readily apparent when you note that a chain of four neighborhood food stores pays the same annual special occupational tax as the Nation's largest single-site brewery or distillery plant.

The GAO has repeatedly recommended repeal of this tax. A September 1990 GAO report states that "special occupational taxes are relatively costly to administer particularly when considering the small amount of revenue generated." In addition, that report notes that the Bureau of Alcohol, Tobacco and Firearms has had problems identifying all of the alcohol retailers subject to the tax and collecting amounts due from them. There is no question that this arcane and antiquated tax is a burden on the tax system and on small businesses, and it needs to be repealed.

Mr. Speaker, this legislation also addresses an enormous problem for both Federal and State governments—tax evasion on sales of diesel fuel. The Joint Committee on Taxation has estimated that the adoption of this proposal would increase revenues by approximately $718 million over the next 5½ years. Simply by collecting taxes owed to the Federal Government—$718 million. That is money that will be taken out of the hands of tax cheaters and organized crime groups, 90 percent of which will go into the highway trust fund to be used for improved bridge and highway infrastructure and approximately 10 percent of which is dedicated to deficit reduction.

The reduction of evasion is accomplished in my proposal by doing two things. First, the bill would move the point of tax collection upstream to the point of first distribution. Doing so will reduce opportunities for creating daisy chains to conceal fraudulent transactions. This same change was effected in 1987, to address gasoline tax evasion with impressive results.

The second part of the proposal would deter evasion by dyeing tax-exempt fuel. This is not an original idea. Motor fuels are dyed in 19 countries worldwide for tax compliance purposes. In the Canadian province of Quebec, diesel fuel has been dyed since 1972. Their collections increased approximately 100 percent in the 2 years following implementation of the change. In the State of Mississippi today, diesel fuel for nonhighway use is dyed for State tax compliance purposes.

Not only is the thought not original for tax compliance purposes, but it is designed to compliment EPA regulations. Under the Clean Air Act, as of October 1993, high sulfur diesel must be dyed and may only be used for off-road purposes. Both the Clean Air Act and my proposal would merge to provide that dyed fuel must remain off-road because it is either high in sulfur or tax exempt.

The enactment of H.R. 5649 is necessary because the current structure of the diesel excise tax makes it simply too attractive for cheaters. The volume of gallons sold and the number of different firms within the distribution chain make it difficult to follow the product from the refiners through multiple wholesalers to the ultimate retailer. In addition, industry characteristics that encourage cheating—a cash industry that is highly price sensitive—will never change. Sales volumes increase dramatically in this industry by selling the product just a few cents below competition.

Some of my colleagues have suggested that diesel fuel tax evasion is simply a regional problem in the Northeast. However, the Criminal Investigation Division of the IRS national office will tell you that diesel fuel tax evasion schemes have been investigated and prosecuted in every geographic region of the country.

Using my home State of California as an example, it is easy to see the effect diesel tax cheating has on State and Federal revenue nationwide. In California, the State and Federal excise taxes on diesel fuel together account for approximately 45 cents per gallon, or roughly 40 percent of the price per gallon. At present, the California State Board of Equalization has, thus far, identified approximately 500 diesel accounts suspected of evasion. Of these accounts, 89 have been audited and determined to owe an additional $20,369,956.

I am told that these investigations are just the tip of the iceberg regarding a nationwide problem. Diesel tax cheating is so extensive now that the U.S. Department of Transportation currently publishes a newsletter called "Fuel Tax Evasion Highlights." Most indicative of the problem, however, is the fact that the industry itself came to me with this proposal to increase compliance on its own taxes because the tax cheats are putting long-established and legitimate companies out of business.

This past May, at a Public Works Subcommittee hearing, the Federal Highway Administration testified that tax evasion schemes eat up between 15 and 25 percent of the taxes on diesel fuel. It is time to do something about this egregious evasion—we must stop organized crime rings and tax cheaters.

Mr. Speaker, H.R. 5649 is good legislation. Not only does it repeal a tax that is inequitable and more costly to administer than it is worth, but it also seeks to enforce a tax that is already on the books, but is being blatantly ignored by flagrant tax cheats. At a time when the Federal Government faces an embarrassing and glaring deficit, and State and local governments can barely, if at all, meet their budgets, it is time to crack down on tax evasion. It is responsible tax policy, and I urge my colleagues to vote in favor of this bill.

Mr. Speaker, I might add that there are some farm groups opposed to this legislation, particularly the latter part

as it pertains to the diesel fuel compliance. I will only say that if, in fact, this legislation goes down, I intend to introduce immediately, and seek active cosponsorship, to make it a personal priority that we will then come up with a counter legislation that will collect the tax on all potential taxpayers at the terminal rack, and then those that are tax exempt can ask for a refund by the Federal Government. We tried to do this in 1987 because we need compliance on this particular issue. We cannot go along and lose $718 million every 5 years while the Federal Government has $400 billion per annum deficits, and so this matter, if we lose it, will not, and here I will pursue it in 1993, and I am hopeful that we will pass it because we have the SOT, the Civil War tax, that should be repealed, and certainly we want to get rid of tax cheats and organized crime that are cheating as well.

□ 1400

Mr. McGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5649. The bill has certainly been adequately explained by my colleague, the gentleman from California [Mr. MATSUI].

Mr. Speaker, as my colleague pointed out, there is some opposition to the bill. With that understanding in mind, I yield 2½ minutes to our colleague, the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. Mr. Speaker, I thank the ranking minority member for yielding me this time.

Regrettably, Mr. Speaker, I must rise in opposition to this bill today. It is not because I disagree with the gentleman from California in his attempt to ultimately repeal the special occupational tax. Frankly, I think that repeal makes sense. I have supported it, and I will continue to support it.

However, the circumstances in which we find ourselves are that we are linking legislative proposals with revenue. While I support the legislative proposal to repeal the special occupational tax, which I think is unwarranted and to which I raised objection back in 1987 when it was increased, I fully support the repeal. However, I do not believe that the method by which the gentleman from California has proposed to pay for it is a method that makes sense or is fair to those of us in rural America. I think that simply replaces one problem with another.

The proposal to dye fuel will almost certainly require family farmers to have dual tanks. It will almost certainly require a capital outlay on the part of service stations in small towns and on the part of farmers and others that I do not believe they should be required to have to make at this point. We have what has seemed to be a $5 billion problem. The gentleman from California [Mr. MATSUI] offers a proposal that raises approximately $700 million. I would much prefer that we first have concentrated hearings in this area, and that, second, we see the feasibility study that is now underway down at the Department of Energy with respect to dyeing fuel, and then combine that with a legislative proposal that really does address the full $5 billion problem over a 5-year period.

So on behalf of myself and my colleague, the gentleman from Iowa [Mr. GRANDY], I am constrained to oppose this legislation. I might say that my colleague, the gentleman from Iowa, had intended to be here today and ask for a vote, and I will ask for a vote in his stead. The gentleman from Iowa [Mr. GRANDY] was on an airplane that had mechanical trouble today, so he is stranded somewhere in an airport. He had intended to be on the floor, and his statement in opposition to this revenue source that is being proposed will have to be supplied under general leave.

Let me restate again the situation. The gentleman from California [Mr. MATSUI] has proposed something that I support and think is fully reasonable with respect to the special occupational tax. The proposal on the affirmative side is absolutely essential, and we ought to adopt it, if not now, at some other point, but it ought to be matched in my judgment with a revenue source that does not put the cost of doing this on the backs of family farmers in this country.

The American Farm Bureau opposes that revenue source, along with the National Farmers Union, the National Council of Farmer Cooperatives, and the National Wheat Growers Association, not because they are selfish, not because they do not understand that there is a problem here, but because they believe this transfers the problem onto the backs of family farmers who are in deep trouble at this point.

Mr. Speaker, I intend to ask for a rollcall vote on this legislation, and I hope we can resolve this problem in some other way at some future point.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I appreciate the efforts of the gentleman from California to repeal the burdensome and inefficient special occupational tax on alcohol. My colleagues will recall that the 1987 Budget Reconciliation Act increased this tax by as much as 1000 percent for retail liquor and beer dealers.

The increase has fallen particularly hard on small businesses, the little mom and pop stores. It is simply inequitable. Furthermore, the General Accounting Office has determined that the special occupational taxes are both difficult to collect and administer.

At the same time, Mr. Speaker, I do have concerns about the revenue raiser used to pay for this measure. As chairman of the Oversight Subcommittee, I have spent an enormous amount of time on gasoline and diesel excise tax evasion issues. The answer to the evasion problem is not to change the point of collection. Instead, we need better enforcement by the Internal Revenue Service. As I looked into these issues, I was shocked to find that the Internal Revenue Service apparently puts a very low priority on the excise tax area. Equally shocking is the fact that the IRS has no computerized means with which to track whether people pay the excise taxes that they owe.

Mr. Speaker, I would hope as we move along that we might find another approach to pay for the repeal of the special occupational tax on alcohol. I am concerned about the cash-flow burdens that the diesel tax change would put on our small wholesale oil marketers. Rather than change the law, I prefer that we encourage the Internal Revenue Service to devote resources to diesel and gasoline excise tax collection and enforce the laws already on the books.

TEXAS OIL MARKETERS ASSOCIATION,
Austin, TX, August 3, 1992.

HON. JAKE PICKLE,
U.S. Congress, Washington, DC.

DEAR CONGRESSMAN PICKLE: The Texas Oil Marketers Association is opposed to Congressman Matsui's (D-Cal.) bill, H.R. 5649, which will move the collection point of the federal excise tax from the independent petroleum marketers' wholesale level to the refinery rack. The legislation also removes the Special Occupational Tax on alcohol retailers.

This legislation is similar to the major supplier contracts TOMA members must sign with their supplier in order to purchase branded products: "The large print giveth, and the small print taketh away." TOMA supports the elimination of the S.O.T. on alcohol, but not at the expense of losing the collection of the excise tax on diesel.

TOMA supports strong enforcement of the collection of the excise tax on motor fuels and has continually encouraged Congress to instruct the IRS to develop a clear audit trail on the collection of the excise tax. Where the tax is collected does not have any effect on the evasion problem if the IRS does not have an audit trail that will track each gallon sold.

If the IRS can track a $10 interest payment to an individual through Form 1099, then why do they say it is impossible to develop an audit trail on excise taxes on motor fuels? To the independent petroleum marketer, the picture is clear. The IRS receives more credit and "glory" when they file against an individual for 15 cents versus building a case against a million dollar excise tax evader.

The movement of the collection point on the excise tax on diesel will not solve the evasion problem. A vote for the Matsui bill will be just another step toward driving the independent petroleum marketers out of business.

Please vote against the Matsui Bill, H.R. 5649.

Sincerely,

JIM SHILLINGBURG,
CAE, Executive Vice President.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Speaker, I rise today in strong support of H.R. 5649, a measure that will provide tax relief for hundreds of thousands of small businesses all across the country. I also want to compliment my colleague from California, BOB MATSUI, for his leadership on this issue.

After Congress passed the Budget Reconciliation Act in 1987, small business retailers learned that, as part of this package, Congress had revived a little known measure, known as the special occupation tax, on alcohol [SOT].

The SOT is imposed on any retailer that sells alcoholic beverages. While it's an antiquated tax, dating back to the Civil War, its effect on small businesses is very real, especially when the 1987 Reconciliation Act raised it more than 1,000 percent.

Imagine the surprise when small businesses such as grocery and convenience stores, restaurants, fraternal organizations, taverns, and others found out that they had to pay the Federal Government yet another tax.

There has been periodic, but consistent, criticism of this tax. As early as 1976, the General Accounting Office called for repeal of the SOT and, in 1990, GAO once again studied the tax and found it inequitable and inefficient, and recommended repeal. Mr. Speaker, I believe the repeal of this unfair tax coupled with enforcement of diesel excise tax is an important proposal. Gasoline retailers, truck stop operators, and others who sell diesel fuel, cannot compete with dishonest individuals who manipulate the current system and avoid paying diesel excise taxes.

These criminals are able to sell their fuel at a much lower price, threatening the livelihood of many honest gasoline retailers. In addition, the Federal Government cannot afford this practice, considering the highway trust fund is cheated out of more than $700 million.

H.R. 5649 provides a one two punch for small business. It repeals an inequitable and inefficient tax, and helps to eliminate diesel excise tax evasion. I urge my colleagues to support this measure.

Mr. Speaker, in closing, I would say that this does not violate any law or it does not affect anybody who is not doing anything that is not against the law.

Mr. GIBBONS. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. CARDIN].

Mr. CARDIN. Mr. Speaker, I want to thank the chairman of the subcommittee for yielding this time to me, and I want to congratulate the gentleman from California [Mr. MATSUI] for bringing this bill to the floor.

This bill is not only needed because it repeals the special occupational tax, which everyone here has said should be repealed, but this tax was increased by a tremendous amount in 1987, for small businesses, an increase from $24 to $250. For small businesses this imposes a burden where there is really no justification at all for the imposition of this tax.

I also want to congratulate the gentleman from California [Mr. MATSUI] for complying with the Budget Act in bringing forward the revenue that is necessary in order to comply with the deficit reduction program. His bill will not only pay for the repeal of the special occupational tax but provide some additional revenue for deficit reduction.

The bill also deals with a very important problem. Everyone here acknowledges that we have an evasion of the diesel tax, the excise tax. The gentleman from California [Mr. MATSUI] has come forward with a proposal that will deal with that evasion and reduce the amount of taxes that are being lost. It complies with the same means of collection that we have with gasoline, and as has been pointed out by previous speakers, it sets up a system of fair competition so that those people who are avoiding the tax do not have an advantage over those people who are duly paying the tax.

□ 1410

Mr. Speaker, I urge my colleagues to support H.R. 5649. It is a good bill on the tax that it repeals, and it is a good bill in the way it is funded.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MATSUI].

Mr. MATSUI. Mr. Speaker, just to sum up, I realize that the farmers have had problems. They have sent out a Dear Colleague letter with respect to this legislation. It is not the part that repeals the special occupancy tax. Everyone favors tax cuts; nobody favors tax increases. I guess this bill is probably symbolic of that.

But the fact of the matter is this does not raise taxes. What this proposal does is require greater compliance of existing tax laws. I know that some of the farm groups are making allegations that this will cost them literally thousands of dollars more to comply with the law, but I would have to say that this is not necessarily true.

In our legislation it would require either one of two things: they can either dye the nontax diesel fuel, or, alternatively, they can pay the tax at the terminal rack and seek a refund later if they do not want to go through some modifications.

Frankly, if in fact this measure goes down, then it is my intent to introduce legislation that will give them the option of only the latter. That is, they can pay the tax at the rack, just like withholding is done for wage earners, and then they can seek a refund at tax time. That will be the alternative and it will raise more money actually because what will happen is there will be a surge of revenues the first year, and I am sure the members of the Committee on Ways and Means will be able to use those revenues for good purposes in 1993, like to reduce the deficit and to require greater tax compliance.

Mr. Speaker, I hope the farm groups out there involved in this debate realize this matter will not be over. I expect this to pass tomorrow, but if it does not, there will be other ways to get greater compliance.

Mr. KANJORSKI. Mr. Speaker, as an original cosponsor of H.R. 3781, the precursor of this legislation, I rise in strong support of H.R. 5649. Our bill, H.R. 5649, will put an end to a nuisance tax which has created more problems than it has raised revenues.

Mr. Speaker, I first learned about the special occupational tax [SOT], in 1989 when a small Elks Club in my congressional district told me that they had just received a tax bill for $9,776.98 for a tax they had never heard about before, and which neither the IRS nor the Bureau of Alcohol, Tobacco and Firearms [BATF] had never attempted to collect. Much to the club's surprise, they were being dunned for taxes owed as far back as 50 years ago.

An investigation by my staff revealed that for many years a seldom-enforced section of the Internal Revenue Code imposed a nominal occupational tax on purveyors of distilled spirits—$25 per year from 1866 to 1940, $27.50 per year from 1941 to 1951, $50 per year from 1952 to 1959, and $54 per year from 1960 to 1988. The 1987 Budget Reconciliation Act increased the tax nearly fivefold, to $250 per year, and transferred administration over it from the IRS to the BATF.

With the major increase in the tax in 1988 the BATF began to more vigorously enforce the law and notify tavern owners of their obligations. For many tavern owners, however, this was the first time they had ever been notified by the Government that there even was a special occupational tax.

The BATF took the inflexible position that they were required to collect back taxes, interest, and penalties as far back as 1866, even if the tavern owners never received a notice that they owed taxes, and even if the tavern is owned by a nonprofit organization like the Elks, Moose, VFW, American Legion, or Knights of Columbus.

The BATF took this position even though the statute of limitation for most tax violations is 3 years, and even though the statute of limitation for violent crimes like kidnaping, arson, and robbery is rarely more than 5 years. Yet in this case the BATF said they were required to collect back taxes, interest, and penalties as far back as 1866 when the SOT was created. That is a 126 year statute of limitation, which is preposterous.

The BATF's position is based on a classic catch-22. It is based on the fact that there is no statute of limitation on tax violations when an individual fails to file a tax return. In this case, of course, the vast majority of people who did not pay failed to do so precisely because they did not know the tax existed. Nei-

ther IRS nor BATF had ever notified them about the tax before, and the tax required a special form, it was not just a line on the normal business income tax form. If these small businesses had been notified they undoubtedly would have paid because for most of the last century the tax was only $25, $27.50 or $50 a year. Since they did not know the tax existed, they did not file the required form, and consequently there is no statute of limitation.

The absurdity of the BATF's position is highlighted by the fact that it would require a business, even a nonprofit charitable group like the VFW or the American Legion, to keep its records as far back as 1866, which few businesses do. It has never been clear whether or not this includes the prohibition years when, of course, it was illegal to dispense alcoholic beverages.

The Elk's Club in my district was told it had to pay back taxes, interest, and penalties for the last 50 years, even though it was flooded in 1972 when the Susquehanna rose over its banks as a result of tropical storm Agnes. It lost all its records for years prior to 1972 in the flood.

As a result of this ludicrous situation, on May 9, 1989, I introduced legislation, H.R. 2285, to establish a reasonable statute of limitation. Sixty-eight of my colleagues from all across the United States cosponsored my bill. I reintroduced H.R. 2285 in the 102d Congress as H.R. 122.

In testimony before the House Ways and Means Committee on October 26, 1989, Assistant Secretary of the Treasury for Tax Policy Kenneth W. Gideon admitted that:

> This case involves a tax that for years before 1987 was insignificant and not well publicized. It appears that noncompliance in years before 1987 was due to the fact that many taxpayers were simply not aware of the tax. There is no evidence that dealers were attempting to avoid the tax.

As a result, the Assistant Secretary stated that the Treasury did not object to the passage of my bill.

Although the revenue impact of my bill was less than $2 million, the lack of action on miscellaneous tax legislation until this month, has prevented this worthwhile proposal from being adopted.

My colleague from California, Mr. MATSUI, has come to the logical conclusion that the entire SOT is a nuisance tax which is not worth the relatively meager revenue it brings in. This confirms informal advice I was given some time ago by BATF personnel who said that the processing of hundreds of thousands of SOT returns each year, and monitoring compliance, was hardly worth the effort for them, particularly given the paltry sums which were raised.

Although Mr. MATSUI's bill does not explicitly include a statute of limitation for past violations, it would be pointless and ludicrous for the BATF to dun unknowing businesses for 50-year-old violations of a tax that no longer exists.

One clear advantage of H.R. 5649 is that by eliminating the underlying tax, we know there will not be any further violations in the future.

Mr. Speaker, the existing law has made criminals out of honest businessmen who were never notified by the IRS or the BATF that they owed taxes. It then proceeded to treat these individuals worse than bank robbers, arsonists, kidnappers, and other violent felons. H.R. 5649 will put an end to this abuse, and will actually raise revenue because it contains an offset which will close a loophole that organized crime has used to avoid paying Federal excise taxes on diesel fuel.

Finally, let me note that some concern has been raised among farm groups that the revenue offset contained in H.R. 5649 will adversely affect farmers. I want to assure them that H.R. 5649 does not, in any way, affect the taxes paid by farmers on diesel fuel. Diesel fuel for off-road use by farmers continue to be tax exempt. Farmers will not be required to install additional storage tanks unless they have a need for substantial amounts of on-road diesel fuel as well as off-road diesel fuel. If they do need substantial amounts of both on-road and off-road diesel fuel, the bill provides a mechanism for them to receive financial assistance with the one-time installation cost of an additional storage tank. H.R. 5649 will not decrease the availability of diesel fuel for farmers or anyone else. A similar system of fuel distribution is already in use in Canada, a major agricultural producer, and there has never been a problem with it.

In short, Mr. Speaker, H.R. 5649 will close a tax loophole which has been exploited by organized crime, while eliminating a nuisance tax which has created a blizzard of cost-inefficient paperwork for hundreds of thousands of small businesses and small fraternal groups like the Moose, the Elks, the Knights of Columbus, the American Legion, and the VFW.

Mr. GRANDY. Mr. Speaker, the bill, H.R. 5649, addresses two separate issues; the first is the repeal of the special occupational tax [SOT]. The second is changing the point of collection of diesel fuel excise taxes and requiring the dyeing of diesel fuel.

While I support repeal of the $250 SOT annual retail licensing fee we should not shift the cost of its repeal to farmers who will be required to spend over $650 to install new fuel tanks as well as pay increased transportation costs for diesel fuel and more for liability insurance on the additional tanks. Simply swapping one problem for another is not an equitable solution to this problem.

No Ways and Means hearings have been held on the diesel fuel tax compliance issue generally and none have been held on possible solutions to the problem. To say that a hearing titled "Shortfalls in Highway Trust Fund Collections" at the Public Works and Transportation Subcommittee on Investigations and Oversight should serve as the basis for Ways and Means Committee action is poor precedent. The hearings did not focus on the compliance problem specifically nor on specific solutions to address any shortfall.

The problem and potential solutions should be studied by the Ways and Means Committee so we are sure any problem that may exist is clearly addressed by the solution. To say that this problem is so massive as to require a fix immediately does not hold water. Neither Treasury nor the IRS has come to the committee complaining of a revenue hemorrhage and our Oversight Subcommittee has not bothered to hold hearings.

However, if the hearing record from Public Works is what you want to base your justification upon, it says diesel fuel evasion is an annual billion dollar problem—$500 billion over the budget window. The proposed solution should at least approach raising the amount of revenue reportedly lost, but it does not even come close. Over the 5 year budget window, moving the collection point and dyeing diesel fuel will raise only $718 million—nothing to sneeze at—but with a reported $5 billion problem I think we should be able to address the reported problem more effectively. With all the trouble it causes, this solution still raises less than 15 percent of the reported revenue loss. I think we need to find a better solution if there is a problem.

Who says that dyeing diesel fuel is the only answer to whatever compliance problem may exist? We are not even sure whether it would work. The Department of Transportation has commissioned a feasibility study on the dyeing of diesel fuel. Congress should wait for the results of this study to be made available before acting on this proposal.

There are dozens of alternatives that could address this problem in a less intrusive manner. Didn't the IRS state at the Public Works hearing that a computer system relating to tax-free sales is feasible? Shouldn't Ways and Means at least look at a solution the IRS believes to be feasible? The IRS is currently working with industry, taxpayers/stakeholders to define burdens and costs of their possible computer system. The committee should listen to the IRS and hear about this option.

I would like to address the assistance funds available for purchase of additional fuel tanks required by this bill. The bill provides $40 million from the highway trust fund for grants. One estimate of what the additional storage tanks for farmers may cost is roughly $500 million per year. Even if you don't like our estimate of what this problem is, cut it in half or a quarter and the additional tanks required solely by farmers still dwarfs the money allocated to solving this problem. Home heating fuel companies as well as construction companies and other tax-exempt users of fuel are also eligible for the grants.

Finally, even if there really was enough money there in the trust fund to solve the tankage problem, that money must still be authorized and appropriated. Given the tight budget constraints those committees are working under, the tankage problem might not rise to the top of their priority list at authorization and appropriation time and no assistance will be provided for the purchase of tanks.

Mr. KYLE. Mr. Speaker, this bill, H.R. 5649 is an example of what is wrong with the legislative process, and why the American people are fed up with Government and demanding change.

Instead of just repealing the onerous Special Occupational Taxes [SOT's], H.R. 5649 simply trades one problem, one injustice, for another.

I support the repeal of SOT's. I had voted against the exorbitant increases that were enacted in 1987—increases that precipitated this legislation today. These taxes should be repealed.

But, the bill doesn't end there. It also attempts to attack the problem of diesel fuel tax evasion, and it should. However, it does so in a way that is expected to recoup only about

$718 million out of an estimated $5 billion evaded over 5 years. And, it imposes new costs of compliance on the agricultural industry that will amount to over $500 million. Other off-road users will also pay a price.

These off-road users are not the problem, at least the primary problem, in these evasion schemes. Yet, they are being forced to pay the price for it.

Mr. Speaker, this bill should not be considered on the suspension calendar. We ought to have an opportunity to amend it. It needs further hearings. We ought to move a bill that takes care of the SOT problem, without penalizing innocent bystanders.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5649.

The question was taken.

Mr. DORGAN of North Dakota. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

TAX TREATMENT OF LICENSED COTTON WAREHOUSES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5643) to amend the Internal Revenue Code of 1986 with respect to the treatment of certain amounts received by operators of licensed cotton warehouses.

The Clerk read as follows:

H.R. 5643

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

SECTION 1. TREATMENT OF CERTAIN AMOUNTS RECEIVED BY OPERATORS OF LICENSED COTTON WAREHOUSES.

(a) GENERAL RULE.—Section 451 of the Internal Revenue Code of 1986 (relating to general rule for taxable year of inclusion) is amended by adding at the end thereof the following new subsection:

"(h) SPECIAL RULES FOR OPERATORS OF LICENSED COTTON WAREHOUSES.—

"(1) IN GENERAL.—In the case of any taxpayer which is the operator of a licensed cotton warehouse and the taxable income of which is computed under an accrual method of accounting, such taxpayer shall not be required to accrue any amounts to be received for processing and storing cotton at such warehouse until such amounts are actually received.

"(2) INTEREST ON DEFERRED TAX LIABILITY.—

"(A) IN GENERAL.—If any deferred amount is received during any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of the interest determined under subparagraph (B) with respect to such deferred amount.

"(B) AMOUNT OF INTEREST.—The amount of interest determined under this subparagraph with respect to any deferred amount shall be determined—

"(i) on the amount of the tax for such taxable year which is attributable to such deferred amount,

"(ii) for the period beginning on the due date for the taxable year of the deferral and ending on the due date for the taxable year in which such deferred amount is received, and

"(iii) by using the Federal short-term rate in effect under section 1274 as of the due date for the taxable year in which such deferred amount is received, compounded semiannually.

"(3) TREATMENT AS INTEREST.—Any amount payable under this paragraph shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during the taxable year.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) LICENSED COTTON WAREHOUSE.—The term 'licensed cotton warehouse' means any warehouse for the storage of cotton which is licensed under the United States Warehouse Act (7 U.S.C. 241, et seq.) or under any similar State law.

"(B) DEFERRED AMOUNT.—The term 'deferred amount' means any amount which is includible in gross income for the taxable year but which would have been includible in gross income for a prior taxable year but for this subsection.

"(C) TAXABLE YEAR OF DEFERRAL.—The taxable year of the deferral is the taxable year for which the deferred amount would have been includible in gross income but for this subsection.

"(D) DUE DATE.—The term 'due date' means the date prescribed for filing the return of tax imposed by this chapter, determined without regard to any extension.

"(5) ELECTION.—This subsection shall apply to a taxpayer only if such taxpayer makes an election under this paragraph. Such an election shall apply to the taxable year for which made and for all subsequent taxable years unless revoked with the consent of the Secretary."

(b) CONFORMING AMENDMENT.—Subparagraph (N) of section 26(b)(2) of such Code is amended by striking "sections 453(1)(3)" and inserting "sections 451(h)(2), 453(1)(3)," .

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts accrued in taxable years beginning after December 31, 1991.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5643 allows operators of licensed cotton warehouses to postpone accrual of income related to processing or storing cotton until the taxpayer is legally able to collect the fees for such services. Such taxpayers would, however, be required to pay the Government an interest charge with respect to the deferral.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation. It was not deemed to be controversial when it was considered by the Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no requests for time and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5643.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TAX TREATMENT OF ALASKA NATIVE CORPORATIONS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5658) relating to the tax treatment of certain distributions made by Alaska Native Corporations.

The Clerk read as follows:

H.R. 5658

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

SECTION 1. TAX TREATMENT OF CERTAIN DISTRIBUTIONS MADE BY ALASKA NATIVE CORPORATIONS.

(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986, any qualified distribution made by a Native Corporation shall be treated as a distribution not made out of earnings and profits.

(b) QUALIFIED DISTRIBUTION.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'qualified distribution' means any distribution to a Native (as defined in section 3 of the Alaska Native Claims Settlement Act) or descendant of a Native (as so defined) which—

(A) is made after the date of the enactment of the Alaska Native Claims Settlement Act, and

(B) which but for this section would have been treated as a dividend under chapter 1 of such Code.

(2) LIMITATION.—The aggregate amount of distributions made by any Native Corporation which may be treated as qualified distributions shall not exceed the lesser of—

(A) the aggregate amount realized by such Corporation on or before July 9, 1992 (or pursuant to an agreement entered into on or before such date), from the sale of any land or interest in land received by such Corporation pursuant to the Alaska Native Claims Settlement Act, or

(B) the aggregate bases (as determined pursuant to section 21(c) of such Act) of any land or interest in land received by such Corporation pursuant to such Act and sold on or before July 9, 1992 (or pursuant to an agreement entered into on or before such date), reduced by the aggregate bases of any land or interest in land sold in a sale referred to in subsection (c)(2)(B).

(c) ADJUSTMENTS TO AMOUNT REALIZED.—For purposes of subsection (b)(2)(A)—

(1) there shall be taken into account any amount realized by the Corporation indirectly through another entity in which such Corporation has an interest, but

(2) the following amounts shall be disregarded:

(A) Any amount realized directly or indirectly by the Corporation for the use of losses credits of such Corporation or of a corporation all of the stock of which is owned directly by such Corporation where such use would not have been allowable without regard to section 60(b)(5) of the Tax Reform Act of 1984 (as amended by section 1804(e)(4) of the Tax Reform Act of 1986, and repealed by section 5021 of the Technical and Miscellaneous Revenue Act of 1988).

(B) Any amount realized directly or indirectly by the Corporation from a special purpose sale of any land or interest in land where the loss incurred on such sale was used *in a manner which would not have been* allowable, but for such section 60(b)(5) and such Corporation realized directly or indirectly any consideration for such use.

(d) SPECIAL PURPOSE SALE.—For purposes of subsection (c), the term "special purpose sale" means a sale in which a loss was recognized, and which was made under an agreement which was entered into either (1) after October 22, 1986, and on or before April 26, 1988, or (2) after April 26, 1988, if the loss incurred thereon was used in a contract referred to in section 5021(b) of the Technical and Miscellaneous Revenue Act of 1988.

(e) NATIVE CORPORATION.—For purposes of this section, the term "Native Corporation" has the meaning given such term by section 3 of the Alaska Native Claims Settlement Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington [Mr. MCDERMOTT].

Mr. MCDERMOTT. Mr. Speaker, I rise as the sponsor of H.R. 5658.

The purpose of this bill is to clarify the original intention of the Alaska Native Claims Settlement Act that certain distributions by Alaska Native Corporations to their shareholders are not taxable.

Under the Alaska Native Claims Settlement Act, Alaskan Natives received cash, land, and rights to natural resources in exchange for the extinguishment of their aboriginal rights.

To facilitate the transfer and to assist the Natives in assimilating into the nonnative economy, the act required that the Natives form regional and village corporations to select, receive, and administer these assets.

Because the transfer of cash and property was compensatory in nature, Congress provided that the settlement be tax free.

In drafting the statute, however, Congress created an unfortunate and probably unintended ambiguity when broad and unclear language was used to govern the tax treatment of distributions of the property portion of the settlement by the Native corporations to their shareholders.

This has led to concern that such distributions would be taxable.

To tax these distributions would be giving with one hand and taking away with another.

Alaskan Natives are entitled to the entire air and just settlement intended by the Alaska Native Claims Settlement Act.

H.R. 5658 attempts to clarify this ambiguity by providing that certain distributions by Alaska Native Corporations arising of the sale proceeds of their natural resources not be taxable as dividends to the shareholders.

This tax treatment is limited to exclude any proceeds relating to the transactions in the mid-1980's to sell net operating losses to third parties. It is further limited to exclude sales of land which is so important to the Alaskan Native heritage and culture.

Mr. Speaker, I believe this bill is a good bill for the native people of Alaska and I urge my colleagues to support it.

Mr. MCGRATH. Mr. Speaker, I yield 2 minutes to the gentleman from Alaska [Mr. YOUNG].

Mr. YOUNG of Alaska. Mr. Speaker, I rise in strong support of H.R. 5658 offered by my good friend, the gentleman from Seattle, WA, Mr. MCDERMOTT. Consideration of this bill today is the culmination of an effort that Mr. MCDERMOTT and I began in 1989 to provide for the fair and just tax treatment of certain distributions by Alaska Native Corporations to their shareholders.

As you are well aware, the Alaska Native Claims Settlement Act was passed by Congress in 1971 to resolve and settle the increasing controversies arising out of claims by Alaska Natives to land and resources in Alaska. The act provided that the Natives would extinguish their aboriginal claims in exchange of cash, land, and rights to natural resources. The compensation was to be fair and just to the Alaska Natives. As a means of facilitating this large and complicated transfer, the Natives were required to form corporations to receive the transferred assets. These corporations were intended to provide the Natives with a business entity that would enable them to assimilate with the nonnative economy and, in many cases, they have worked quite effectively.

The purpose of the Settlement Act was to make the Natives whole for the claims they were relinquishing. It was not a for-profit transaction. As a result, the act provided that the settlement be excluded from Federal, State, and local tax just like a damage award from a court of law. However, because of some ambiguity in the statute, the Native Corporations have real concern that distributions to shareholders may be taxed as dividends. The distribution of the nonprofit portion of the sale proceeds, or, in essence, the return of capital portion, should not be taxed. Taxing these distributions would be nothing less than giving with one hand and taking with the other.

The amount of compensation was determined in ANCSA and the Alaska Natives should receive this fair and agreed-upon amount before the Government tries to take some of it back through taxes.

Mr. Speaker, this is a good bill. It ensures that Alaska Natives are treated fairly and justly. I urge my colleagues to support it.

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington [Mr. MCDERMOTT].

Mr. MCDERMOTT. Mr. Speaker, I wish to advise Members that the gentleman from California [Mr. MILLER], the chairman of the Committee on Interior and Insular Affairs, has done a very careful analysis of this bill and supports it.

Mr. MILLER of California. Mr. Speaker, I rise in support of this legislation which clarifies the tax treatment of certain distributions to shareholders made by Alaska Native Corporations.

As chairman of the Interior Committee, I sincerely appreciate the interest that the Ways and Means Committee has taken in Alaska Native matters. The prime sponsor of this bill, Mr. MCDERMOTT of Washington, served as one of the most capable members of the Interior Committee, and he is continuing to work hard to address problems confronting American Indians through his positions on Ways and Means.

The text of the bill as reported does, however, raise some concerns about its scope and potentially unintended consequences. I am pleased that the committee has sought to respond to my concerns through clarifying report language. In addition, I appreciate the commitment of the gentleman from Washington to modify the bill language as the legislative process continues in the Senate or in conference.

I raise these concerns in the context of the experience Congress had with the sale of net-operating losses by Alaska Native Corporations. The NOL provision was approved by Congress in 1986 with a little appreciation of the fiscal and environmental consequences. While some of the Native Corporations used the tax break to offset legitimate business losses, others created resource-based NOL transactions which required quick development of their lands in order to recognize huge tax losses. For corporations which owned timber, large areas were clearcut at uneconomic rates, resulting in significant environmental degradation, all of which was subsidized by the taxpayer. The NOL provision was originally estimated to cost $50 million and eventually cost the taxpayers over $1.5 billion.

As Members know, the Interior Committee takes its responsibility for American Indian and Alaska Native matters very seriously. In 1971,

the Interior Committee wrote the Alaska Native Claims Settlement Act to resolve the aboriginal land claims of Alaska Natives.

In the act, Congress adopted a historically unique approach to American Indian policy. The Claims Act authorized the creation of 13 Native regional corporations and more than 200 village, urban, and group corporations to administer the settlement of approximately $1 billion and over 40 million acres of land.

While Congress used the corporation structure to implement the Claims Act, Alaska Native Corporations are clearly not intended to be just like other for-profit businesses. Alaska Native Corporations are charged with a difficult mission of attempting to balance economic development goals with social and cultural concerns such as maintaining their lands for subsistence use. Sale of stock has been restricted by Congress in an effort to discourage the potential short-term economic interests of current shareholders from sacrificing the long-term interests of future generations of Alaska Natives.

Section 21(c) of the Claims Act provides that the initial conveyance of lands to Alaska Native Corporations shall be tax free and that the basis in lands for tax purposes is established at the time of conveyance. Congress also intended that Native corporations could make tax-free distributions to its shareholders of the cash amounts received in the original settlement.

The bill before us today clarifies that Alaska Native Corporations may make tax-free distributions to shareholders of revenue generated from development of their natural resources in an aggregate amount of no more than the basis in the land as established by section 21(c) of the Claims Act. The tax-free treatment is limited to cash revenues received from the development of natural deposits or timber by a Native corporation or a wholly owned subsidiary prior to July 9, 1992, and excludes revenues related to net operating loss transactions.

For both fiscal and environmental reasons, it is essential that tax-free distributions be limited, as provided in this bill, to revenues generated from past resource development. After the disastrous experience with the net operating losses, it would be utterly irresponsible for Congress to open another Pandora's box of environmentally destructive activity on Native lands through additional taxpayer subsidies in the future.

It is my intent to work with the gentleman from Washington and the Ways and Means Committee to expand this legislation to provide prospective tax incentives for Native corporations which chose to preserve, rather than develop, their lands. This would build on my provision passed by the House in the comprehensive energy bill (H.R. 776) to use *Exxon Valdez* oil spill settlement funds for acquisition of Native corporation timber and lands.

I have long argued that we should use the Tax Code to encourage environmentally responsible activity. To allow tax-free distributions of revenues generated by Native corporations through selling conservation easements or lands to the Government would benefit both the Alaska Native community and the environment. I appreciate the committee's cooperation to this end.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5658.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

□ 1420

EXTENDING ROLLOVER PERIOD FOR PRINCIPAL RESIDENCE FOR CERTAIN TAXPAYERS

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5652) to amend the Internal Revenue Code of 1986 to extend the period for the rollover of gain on the sale of a principal residence for the period the taxpayer has substantial frozen deposits in a financial institution.

The Clerk read as follows:

H.R. 5652

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

SECTION 1. EXTENSION OF TIME FOR PURCHASE OF NEW RESIDENCE UNDER SECTION 1034.

(a) GENERAL RULE.—Section 1034 of the Internal Revenue Code of 1986 (relating to rollover of gain on sale of principal residence) is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) EXTENSION WHERE TAXPAYER HAS SUBSTANTIAL FROZEN DEPOSITS.—

"(1) IN GENERAL.—The running of any period of time specified in subsection (a) or (c) (other than the 2 years referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer has substantial frozen deposits after the date of the sale of the old residence; except that any such period of time as so suspended shall not extend beyond the date 5 years after the date of the sale of the old residence.

"(2) SUBSTANTIAL FROZEN DEPOSITS.—For purposes of this subsection—

"(A) IN GENERAL.—A taxpayer shall be treated as having substantial frozen deposits for any period during which the aggregate frozen deposits of the taxpayer exceed 50 percent of the net amount realized from the sale of the old residence.

"(B) FROZEN DEPOSIT.—The term 'frozen deposit' means deposit in a financial institution if such deposit may not be withdrawn (during a period of at least 5 days) because of—

"(i) the bankruptcy or insolvency of a financial institution, or

"(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

"(C) NET AMOUNT REALIZED.—The net amount realized from the sale of the old residence is the amount realized from the sale of the old residence reduced—

"(i) as provided in subsection (b)(1), and

"(ii) by the amount of any indebtedness of the taxpayer which was secured by the old residence.

"(3) TREATMENT OF MARRIED INDIVIDUALS.—If the old residence and the new residence are each used by the taxpayer and the spouse of the taxpayer as their principal residence, such individuals shall be treated as one taxpayer for purposes of this subsection."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to—

(1) any residence sold or exchanged after December 31, 1990, and

(2) any residence sold or exchanged on or before such date if the period specified in section 1034(a) of the Internal Revenue Code of 1986 (without regard to the amendment made by subsection (a)) has not expired before January 1, 1991.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Rhode Island [Mr. REED], the sponsor of this bill.

Mr. REED. Mr. Speaker, I rise in support of H.R. 5652. I would first like to thank Chairman ROSTENKOWSKI and my good friend Mr. DONNELLY. Passage of this bill would not have been possible without their interest in the plight of Rhode Islanders still struggling to get their lives back on track in the wake of our credit union crisis.

I would also like to acknowledge and thank the Providence IRS staff for their extraordinary efforts in assisting Rhode Island taxpayers during this crisis. The efforts of Malcolm Lieberman, Patricia Rusk, Sheryl Egan, and others in the Providence IRS office were essential in resolving administratively many tax problems that arose as a result of this crisis.

On January 1, 1991, the Governor of Rhode Island closed 45 privately insured credit unions and banks when their private deposit insurance fund failed. Over 350,000 accounts and $1.7 billion in deposits was frozen. And, only in the last few weeks have the majority of those deposits been once again made available to depositors.

Mr. Speaker, never before, not even during the Great Depression, has such a large percentage of a State's population been affected by a banking crisis.

These depositors put their money into local institutions with confidence that their deposits would be fully insured and also that they would have immediate access to their deposits. They had no knowledge that would have led them to believe that their savings were at risk.

As a result, prior to January 1, 1991, several people sold their homes and de-

posited the proceeds of these sales into their privately insured institution—which was then closed, freezing the proceeds from the sale of their home. Some of these people had no access to those funds for 18 months, and they have been unable to use the proceeds to purchase a new home or obtain credit toward the purchase of a new home within the time specified in section 1034 of the IRS code.

In addition, taxpayers who now have access to their funds, or a portion of their funds, are, in some cases, faced with a capital gains penalty because they have exceeded the rollover period.

In April, I wrote to Commissioner Goldberg and asked if the IRS had the authority to waive the statutory requirements of section 1034(a). I was informed that the IRS has no such authority, and that a legislative change was necessary.

The legislation before us today, H.R. 5652, introduced by myself and Mr. DONNELLY, will assist depositors who have the proceeds from a home sale in a closed credit union. Under current IRS law (section 1034), a taxpayer may generally defer recognition of gain on the sale of a principal residence as long as the gain is rolled over into a new residence within a 2-year period.

H.R. 5652 suspends the 2-year rollover period, but for not more than 5 years, during any time that a taxpayer had substantial frozen deposits.

A taxpayer would be treated as having substantial frozen deposits if an amount exceeding 50 percent of the amount realized from the sale of a principal residence were deposited and then frozen in a financial institution. The deposits would be deemed frozen if the funds may not be withdrawn because of the bankruptcy or insolvency of the financial institution, or any requirement imposed by the State in which the institution is located because of the bankruptcy or insolvency.

This legislation received the support of Assistant Secretary of the Treasury for Tax Policy during a hearing in the Ways and Means Committee on July 6.

This legislation applies to a very small number of people under extremely specific circumstances. It will result in no significant loss to the U.S. Treasury.

Mr. Speaker, this legislation is simply fair. We are not giving these individuals anything to which they are not entitled. We are simply recognizing that during the time when the accounts were frozen, these people could not possibly rollover the funds because they could not get the money out of the bank.

Last year I came before my colleagues many times and asked your help in approving a loan guarantee for the State. Thanks in large measure to the tremendous support we received from Banking Committee Chairman HENRY GONZALEZ and other members of that Committee, Congress supported this request. Today we are taking another step toward resolving this situation and I am back before you again, asking for your understanding once more.

I urge my colleagues to support this measure which will allow a small number of Rhode Island taxpayers to finally get on with their lives.

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill needs no further explanation. It was not deemed to be controversial when it was considered by the Ways and Means Committee, and we have heard no objections since then.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5652.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SPECIAL ESTATE TAX VALUATION RECAPTURE RULES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5647) to provide that the special estate tax valuation recapture provisions shall cease to apply after 1992 in the case of property acquired from decedents dying before January 1, 1982.

The Clerk read as follows:

H.R. 5647

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, effective on and after January 1, 1993, the amendments made by subsection (c) of section 421 of the Economic Recovery Tax Act of 1981 shall also apply with respect to the estates of decedents dying before January 1, 1982.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. GRANDY].

Mr. GRANDY. Mr. Speaker, I rise in strong support of H.R. 5647 and urge its favorable adoption by the House and its eventual adoption into law. I introduced H.R. 5647 in order to remove an inequity in current law and to help preserve family farms and family businesses in America.

This bill deals with section 2032A of the Internal Revenue Code. This highly complex section, which we amended in OBRA 1990 due to its unintended adverse impact on family-owned businesses, deals with the special use valuation of estates for estate tax purposes. Section 2032A permits the heirs of an estate to have any land or business property in the estate to be valued at its use value—be it agricultural or small-business—instead of its market value in order to reduce the estate taxes that are due. The purpose behind this special use valuation is to help preserve family farms and family businesses that may have to be sold just to pay the estate taxes if the taxes were computed based on the market value for development.

Election of special use valuation treatment under section 2032A is not free, however. If elected, the heirs have to enter into a restrictive agreement with the Internal Revenue Service [IRS] which requires them to keep the land in its special use—be it farming or small business—for a period of years and to not sell it during that period. The IRS also maintains a lien on the property equivalent to the reduced tax liability which resulted from the special use valuation. If the heirs discontinue the qualified use or sell the property, they are liable for the previously avoided estate tax.

Prior to 1982, the time period of the restrictive section 2032A agreements was 15 years. However, in 1981, pursuant to the Economic Recovery Tax Act of 1981 (Public Law 97-34), these restrictive agreements were only required to last 10 years. The existing 15-year agreements, however, were not altered thus leaving the inequity I spoke of earlier. The effect of H.R. 5647 is to remedy this inequity by converting all of the remaining 15-year agreements into 10 year agreements. Since 1992 is the 10th year after the tax change in 1981, all 15-year agreements would be terminated as of December 31 of this year and the IRS liens on those estates would be lifted.

The motivation for H.R. 5647 is not to encourage heirs to sell agricultural land or other business assets or use them for nonqualified purposes. Nor is it because constituents have been pounding my door down asking to get out of the agreements. I think the IRS would agree that most of the people holding properties under section 2032A do not plan on selling it or not keeping it in farming or other family business use.

In fact, how this issue came to my attention was from a constituent who farms land subject to a section 2032A agreement and who desperately wants to continue doing so. However, due to the restrictive lien placed on the property and a few tight years in farming,

he and his family members are finding it increasingly difficult to secure adequate financing to continue farming—the IRS lien restricts how much the bank can lend. If they cannot secure adequate financing they will be forced to sell the family farm, violate the agreement which they don't want to, and then potentially be subject to additional estate taxes.

The purpose of my bill is to remove this obstacle and help preserve the family farm. It has become clear to me that repeal of section 2032A to these old agreements is the most effective, direct way of removing that obstacle and it is also fair given the change made in 1981.

I urge my colleagues to pass this bill and I look forward to its adoption into law.

□ 1430

Mr. MCGRATH. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5647.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TAX TREATMENT OF DEPOSITS UNDER CERTAIN PERPETUAL INSURANCE POLICIES

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5657) to amend the Internal Revenue Code of 1986 with respect to the treatment of deposits under certain perpetual insurance policies.

The Clerk read as follows:

H.R. 5657

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

SECTION 1. TREATMENT OF DEPOSITS UNDER CERTAIN PERPETUAL INSURANCE POLICIES.

(a) GENERAL RULE.—Section 7872 of the Internal Revenue Code of 1986 (relating to treatment of loans with below-market interest rates) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) TREATMENT OF DEPOSITS UNDER CERTAIN PERPETUAL INSURANCE POLICIES.—

"(1) IN GENERAL.—This section shall not apply to any deposit made by a policyholder under a qualified perpetual policy.

"(2) QUALIFIED PERPETUAL POLICY.—For purposes of paragraph (1), the term 'qualified perpetual policy' means any insurance policy—

"(A) which provides insurance for property damage or casualty with respect to qualified residential property (or the contents thereof), and

"(B) which is funded only by the policyholder placing with the insurance company a cash deposit (and does not provide for any periodic premiums) and such deposit is fully refundable (except for a penalty for early withdrawal) upon cancellation of the policy.

For purposes of the preceding sentence, the term 'qualified residential property' means any personal residence and any building used for residential purposes with 10 or fewer dwelling units."

(b) CONFORMING AMENDMENT.—Paragraph (1) of section 7872(c) of such Code is amended by striking "subsection (g)" and inserting "subsections (g) and (h)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. CARDIN], the sponsor of the bill.

Mr. CARDIN. Mr. Speaker, I rise in support of H.R. 5657.

Mr. Speaker, H.R. 5657, which I introduced along with my colleagues on the Ways and Means Committee, Mr. GRADISON and Mr. SCHULZE, brings tax fairness to thousands of middle-class American homeowners. It does so by reaffirming the traditional tax treatment of perpetual insurance policies.

H.R. 5657 clarifies the tax treatment of deposits under perpetual insurance policies on residential property. The bill is crucial to maintaining practices under which thousands of homeowners have insured their homes for 200 years.

The way the policies work is that the homeowner makes a deposit with the insurer. The amount of the deposit is based on the value of the property being insured. The company invests the deposit, and uses the earnings on the investment to cover the cost of the insurance.

As I mentioned, the companies offering these perpetual insurance policies have been in business, operating in this way, for 200 years. The transaction between homeowners and the companies involved have never triggered a Federal tax consequence.

In the past few years, the Internal Revenue Service has made a number of inquiries of the companies. The Service has sought to determine whether the deposit paid by the homeowner constitutes a loan at below market rates under section 7872 of the Internal Revenue Code.

Section 7672, which was adopted as part of the 1984 Tax Act, provides that for certain below-market rate loans, the foregone interest is treated as transferred from the lender to the borrower and retransferred by the borrower to the lender as interest. The section applies to gift loans, demand loans, compensation-related loans, and tax avoidance loans.

The deposits made by policyholders under perpetual insurance policies fit none of these categories. It is especially clear that the deposits do not constitute tax avoidance. The policies in question have been offered, in the case of the company operating in Baltimore, since 1865. It is hard to argue that a transaction that predates the existence of the Federal income tax by more than half a century was designed as a tax avoidance scheme.

Section 7872 specially applies to interest arrangements that have a significant effect on the Federal tax liability of the lender or the borrower. It is important to understand that the only Federal tax impact from a change in the traditional treatment of these policies would fall not on the companies, but on thousands of middle-class homeowners. If perpetual deposits are treated as interest-free loans, the company, as borrower, has deemed premium income as an offsetting interest expense deduction.

But while the change would be a wash for the company in terms of taxes, the policyholders would be required to pay tax on interest income, and have no offsetting deduction. Given the average size of the deposits of approximately $3,000, the significant-effect provision of section 7872 should not be triggered.

Furthermore, the regulations adopted under the significant-effect provision include a list of exemptions. The exemptions include accounts or deposits made with a bank in the ordinary course of its business, and loans made by a life insurance company in the ordinary course of its business. The close similarity of the perpetual insurance deposits to these exempted transactions clearly leads to the result we would effect through H.R. 5657.

Mr. Speaker, only a small number of these companies are operating in the country today. The policyholders are not high-rollers seeking advantages through the manipulation of the Tax Code. In fact, the average policyholder of the Baltimore-based perpetual company has income of slightly over $50,000.

The bill simply codifies the tax treatment that has traditionally been accorded these policies. The revenue effect of the bill is negligible, estimated by the Joint Tax Committee at $1 million a year. To treat these policies as loans under section 7872 clearly reaches beyond the intent of the section, which was to nail tax avoidance schemes.

Mr. Speaker, we should not be in the business, through the misapplication of the Tax Code, of putting companies out

of business. The American taxpayers who have bought these policies deserve to be able to have the assurance that the Federal Government will not cavalierly and unwisely disrupt their homeowners insurance.

I urge my colleagues to join me in passing this needed legislation.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, I rise in support of H.R. 5657. The bill has been more than adequately explained by our colleague, the gentleman from Maryland [Mr. CARDIN]. It was not deemed to be a controversial measure when it was considered by the Committee on Ways and Means, and we have heard no objections since then.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the bill, H.R. 5657.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

MFN STATUS FOR REPUBLIC OF ALBANIA

Mr. GIBBONS. Mr. Speaker, I move to suspend the rule and pass the joint resolution (H.J. Res. 507) to approve the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania.

The Clerk read as follows:

H.J. RES. 507

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania transmitted by the President to the Congress on June 16, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida [Mr. GIBBONS] will be recognized for 20 minutes, and the gentleman from New York [Mr. MCGRATH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. GIBBONS].

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a change of pace. All the bills we have had so far have been tax bills. This is a trade bill. This bill extends most-favored-nation treatment to the Republic of Albania.

Mr. Speaker, for over 50 years the Republic of Albania, the people of Albania, have either been occupied by hostile forces or they have been under a Communist dictatorship. Along with the revolution that has taken place in Eastern Europe, the people of the Republic of Albania have at last found freedom. They deserve freedom. I know of no people in Europe who have been more mistreated by their neighbors, by history, by religion, or by occupying invaders than the people of Albania.

Mr. Speaker, after World War II the country sunk into the most obstinate of all Communist tyrannies. Albania, under the Communist dictator, became the ultimate Communist state.

□ 1440

It was more Communist than the U.S.S.R. It was more Communist than China, and with the same disastrous or more disastrous results accrued to these fine people.

They now seek freedom. They have established a republic. They are attempting to gain or regain control of their destiny and enter into the world marketplace, and we welcome them. They are entitled to it.

They have entered into a treaty of commerce and trade with the United States that extends to the United States an opportunity to enter their markets on a commercial basis and to receive fair and free treatment of our goods and our services and to acknowledge that we are entitled to trade in their country. By this act, if it is passed by the Congress, and I think it should be, the President of the United States will be entitled to extend to these people nondiscriminatory tariff treatment to their products.

I urge the adoption of this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGRATH. Mr. Speaker, I rise in strong support of House Joint Resolution 507.

Mr. Speaker, I yield 3 minutes to my colleague from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in support of this resolution approving the extension of most-favored-nation [MFN] treatment to the products of the Republic of Albania. I want to commend the good work of majority leader GEPHARDT and minority leader MICHEL and the gentleman from Florida [Mr. GIBBONS], the distinguished chairman of the trade subcommittee for their leadership in bringing this bill to the floor at the request of the administration.

Not many years ago, Albania was one of the most closed societies in the world of nations and was extremely anti-American in its orientation. Totalitarian communism denied basic freedoms to the Albanian people and imposed upon that poor country an unworkable economic system that made Albania the most undeveloped nation in Europe.

Fortunately, the winds of change blew through Eastern Europe in 1989, and dramatic changes have taken place in Albania since that time. Already, democratically elected President Sali Berisha is bringing basic human freedoms, respect for human rights and free market economics to his longsuffering nation.

The administration and the Congress, in particular, encouraged the democratic forces in Albania to stand up to their former Communist regime. We gave them good moral support at that time. However, we cannot stand back and let that poor nation face overwhelming challenges without another helping hand. We must stay engaged.

House Joint Resolution 507 will give Albania the kind of help that it needs as it moves from a command to a free market economic system. The resolution will grant Albania standard tariff rates on exports to the United States. Already, America is granting economic assistance and humanitarian relief to that small country. This resolution provides badly needed help in the trade area so that Albania can strengthen its weak economy, and someday join the family of free market nations.

Accordingly, I urge my colleagues to join me in strongly supporting this timely resolution.

Mr. MCGRATH. Mr. Speaker, I yield 3 minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this Member rises in strong support of House Joint Resolution 507, granting most-favored-nation tariff status to the Republic of Albania.

For decades Albania has been the most isolated nation in Europe, cut off from almost all contact with its neighbors. Cut off from the outside world, this tiny nation on the Adriatic has been the country that time forgot. And it has languished, as its leaders imposed a brand of radical Marxism that was extreme even in the eyes of their Communist neighbors. Indeed, of all the former Communist countries of Eastern Europe, perhaps Albania's sufferings were most extreme.

Yet the democratic revolution has now come to Albania. The recently conducted elections were a dramatic demonstration of the strides being taken in Albania. This is a country that wants democracy. This is a country that wants a free market economy. This is a country that seeks to rejoin the modern family of nations.

Mr. Speaker, this Member would note the important role in Albania's transition to a free market democracy that is being played by a consortium headed by the University of Nebraska at Lincoln. Faculty staff of UN–L are on the scene for aid in Albania, working with local leaders to develop the technical and legal infrastructure to sustain a free market economy. UN–L is providing technical assistance at the time when Albania needs it most. And,

through the University's Center for Albanian Studies—the only such center in the world—books, computers, and software are being provided to the University of Tirana to establish a management development center. This modest but very necessary educational assistance effort, coupled with the granting of most-favored-nation tariff status, will help Albania in its economic transformation. In going forward with these measures, we will be laying the foundation for good trade relations in the years ahead.

Mr. Speaker, I commend the leadership on both sides of the aisle, and Chairman GIBBONS, and I thank the gentleman for his special role in this, as well as the ranking minority member of the Subcommittee on Trade.

This Member would urge adoption of House Joint Resolution 507.

Mr. MCGRATH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution has certainly been adequately explained by the several speakers. It was certainly not deemed to be controversial when it was considered in the Ways and Means Committee and we have heard no objections to the resolution since then.

Mr. SWETT. Mr. Speaker, I enthusiastically and wholeheartedly support and welcome this legislation before the House today which will extend most-favored-nation [MFN] status to products of Albania coming to the United States.

This legislation is most appropriate in view of the political changes that have taken place in Albania over the past 2 years. The people of Albania have risen up against their former Communist government—one of the most repressive and oppressive Communist governments—and Albania now has a freely elected, democratic government. Just a few years ago, I had the great pleasure and honor of welcoming to Washington, Albania's democratically elected President, Hon. Sali Barisha. His commitment, and the commitment of the Albanian people, to democracy and to a free-market economy are most impressive, and they make it most proper that we extend this trade benefit to Albania at the present time.

Mr. Speaker, Albania is a small, poor European country which is seriously in need of economic development in order to provide for its population. The people of Albania have been subject to a brutal dictatorship which stifled the economy of the country, contributed to the country's impoverishment, and spent limited resources for questionable purposes. It is most gratifying to see the new Albanian Government making decisions that will reorient the country's economy and benefit the Albanian people.

It is most appropriate under these circumstances, Mr. Speaker, that we extend the same benefits to Albania that are enjoyed by other countries, including the other newly emerging democracies of central and Eastern Europe. Albanian trade products are limited and are likely to be limited in the future, but this has great symbolic importance. By extending MFN trade status to Albania, we are welcoming and recognizing Albania's return to equal status among the community of nations.

It is noteworthy, Mr. Speaker, that New Hampshire has played a disproportionate role in helping this newly emerging democracy in making the political and economic changes that are vital to its further development. Among those from New Hampshire who have contributed are Mr. Tom Christo, a prominent businessman; David Young, a businessman and member of our State house of representatives; and our colleague, BILL ZELIFF, who personally traveled to Albania earlier.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. HOYER. Mr. Speaker, I rise today to voice support for the pending United States-Albania trade agreement. Timely adoption of the agreement would pave the way for the extension of most-favored-nation [MFN] status to that nation. I commend the distinguished chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, and the chairman of the Trade Subcommittee, Mr. GIBBONS, for their prompt action on this important agreement. The agreement, signed during President Berisha's historic visit to Washington in June, is a milestone in United States-Albanian relations and could provide an important boost to Albania's faltering economy.

As Chairman of the Helsinki Commission, I have followed closely developments in Albania. A nation slightly smaller than my home state of Maryland, Albania has made significant strides in recent years to reverse decades of self-imposed international isolation and domestic repression. Diplomatic relations with the United States were restored in 1991 and Albania became a full participant in the Conference on Security and Cooperation in Europe [CSCE].

Albania is committed to undertaking political and economic reforms in keeping with its CSCE commitments which set forth excellent standards for the transition to democracy and market economy. Albanians gave their overwhelming support to the opposition Democratic Party in elections held earlier this year which were observed by Helsinki Commission staff. Dr. Sali Berisha, a leading Albanian intellectual and a founder of the Democratic Party—Albania's first opposition party—was elected President last March following elections in which the Democratic Party won 62 percent of the vote. President Berisha met with the Commission leadership during his recent official visit to Washington. He had testified before the Commission on democratic developments in his country in May 1991.

President Berisha and the leadership in Tirana face the difficult task of overcoming the legacy of communism which has left Albania as the poorest country in Europe today. Soaring unemployment, reportedly as high as 70 percent, and inflation are sources of particular concern. Nevertheless, the democratic government is dedicated to implementing market-oriented reforms. Its action program presented in April calls for radical reform covering privatization, development of the private sector, and liberalization of prices and trade. The Government is working closely with the International Monetary Fund and other organizations in efforts to overcome decades of centralization and forced collectivization.

I urge my colleagues to vote in support of the pending trade agreement as a means of demonstrating our commitment to the reform process underway in Albania and as a vehicle for expanding trade opportunities between our two nations.

Mr. ROSTENKOWSKI. Mr. Speaker, I rise in support of House Joint Resolution 507, to approve the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania.

Approval of this resolution will permit the President to proclaim most-favored-nation [MFN] treatment to Albania and for the agreement on trade relations between the United States of America and the Republic of Albania, signed on May 14, to enter into force upon an exchange of notes of acceptance by the two governments.

Albania has met the terms and conditions set forth in title IV of the Trade Act of 1974 for the granting of MFN treatment. The bilateral trade agreement includes provisions for facilitating trade and business relations between our two countries, strong protections of intellectual property rights, import safeguard measures, commercial dispute settlement, as well as reciprocal nondiscriminatory treatment. The President also has waived the so-called Jackson-Vanik Freedom of Emigration Requirements of title IV based on satisfactory assurances from the Albania Government that its practices will lead substantially to freedom of emigration objectives.

Mr. Speaker, the Committee on Ways and Means is not aware of any opposition to this resolution. Extending MFN status to Albania will promote United States trade and investment opportunities and demonstrate United States support for the progress by Albania from economic isolation into the global marketplace.

I urge all my colleagues to support passage of House Joint Resolution 507.

Mr. MCGRATH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Florida [Mr. GIBBONS] that the House suspend the rules and pass the joint resolution, House Joint Resolution 507.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the 19 bills that have just been considered and passed by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION ACT OF 1992

Mr. EDWARDS of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5399) to amend the U.S. Commission on Civil Rights Act of 1983 to provide an authorization of appropriations.

The Clerk read as follows:

H.R. 5399

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 "United States Commission on Civil Rights Authorization Act of 1992".

SEC. 2. REAUTHORIZATION.

Section 7 of the United States Commission on Civil Rights Act of 1983 (42 U.S.C. 1975e) is amended by adding at the end the following: "There are authorized to be appropriated to carry out this Act $7,422,014 for fiscal year 1993, and an additional $850,000 for fiscal year 1993 to relocate the headquarters office. None of the sums authorized to be appropriated for fiscal year 1993 may be used to create additional regional offices.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. EDWARDS] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. HYDE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5399 authorizes an appropriation for the U.S. Commission on Civil Rights for fiscal year 1993.

By voice vote, the Committee on the Judiciary rejected the Commission's request for increased funding of 31 percent and staff of nearly 21 percent over the current fiscal year.

H.R. 5399 maintains the agency at 1992 levels with the requested 4.7 percent COLA increase and 4 percent for inflation. It also authorizes $850,000 to relocate the headquarters office, and prohibits using any funds to create additional regional offices.

Last year we debated legislation extending the life of the Commission. The clear bipartisan message from that debate was that the agency must clearly demonstrate it is back in the fact-finding business if it expects to be reauthorized at the end of 3 years. I believe the committee's action this year makes clear that it is premature to expand its operations until that record of fact-finding is clearly demonstrated.

I am pleased the Commission is taking seriously the committee's concerns about its fact-finding mandate. Already this year, it has:

Released a well publicized report on the "Civil Rights Issues Facing Asian Americans in the 1990's";

Conducted hearings in Washington, DC and Chicago, IL, around its new theme of race, poverty, and violence; and

It plans to issue three additional reports.

In fiscal year 1993, the agency plans to issue three reports and conduct a hearing in Los Angeles on racial and ethnic tensions.

Mr. Speaker, the sums authorized by H.R. 5399 will enable the Commission to carry out its statutory fact-finding mission. I urge support of this bill.

□ 1450

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill authorizes an appropriation of $7,422,014 and an additional $850,000 for fiscal year 1993 to relocate the headquarters office of the Commission. The building in which the Commission is currently located is considered unsafe and so they will be forced to move to another location in Washington.

This authorization is less than what the administration requested and the Commission originally requested, but the subcommittee members, on a bipartisan basis, feel that it is sufficient for the Commission to operate effectively.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. EDWARDS of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. EDWARDS] that the House suspend the rules and pass the bill, H.R. 5399.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ESTABLISHING DIVISIONS IN THE GENERAL JUDICIAL DISTRICT OF CALIFORNIA

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3795) to amend title 28, United States Code, to establish three divisions in the Central Judicial District of California.

The Clerk read as follows:

H.R. 3795

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

SECTION 1. FINDINGS.

The Congress makes the following findings:

(1) The Federal Government has the responsibility to provide quality services which are readily accessible to the people it serves.

(2) The court facilities in the Central Judicial District of California are presently inadequate, and current and projected growth exacerbates the problem.

(3) The population demographics of southern California have changed dramatically over the last decade, as the center of population shifts inland. Between 1980 and 1990, the population of Riverside County increased 76.5 percent, and San Bernardino County's population increased 58.5 percent, to a combined population of 2,600,000.

(4) In the next 15 years, the population in Riverside and San Bernardino Counties is expected to increase again by 70 percent, and 67 percent, respectively. By the year 2005, Riverside and San Bernardino Counties will have 4,400,000 residents.

(5) As a result of the population growth, the freeways connecting the Pacific coast and the inland areas are tremendously overburdened, and Federal offices along the coast are no longer accessible to the residents of Riverside and San Bernardino Counties.

(6) The creation of 3 divisions in the Central Judicial District of California is urgently needed to provide for the delivery of judicial services to all areas and all residents of the Central Judicial District of California.

SEC. 2. CREATION OF 3 DIVISIONS IN CENTRAL DISTRICT OF CALIFORNIA.

Section 84(a) of title 28, United States Code, is amended to read as follows:

"(c) The Central District comprises 3 divisions.

"(1) The Eastern Division comprises the counties of Riverside and San Bernardino.

"Court for the Eastern Division shall be held at a suitable site in the city of Riverside, the city of San Bernardino, or not more than 5 miles from the boundary of either such city.

"(2) The Western Division comprises the counties of Los Angeles, San Luis Obispo, Santa Barbara, and Ventura.

"Court for the Western Division shall be held at Los Angeles.

"(3) The Southern Division comprises Orange County.

"Court for the Southern Division shall be held at Santa Ana.".

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act.

(b) PENDING CASES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect any action commenced before the effective date of this Act and pending in the United States District Court for the Central District of California on such date.

(c) JURIES NOT AFFECTED.—This Act and the amendments made by this Act shall not affect the composition, or preclude the service, of any grand or petit jury summoned, empaneled, or actually serving in the Central Judicial District of California on the effective date of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey [Mr. HUGHES] will be recognized for 20 minutes, and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. President, I will take a few minutes to briefly describe the bill and its background.

H.R. 2795 would merely establish a third place for holding court at a site

in San Bernardino or Riverside Counties in the Central Judicial District of California. At the present time, court is only held in Los Angeles and Santa Ana in Orange County.

The justification for this minor change in the central district can be made on the following demographic and geographic factors. Between 1980 and 1990, the population of Riverside County increased 76.5 percent and the population of San Bernardino County increased 58.5 percent; 2.6 million persons now live in these counties which is the 11th most populous area in the country. In the next 15 years, the population in these areas is projected to increase again by 70 percent and 67 percent, respectively, which will mean by the year 2005 they will have 4.4 million residents.

San Bernardino County, itself, is the largest county in the 48 contiguous States of the United States—it is larger than the combined areas of New Jersey, Massachusetts, Delaware, and Rhode Island. Together with Riverside County it is an enormous expanse. This combined with the results of other population growth in southern California has made the freeways between these inland areas and the court houses in Santa Ana and Los Angeles tremendously overcrowded, leading to rush-hour traffic commutes of 5 hours a day or more for law enforcement officers, attorneys, and other principal parties involved with Federal civil and Criminal cases.

On May 4, 1992, the judges of the central judicial district overwhelmingly voted in favor of H.R. 3795 and Chief Judge Real stated at our sharing on June 11, 1992, that H.R. 3795 has been approved by the judicial council for the ninth circuit. Chief Judge Real also indicated that he expects support for H.R. 3795 from the Judicial Conference of the United States when they meet in August.

H.R. 3795 has the bipartisan support of both Senators from California and is sponsored in the House by Mr. GEORGE BROWN and the original cosponsors are Mr. LEWIS, Mr. COX, and Mr. MCCANDLESS of California.

I believe H.R. 3795 is noncontroversial and it was reported out favorably by voice vote from the Committee on the Judiciary. I urge your support for H.R. 3795.

Mr. Speaker, I want to, first of all, congratulate the ranking Republican, the gentleman from California [Mr. MOORHEAD], for his work on this and other legislation. He cannot be with us today, but substituting for him today is the gentleman from North Carolina [Mr. COBLE]. I appreciate his valued service on our subcommittee.

Mr. Speaker, I urge support for H.R. 3795.

Mr. Speaker, I reserve the balance of my time.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3795, which would amend title 28, United States Code, to establish three divisions in the Central District of California.

Mr. Speaker, I would like to commend the chairman of the Subcommittee on Intellectual Property and Judicial Administration, the gentleman from New Jersey [Mr. HUGHES], as well as the ranking minority member of the subcommittee, the distinguished gentleman from California [Mr. MOORHEAD], for their work on this legislation. In addition, several distinguished members of the California delegation have played important roles in the consideration of H.R. 3795 and are to be commended for their efforts. They include the gentleman from California [Mr. BROWN], the gentleman from California [Mr. LEWIS], the gentleman from California [Mr. COX], and the gentleman from California [Mr. MCCANDLESS].

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LEWIS], one of the original cosponsors of the legislation, and one who has been instrumental in getting this bill to the floor of the House today.

Mr. LEWIS of California. Mr. Speaker, I rise in support of H.R. 3795, a bill to establish three divisions of the Central Judicial District of California.

This legislation will create three separate divisions of the central district. One division will continue to meet in Los Angeles; the second will meet in Orange County; and the third will meet in the inland empire—ideally in San Bernardino County.

Having represented the majority of San Bernardino County, I have seen the enormous population growth over the past decade. In fact, over the last 10 years, the population of San Bernardino County has nearly doubled in size. With population growth expected to continue its upward spiral into the next century, the ability of San Bernardino County residents to commute to Federal Court facilities in Los Angeles and Orange County becomes increasingly difficult, if not impossible. The transportation infrastructure simply has not kept pace with these demographic changes. Long commutes have become increasingly common.

Moreover, the pressures placed by population growth are magnified when one considers the enormity of San Bernardino County. San Bernardino County is the largest county in the continental United States. Many of my constituents reside in remote areas some 200 miles away from the central district's facilities. From Needles to Barstow to Baker and beyond, my constituents are denied reasonable access to Federal Court facilities. As jurors, they are expected to travel unreasonable distances to participate in trials. Locating a court in the San Bernardino or Riverside region would erase this geographic barrier to justice.

Accompanying the population growth in San Bernardino has been a disturbing increase in criminal activity. Both San Bernardino and Riverside Counties have been named high intensity drug trafficking areas [HIDTA] by the Department of Justice. This designation was made due to the large drug trade that exists in the southern California area. As a result of this action, a number of new antidrug initiatives have begun and additional funds have been made available to local law enforcement in San Bernardino and Riverside Counties. A new court in this area would aid in the quick and efficient disposition of cases brought about through this HIDTA designation.

The district court's docket has reflected the area's growth. According to the Administrative Office of the United States Courts, criminal activity and civil filings increased from 9,876 in 1990 to 10,601 in 1991. Down from a high of 14,298 in 1987, filings will undoubtedly increase significantly over the next decade. The median time of criminal felony cases from filing to disposition has increased from 3.5 months in 1986 to 5.1 months in 1991. Though we recognize and commend the court's efforts to accommodate this growth, I believe the only realistic permanent solution would be to divide the district and place a Federal court in the Inland Empire—specifically in San Bernardino County.

I am pleased to have worked with my colleagues, Mr. BROWN, Mr. MCCANDLESS, and Mr. COX, in designing this bill and I hope we can move to enact it and return make the courts more convenient to the people of southern California. I urge my colleagues to support H.R. 3795.

□ 1500

Mr. HUGHES. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from California [Mr. BROWN], who is the original sponsor of this legislation and has worked very diligently to move this legislation to the floor.

Mr. BROWN. Mr. Speaker, I will not repeat the arguments already made by my good friend, the gentleman from New Jersey [Mr. HUGHES] with regard to this legislation.

Mr. Speaker, first let me thank the distinguished chairman of the House Judiciary Committee, Congressman JACK BROOKS, and the very able chairman of the Judiciary Subcommittee on Intellectual Property and Judicial Administration, Congressman BILL HUGHES, for bringing this important bill (H.R. 3795) before the House for a vote. My constituents and I could not hope for more concern and responsiveness from any Member of the Congress.

In the interest of time, let me briefly highlight some of the most compelling

arguments in support of bringing Federal Court to the region of southern California that we affectionately call the inland empire.

First, as you know, the population of southern California continues to soar. But what you may not know is that the center of this population explosion is shifting steadily away from the coastal counties toward the Inland Empire. The two counties I represent had the fastest growing population anywhere in the Nation during the past decade.

Between 1980 and 1990, the population of Riverside County rose 76.5 percent, while the population of San Bernardino County increased 50.5 percent; 2.6 million people now live in the Inland Empire, yet there is absolutely no Federal Court within reasonable access. In comparison, 2.1 million people live in Orange County and Federal Court already sits in Santa Ana. In Sacramento, 1.8 million people enjoy a Federal Court in their midst.

Second, foreboding demographic trends are clear. The population of the Inland Empire will continue to grow by leaps and bounds. In the next 15 years, the population in Riverside and San Bernardino Counties is projected to grow by 70 percent and 67 percent, respectively. By the year 2005, Riverside and San Bernardino Counties will have 4.4 million residents.

Third, geographic practicalities also argue in favor of establishing a division of Federal Court in the Inland Empire. San Bernardino County is the largest county in the 48 contiguous States—larger than the combined States of New Jersey, Massachusetts, Delaware, and Rhode Island. Combined with Riverside County, there is an enormous expanse of far-flung communities in the Inland Empire, but there is no access to Federal Court facilities closer than downtown Los Angeles—more than 200 miles from the eastern border of San Bernardino County. Those long distances, for example, make it extremely difficult for my constituents to serve as jurors.

Fourth, residents of the Inland Empire are confronted daily with commuting gridlock when they attempt to travel to Federal Court. As a result of unparalleled population growth in southern California, in general, and in the Inland Empire, in particular, the highways connecting Los Angeles and Orange County are completely overwhelmed. Federal Court facilities in Los Angeles and Santa Ana are very inaccessible to my constituents. It is very wasteful and totally unreasonable to expect the residents of San Bernardino and Riverside Counties to endure a commuting nightmare, sitting in traffic 6 hours round-trip to travel just 50 miles to pursue one case in a Federal courtroom in Los Angeles or Santa Ana.

Finally, H.R. 3795 represents a cost-effective way to redress these existing problems and to position the Federal judiciary in southern California smartly to respond to the additional looming demographic changes certain to further transform our region. Subdividing the central district is far less costly than creating a whole new district. Also when the lease for Federal bankruptcy judges in San Bernardino expires in 1994, their offices could be consolidated in one Federal courthouse site in the Inland Empire.

Mr. Speaker, it is my firm conviction that our Federal Government has a solemn, threshold responsibility to provide quality services that are readily accessible to the people we serve. With respect to Federal Court facilities, that is clearly not happening in the Inland Empire.

Finally, I would be remiss if I did not recognize three outstanding southern Californians who have provided so much assistance to me in advancing this legislation. The extraordinary leadership and foresight shown by Chief Judge Manuel Real of the Central Judicial District of California has been crucial in building support for this bill and underscoring why it is so urgently needed. He is truly one of our Nation's exceptional jurists and public servants.

Jane Carney and Terry Bridges, two outstanding attorneys in the Inland Empire, past and present leaders of our local bar associations, have worked tirelessly, too, to demonstrate why our region merits its own Federal Court.

H.R. 3795 has received strong bipartisan backing at every step of the legislative process. I urge my colleagues to support it.

Mr. McCANDLESS. Mr. Speaker, today I rise in support of H.R. 3795, a bill to establish three divisions of the Central Judicial District of California.

This bill will create three separate divisions of the central district. One division will continue to meet in Los Angeles; the second will meet in Santa Ana in Orange County; and the third will meet either in San Bernardino or Riverside. Let me say just a word about the special problems faced by these two counties.

Over the last 10 years, the population in Riverside and San Bernardino Counties has nearly doubled in size. In the next 15 years, it's predicted that it will double once again. This increase has clogged both the courts with more cases and the freeways with more cars.

In addition, both San Bernardino and Riverside counties have been named part of the high-intensity drug trafficking area [HIDTA] by the Department of Justice. This designation was made due to the large drug trade in the southern California area. As a result of this action, a number of new antidrug initiatives have begun and additional funds have been made available to local law enforcement. A new court in this area would aid in the quick and efficient disposition of cases brought about through this HIDTA designation.

I am pleased to have worked with my colleague in designing this bill and I hope we can move to enact it and return the courts to the people of southern California. I urge my colleagues to vote in favor of H.R. 3795.

Mr. MOORHEAD. Mr. Speaker, I would like to indicate my support for H.R. 3795, which would establish three divisions in the Central Judicial District of California and also establish a new place for holding court in San Bernardino or Riverside County. I would like to commend the chairman of the Subcommittee on Intellectual Property and Judicial Administration, BILL HUGHES, for his work on this legislation. In addition, several of my distinguished colleagues from California, especially GEORGE BROWN, JERRY LEWIS, CHRIS COX, and AL MCCANDLESS have played key roles in the consideration of H.R. 3795 and are to be commended for their efforts.

As one of the witnesses at the Subcommittee hearing on this proposal noted:

There have been discussions and proposals over many years about solutions to the perceived problems of the geographical size, caseload, and population of the current Central District of California.

In fact, as far back as 1977, our former distinguished colleague on the Judiciary Committee and now a prominent judge on the Ninth Circuit Court of Appeals, Chuck Wiggins, introduced H.R. 3972, a bill to create a new judicial district in California comprised of the counties of Orange, San Bernardino, and Riverside. By the same token, our distinguished colleague from California, BILL DANNEMEYER, has introduced legislation in each of the last two Congresses to create a new judicial district in California. While H.R. 3795 does not go as far as creating a new judicial district, it does represent in part the culmination of these earlier, laudable efforts to bring relief to the Central District of California.

In short, the need for H.R. 3795 is based on the current burgeoning population of 2.6 million people in San Bernardino and Riverside counties. In the next 15 years, the populations in these areas are projected to increase again by 70 percent and 67 percent respectively, which will mean by the year 2005 they will have 4.4 million residents. In addition, Federal Court facilities in Los Angeles and Santa Ana are very inaccessible to litigants, witnesses, jurors, and counsel. Six-hour round trip commutes to travel 50 miles to pursue one case in a Federal courtroom in Los Angeles or Santa Ana are not uncommon for residents of San Bernardino and Riverside Counties.

H.R. 3795 is supported by the judges of the Central District of California, the Riverside and San Bernardino County Bar Associations and all major Federal law enforcement agencies in the relevant counties. Accordingly, I urge my colleagues' support for the legislation.

Mr. COBLE. Mr. Speaker, I yield back the balance of my time.

Mr. HUGHES. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and pass the bill, H.R. 3795.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. McCathran, one of his secretaries.

PROVIDING POLICIES WITH RESPECT TO APPROVAL OF BILLS PROVIDING FOR PATENT TERM EXTENSIONS

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5475) providing policies with respect to approval of bills providing for patent term extensions, and to extend certain patents, as amended.

The Clerk read as follows:

H.R. 5475

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

SECTION 1. STATUTORY EXTENSION OF PATENT TERMS.

(a) IN GENERAL.—The Congress finds that, in the future, any bill providing for the extension of the term of a patent should not be approved by the Congress unless the requirements set forth in subsection (b) or (c) are met.

(b) REQUESTS BASED ON DELAY IN PREMARKET APPROVAL.—When the basis for a bill providing for a patent extension is delay in premarket regulatory approval of a patented invention, the following requirements should be met before the bill is approved by the Congress:

(1) GOVERNMENTAL MISCONDUCT.—(A) Delay in the approval process must have been beyond the control of the patent holder and directly caused by governmental misconduct.

(B) For purposes of this paragraph, governmental misconduct is established by presentation of adequate proof of—

(i) dishonest or deceitful conduct,

(ii) vindictive or retaliatory action,

(iii) arbitrary, capricious, or grossly negligent performance of governmental duties, or

(iv) serious failure to perform governmental duties,

by the Federal Government.

(C) Unusual or unexpected delay alone does not constitute governmental misconduct for purposes of this paragraph.

(2) UNJUSTIFIED INJURY TO THE PATENT HOLDER.—The governmental misconduct under paragraph (1) must have caused a substantial inequity to the patent holder who, without the extension of the patent term, will suffer material harm directly attributable to the delay in the approval process. The unjustified harm to the patent holder if relief is not granted must outweigh any harm to the public (such as through higher prices) or to competitors that will result from extension of the patent.

(3) EXPIRED PATENTS.—Expired patents shall not be revived and extended, except under the most extraordinary and compelling circumstances. In no such case shall an extension be granted unless the patent holder exercised due diligence to prevent the invention from entering the public domain.

(4) INTERVENING RIGHTS.—In the event extraordinary circumstances justify the revival and extension of an expired patent, intervening rights shall be extended to persons using the subject matter of the patent after its expiration. Such rights shall not be provided in the case of statutory extension of unexpired patents, except that, in a case in which extreme injustice would result from the failure to provide such rights, they may be extended to persons who have, in good faith expectation of the expiration of the patent, made substantial preparation for use of the subject matter of the patent after its expiration.

(c) OTHER REQUESTS.—When the basis for a bill providing for a patent term extension is other than delay in premarket regulatory approval, the following requirements should be met before the bill is approved by the Congress:

(1)(A) Either governmental misconduct (as described in subjection (b)(1)), or action or inaction by the United States Government, contributed substantially to significant injury to the patent rights of the person requesting extension of the patent.

(B) For purposes of subparagraph (A), the action or inaction by the Government need not constitute governmental misconduct (as described in subsection (b)(1)), but must be of such a nature as to create a moral or ethical obligation on the part of the Government to provide relief to a person whose patent rights have been substantially injured by the action or inaction by the Government. Such action or inaction may include altering, by statute or rule, the regulatory approval procedures, standards, or requirements in a case in which there has been material reliance by an applicant on the prior procedures, standards, or requirements.

(2) The requirements set forth in paragraphs (2) through (4) of subsection (b) are met, except that—

(A) the reference in subsection (b)(2) to "governmental misconduct" shall be deemed to include, as applicable, the action or inaction by the Government described in paragraph (1) of this subsection, and

(B) the reference in subsection (b)(2) to "delay in the approval process" shall be deemed to refer to "governmental misconduct", which shall be deemed to include, as applicable, the action or inaction by the Government described in paragraph (1) of this subsection.

(d) LACK OF DUE DILIGENCE.—Notwithstanding the preceding provisions of this section, in no case should the Congress approve a bill providing for the extension of the term of a patent in the case of delay attributable to a lack of due diligence by the patent holder.

SEC. 2. PATENT EXTENSION FOR NONSTEROIDAL ANTI-IN-FLAMMATORY DRUGS.

(a) IN GENERAL.—The terms of United States patents numbered 3,793,457 and 4,076,831 shall each be extended for a period of 2 years beginning on the date of its expiration.

(b) LIMITATION ON RIGHTS.—The rights derived from any patent which is extended by this section shall be limited during the period of such extension to any use for which the subject matter of the patent was approved by the Food and Drug Administration before the date of the enactment of this Act.

SEC. 3. PATENT TERM EXTENSION FOR OLESTRA.

The terms of United States patents numbered 4,005,195, 4,005,196, and 4,034,033 (and any reissues of such patents) shall each be extended for a period beginning on the date of its expiration through December 31, 1997.

SEC. 4. EXTENSION OF PATENT FOR INSIGNIA.

A certain design patent numbered 29,611, which was issued by the United States Patent Office on November 8, 1960, which is the insignia of the United Daughters of the Confederacy, and which was renewed and extended for a period of 14 years by the Act entitled "An Act granting an extension of patent to the United Daughters of the Confederacy", approved November 11, 1977 (Public Law 95-168; 91 Stat. 1349), is renewed and extended for an additional period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 5. PATENT TERM EXTENSIONS FOR AMERICAN LEGION.

(a) BADGE OF AMERICAN LEGION.—The term of a certain design patent numbered 54,296 (for the badge of the American Legion) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

(b) BADGE OF AMERICAN LEGION WOMEN'S AUXILIARY.—The term of a certain design patent numbered 55,358 (for the badge of the American Legion Women's Auxiliary) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

(c) BADGE OF SONS OF THE AMERICAN LEGION.—The term of a certain design patent numbered 92,187 (for the badge of the Sons of the American Legion) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 6. INTERVENING RIGHTS.

The renewals and extensions of the patents under sections 4 and 5 shall not result in infringement of any such patent on account of any use of the subject matter of the patent, or substantial preparation for such use, which began after the patent expired but before the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey [Mr. HUGHES] will be recognized for 20 minutes, and the gentleman from North Carolina [Mr. COBLE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5475 is the product of almost a year's work by the Subcommittee on Intellectual Property and Judicial Administration. It grew out of a group of nine separate bills referred to the committee, each of which would extend the term of a patent or patents.

Following a hearing on these bills last October, the Subcommittee on Intellectual Property and Judicial Administration determined that at least two of them involved substantial factual disputes. We therefore asked the General Accounting Office to do some factfinding analysis regarding the Food and Drug Administration review of the ansaid (H.R. 2255) and olestra (H.R. 2805) products.

After some 4 months, the GOA provided the subcommittee with reports which helped clarify the facts regarding FEA review of ansaid and olestra.

The subcommittee then met and decided to defer action on the specific bills until we first develop a set of standards which must be met before we

will favorably consider any bill providing for a patent term extension.

We also agreed that any bill favorably reporting a patent term extension should be a public and not a private bill.

As a reflection of these decisions, H.R. 5475 is a public bill which establishes standards for the consideration of future patent extension bills.

We decided not to apply these standards retroactively to the bills already pending. I doubt if any of the separate extension bills which are incorporated in this bill would qualify under these new, strioter standards. However, we feel that fairness dictates that these petitions be judged by preexisting standards, not by ones we formulated after these bills were introduced. Indeed, in our hearing last October on these bills, proponents and opponents alike quite properly focused their presentations on whether the particular fact situations in question met the 1984 standards developed by our committee.

The central requirement of the new standards is that the patent rights of the patentee who is seeking an extension were materially harmed by governmental action or inaction.

If the claim is that the harm resulted from unjustified delay in the regulatory approval process—and almost all cases are—the governmental action or inaction must constitute misconduct on the part of the Government. Mere delay in the regulatory process is not sufficient basis for a patent extension.

The bill enumerates various types of Government action which might constitute misconduct. In addition to egregious acts, such as deceitful, vindicative, or retaliatory action, misconduct can also be found in grossly negligent performance of governmental duties, or serious failure to perform those duties.

In examining the history of special legislation to grant statutory patent relief, we determined that, on some rare occasions, relief is appropriate even though there is no governmental misconduct. Examples are found in the governmental taking or curtailing of patent rights during time of war or national emergency. In these circumstances, the Government has not been guilty of misconduct—but nonetheless the patent owner was seriously harmed by governmental action, and there is a moral if not a legal obligation on the part of the Government to provide relief.

In addition to the formulation of standards for future cases, H.R. 5475 provides for patent term extensions in the case of five product patents and four design patents.

Deciding these individual cases was the tougher part of our work on these issues, and among the most difficult I have worked on in my 18 years in the House.

First, the facts were in serious dispute. After we sorted out the facts as best we could, we had to decide what was fair and in the public interest.

On the one hand is the interest of developers of these products, their stockholders and employees in seeing that they are given the opportunity to market their products and recover their investments.

These investments are massive. For example, the three products involved in this bill required from $100 to $230 million to develop. Without a fair chance to bring their drug or food product to market, these investments would not be made, and we would all suffer.

On the other hand, patent terms have always been limited, and for good reason. The inventor receives exclusive rights to make and market the invention for a limited period of time in exchange for full disclosure of how it is made, so that others may enter the competition when the term expires. This benefits not only competitors who wish to enter the market, but also, frequently, the public at large in the form of lower prices. Generic drugs are a prime example.

Let me describe for you what we decided on the individual patents, and why:

1. ANSAID AND LODINE

Patents for these two products, both nonsteroidal anti-inflammatory drugs, are each extended for 2 years. Both the Upjohn new drug application for ansaid and the American Home Products NDA for lodine encountered delays of more than 78 months before approval. This is three times the average review period at the time these applications were filed.

The delays were caused in part by FDA concern over serious results, including numerous deaths, which resulted from the use of other, previously approved drugs of the same category. Nonetheless there was a troublesome 2-year period during which it appears that, without reasonable explanation, no action at all was taken by the FDA. In short, I believe the FDA, stung by criticism of the approval of the earlier drugs, froze up and shut down work on these drugs for about 2 years.

Eventually—after 78 months in the case of ansaid and 96 months in the case of lodine—the FDA determined that both ansaid and lodin are safe and effective, and have none of the defects found in the earlier approved drugs. Under these circumstances, some short term of extension is appropriate. H.R. 5475 provides for a 2-year extension of each of these patents.

2. OLESTRA

Consideration of the appropriate review and approval process for this ground breaking product has vexed the FDA and Procter & Gamble, the company which developed it, for 20 years. One of the four patents involved in the olestra application, which has not yet been approved, has already expired. The patents cover various aspects of the noncaloric cholesterol-free sucrose polyester compound known as olestra. Olestra is a fat replacement product that can be used to flavor and texture food.

I do not believe that there is any justification for reviving the expired patent, or for granting the company's other request for an open-ended 10-year extension of the existing patents, to run from the time, if ever, that the FDA approves the food additive petition.

However, some relief is appropriate. The bill before us would extend the three unexpired olestra patents until December 31, 1997. This amounts to an extension of about 4 years for two of the patents, and 3½ years for the third.

If and when the FDA petition is approved, the company would be entitled to a 2-year extension under the Patent Term Restoration Act of 1984. However, if we enact this bill, it will take away that 2 years. The net effect of this bill is, therefore, an extension of only 1½ to 2 years.

We refused to provide an extension for the patent for an antiradiation drug developed under contract to the U.S. Army in the 1960's and known as WR 2721. That drug shows substantial potential for additional useful development.

However, we don't think that, standing alone, potentiality for future development is a proper basis for patent extension. The company—U.S. Bioscience—which owns the patent rights acquired those rights in 1987. The company bases its request for an extension upon the claim that, for many years, information regarding the potential for the drug was unavailable because of national security classification.

We checked with the Army, however, and found that the information was classified for no more than a 4-year period, and that this classification was lifted in 1965. The Army further reports that it in fact encouraged publication and development of the potentialities of the drug, beginning in the 1970's.

Furthermore, we don't think a company which bought patent rights in 1987 has a legitimate claim against the Government for something the Government may have done in the 1960's, long before the company bought into the patent, and even before it was issued.

DESIGN PATENTS FOR INSIGNIAS AND BADGES

Section 4 of the bill would renew and extend the design patent for the insignia for the United Daughters of the Confederacy.

Section 5 would renew and extend the design patents for the badges of the American Legion, the American Legion Women's Auxiliary, and Sons of the American Legion.

All of these four design patents have expired, and would be renewed and extended for a period of 14 years beginning on date of enactment. Intervening rights would be recognized to prevent

infringement actions against any persons who began use of the subject matter of these patents after their expiration and before the effective date of this act.

H.R. 5475 is a good bill. It lays down clear and appropriately tough standards for future statutory patent extensions.

It deals fairly with the bills filed under the old rules. It grants short extensions for products which were bogged down for excessive amounts of time in bureaucratic delay, and thus encourages the extremely expensive research and development that is necessary to bring beneficial new medicines and food products to consumers.

I urge your support.

□ 1510

Mr. Speaker, I reserve the balance of my time.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to express my strong support for passage of H.R. 5475, a bill to create new standards regarding patent extension approvals. My primary interest in this legislation concerns that section of the bill involving the macronutrient called olestra, which has been developed by the Procter & Gamble Corp.

Mr. Chairman, I first want to commend the chairman of the Subcommittee on Intellectual Property and Judicial Administration, the gentleman from New Jersey [Mr. HUGHES], and the ranking minority member of the subcommittee, the distinguished gentleman from California [Mr. MOORHEAD], for their patience and thoughtful contributions during our work on this project. Mr. Speaker, these two gentlemen provided the leadership necessary to craft a fair and innovative bill which will extend certain patents for a brief period of time while creating a new standard to be applied to future extension requests.

In addition to olestra, those products receiving patent extensions are two anti-inflammatory drugs, one licensed to the Uphohn Co., called ansaid; and the other owned by American Home Products, called lodine. Both drugs will receive 2-year extensions. Design patents for badges and insignia used by the United Daughters of the Confederacy and the American Legion will also be extended for 14 years.

The most important feature of the bill, Mr. Speaker, is the creation of new criteria to judge the merits of future requests. In brief: when a request for a patent term extension involves regulatory delay, the delay must have been beyond the control of the patent holder and directly caused by governmental misconduct. Unusual or unexpected delay alone will not constitute governmental misconduct. Further, the governmental misconduct must have caused a substantial inequity to the patent holder who will suffer material harm in the absence of an extension. Expired patents shall not be revived and extended, except under the most extraordinary and compelling circumstances. Requests based on circumstances other than regulatory delay need not constitute misconduct but must be of a nature to create a moral obligation on the part of the Government to supply relief.

No one involved in this process walked off with all of what he or she wanted. But the finished product in my opinion is something in which the subcommittee, especially its leadership, can take pride.

Mr. Speaker, I made the statement, you may recall, in full committee, I was reminded of a ship charting dangerous waters as we went through this with Mr. HUGHES and Mr. MOORHEAD, who led the subcommittee through what I call procedural waters infested with rocks on the one hand, reefs on the other, and shoals somewhere in the middle. But thanks to their leadership, and I will again use the word patience, we negotiated this very difficult course and, I think, came up with a very worthwhile finished product.

Mr. Speaker, as noted, I am most interested in obtaining relief for olestra. By way of background, olestra is a calorie-free fat substitute that looks, cooks, and tastes like ordinary fat, but adds no fat or calories to the diet. Procter & Gamble has been testing olestra since 1971, the year its first patent for the substance was granted. Since that time, Procter & Gamble has invested more than $180 million in research and development in the project, but because of the unique nature of olestra, has been unable to secure Food and Drug Administration approval of the product. The company plans to spend another $50 million over the next 2 years to obtain the necessary regulatory clearance.

□ 1520

The last point, I believe, Mr. Speaker, is crucial in understanding why extended patent protection for olestra is warranted. Back in the early seventies, some testing indicated that olestra contained cholesterol-reducing properties. Neither Procter & Gamble nor the FDA had ever encountered a substance like this one that processed the attributes of a drug, on the one hand, as well as a food additive, on the other.

There was a total absence of any precedent to guide Procter & Gamble as it sought to establish the proper testing protocols for olestra, or to enable the FDA to provide other guidance in the matter. Stated differently, the FDA was compelled to develop the rules of the game as it went along. Understandably—and after the fact—this resulted in a 20-year-plus delay in approval that persists to this day.

Mr. Speaker, we all know that patent extension bills are rarely approved. To do so routinely would encourage monopolistic behavior and ultimately hurt consumers through higher prices. They should only be granted under exceptional circumstances. Under the standard which has governed patent extension requests, however, Procter & Gamble's situation would more than justify the assistance contained in H.R. 5475.

The company initially requested a 10-year extension for four patents—one of which has already expired—from the date of regulatory approval. But the legislation before us only extends the unexpired patents for 3½ to slightly less than 4 years—at most—after expiration. The expired patent—the most important of the four—will not be extended at all. But this is still an equitable result, Mr. Speaker; Procter & Gamble will receive some protection for its exercise of good faith and commitment to regulatory compliance. As a simple matter of equity, it would otherwise be unfair to allow competitors to piggy-back on a $180 million investment when this corporation has exercised due diligence as it navigated, and continues to navigate, the regulatory maze at FDA, and I do not say there is fault against FDA, but it is, nonetheless, a regulatory maze.

Finally, Mr. Speaker, I think we have before us a fair, balanced, equitable bill, and I urge its passage.

Mr. Speaker, I reserve the balance of my time.

Mr. HUGHES. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. STARK].

Mr. STARK. Mr. Speaker, I thank the distinguished gentleman from New York [Mr. MCHUGH] for yielding this time to me. He has yielded to me knowing that I have some reservations on the bill.

Mr. Speaker, H.R. 5475 deserves thoughtful consideration by every Member of the House. It is not without controversy, unfortunately, or differences of opinion on what is arguably a very complex subject.

First, Mr. Speaker, I would like to commend the thoughtful approach of the Committee on the Judiciary in establishing new strict standards for granting private patent extensions. Passage of this bill will have a significant effect on the normal course of business for thousands of American companies and their workers, not to mention millions of consumers.

Having said that, however, I think that what the bill gives with the one hand it immediately taketh away, and it grants special patent extensions to three companies without actually applying the new standards, and granting those extensions has been opposed by a variety of consumer interests: Public Citizen, Center for Science in the Public Interest, Citizens for Public Action on Blood Pressure and Cholesterol, Consumer Federation of America, Con-

sumers Union and the National Consumers League. It would be my hope that that portion of this bill would have been dropped had the bill been brought to the floor with a rulemaking in order an amendment to eliminate that portion of it. It seems to me that without the debate necessary to determine whether billions of dollars should be given away to three of the largest, most profitable pharmaceutical manufacturers in this country who already enjoy generous research and development tax credits, 936 credits for manufacturing in Puerto Rico, which gives almost $3 billion a year in taxpayer awards to these pharmaceutical companies, and they have just announced, in some cases, some 27 percent increase on some of the drugs covered under this bill.

How much are we going to ask the consumers of this country who are already burdened by the lack of decent cost containment of their medical expenses to bear? I think that is a topic worthy of debate.

I would like to see H.R. 5475 passed by this House. I would like to see it amended, and I would like to see the amendment discussed after thorough discussion of these particular issues.

Mr. COBLE. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. FAWELL].

Mr. FAWELL. Mr. Speaker, I thank the gentleman from North Carolina [Mr. COBLE] for yielding this time to me.

Mr. Speaker, I come before this body not deeply knowledgeable in reference to all the aspects of this bill, and I commend the committee for certainly coming up with new recommendations, new concepts, in regard to patent approvals.

However, Mr. Speaker, I have had contact from various groups, one within my 13th Congressional District, where they pointed out that they had relied upon the fact that a certain patient, described in this bill, would be expiring. This pertains to olestra, the fat substitute which indeed is quite a concept. They have spent approximately $40 million in research of olestra, assuming that there was a date certain when the patents pertaining to olestra would be terminated. So it does appear to me that there is controversy here and that perhaps it was not a bill that should be on the Suspension Calendar.

I did want to express my concern. I think somewhere along the line there should be some open debate on this subject because I am sure there are many others who have some of the concerns that I do have.

Mr. Speaker, I thank the gentleman very much for having yielded to me.

Mr. COBLE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Speaker, I thank the gentleman from North Carolina [Mr. COBLE] for yielding this time to me, and, Mr. Speaker, I want to compliment the gentleman from New Jersey [Mr. HUGHES], the gentleman from California [Mr. MOORHEAD], and the gentleman from North Carolina [Mr. COBLE] for the extraordinary good work they have done in bringing together this bill which is very complicated, to say the least.

I know that the gentleman from North Carolina [Mr. COBLE] has done a splendid job in explaining the reason why I am here to extend the patent for olestra. The gentleman has mentioned that olestra is unique. It has taken Procter & Gamble over 20 years of research and uninterrupted dialog with the FDA. Procter & Gamble has invested something in the neighborhood of $185 million to research for olestra in pursuit of this innovation. It is a unique new food additive, and because it is unique, the Food and Drug Administration has been a long time in allowing for approval. Procter & Gamble has been diligent in pursuing FDA approval from the start, and, without the extension, Proctor & Gamble will lose all of its key patent rights by expiration through early 1994, about the same time that FDA would be expected to approve its use.

So, Mr. Speaker, I rise in support of this legislation. I think it is good legislation, but I especially think it is desirable because of the patent extension for olestra. There is a foreign-based competitor, I submit, ready, willing and able to pick up where Procter & Gamble is about to leave off if this extension is not granted. I think a failure to extend the extension of the patent for olestra would be unfair and a deterrent to long-term research and development.

□ 1530

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to say to my colleagues in California and Illinois that I understand the argument. I understand that there is a foreign corporation which is based in Rotterdam that has also invested a lot of money in this product, not nearly as much as has Procter & Gamble, and obviously they are opposed to the legislation because they stand to gain from this patent going into the public domain.

But let us just take olestra. The basic patent is already expired. It has been 20 years. We grant a 17-year patent. Putting aside the 2-year extension available under certain circumstances, we grant 17 years. That means that they have 17 years basically to receive the recoupment for that money. In the instance of Procter & Gamble, they have spent $180 million.

Now, while on the one hand once the patent falls into the public domain we benefit through the generic industry in particular in lower costs, but if companies will not invest because they cannot recoup their investment, then we do not get the patent to begin with and we do not get the products. That is the balancing we have had to do.

In the instance of olestra, the Food and Drug Administration did not know what to do with it. They had a macronutrient and they did not know what it was about and we did not have testing protocols in place. So it took all those years to get to the point where we are just moving that through the process now.

Just recently the Food and Drug Administration mandated new tests on pigs. That was a brew requirement. In the meantime, 20 years have gone by and their basic patent has expired.

Is that fair? I do not think that is fair.

In the instance of ansaid, ansaid was a closer call for us. Lodine, not so much. But ansaid, there was a 2-year period of time when apparently the FDA did very little if anything in processing that drug. It took a total of 78 months, when the average time should take 26 months. Is that fair? In the instance of lodine, it took 96 months. It is a very similar product.

Mr. Speaker, that takes away from the company's basic investment and makes it that much more difficult for those companies to recoup their investments.

We talk about industries having a hard time surviving in this economic climate today and competing with other companies around the world. Here is an instance basically where there is a basic unfairness. So we get down to the standard.

Mr. Speaker, I think my colleague is right. We agonized over whether to apply this tough new standard, but we thought to ourselves, is that fair to take a tougher new standard and apply it to pending cases?

We took testimony on the basis of a standard which says if you have delay and you have harm, that is a sufficient basis for a patent extension. Is it fair to change the rules in the middle of the game after you have taken testimony?

Mr. Speaker, I do not think so. That is where the subcommittee came down, that is where the full committee came down, and, Mr. Speaker, I think the subcommittee and the full committee in working their will came up with a fair and balanced bill to all concerned. Not just to the companies, but also to the public interest, which is served by getting these products on the market so we can benefit from these new medicines.

Mr. FISH. Mr. Speaker, I rise in support of H.R. 5472.

I would like to commend the gentleman from New Jersey [Mr. HUGHES] and the gentlemen from California [Mr. MOORHEAD], and North Carolina [Mr. COBLE] for their painstaking work and thoughtful analysis on these difficult issues. Our patent laws have served this coun-

try well. Patent protection provides the incentives to make investments and bring new products to market. It's important to protect and encourage this investment but we must at the same time be sensitive to the rights of others whose competitive commercial interest may be adversely affected by the extension of a patent. To balance these interests can be a very difficult assignment. Upjohn, American Home Products, and Procter & Gamble made a fair and reasonable case before the subcommittee.

Extending the term of a patent, even one that has expired is something the Congress can and has done for over 200 years. The use of special relief legislation was adopted by the First Congress, which passed the first two private bills in 1789. The first private patent extension was enacted in 1808. The acceptance of this special legislative function by Congress met with opposition early on—John Quincy Adams regarded it as a contradiction of the separation of powers. He thought that "a deliberative assembly is the worst of all tribunals for the Administration of Justice." I am sure some of you would agree with him, but my point is that H.R. 5475 represents a method of justice that's as old as the process itself. It's not an easy method, it's not a popular method and it may not be the best method, but the Judiciary Committee and its subcommittee have done this House and the Congress an important service by not only carefully considering the various bills currently before it, but also in developing guidelines that will aid in the consideration of future proposals. For this we are grateful and I urge support for H.R. 5475.

Mr. GRADISON. Mr. Speaker, I rise in support of H.R. 5475, a bill providing policies with respect to approval of bills providing for patent term extensions. At the outset, I want to commend the chairman of the subcommittee [Mr. HUGHES] and the ranking Republican member [Mr. MOORHEAD] for their cooperation, fairness, and deliberate consideration of the issues raised in this legislation.

Substantial congressional and judicial precedent exists for the extension of patent terms. However, this legislation represents the first instance in which Congress will establish statutory standards by which requests for patent term extensions are to be judged. These provisions are reasonable and they deserve the support of the House. It would, however, be unreasonable to apply these standards retroactively.

H.R. 5475 also incorporates the provisions of H.R. 2805, as amended, which I introduced last year. H.R. 2805 would have extended the terms on patents related to olestra, a noncaloric, nonabsorbable fat replacement, invented by the Procter & Gamble Manufacturing Co.

Due to the unique properties of olestra, its use as a food additive has not yet been approved by the Food and Drug Administration. The unique character of olestra has required the development of a new regulatory regime which was not foreseen when current law was written. As a result, no practical relief can be granted to the company under the Patent Restoration Act of 1984. Hence, the need for congressional action.

Mr. Speaker, the subcommittee, after deliberate consideration, chose not to extend the expired patent on olestra. The extensions the subcommittee did grant on the three remaining patents are for a period of 3 years.

In my view, this will provide some relief to the company and will also support an important public policy interest. Our interest in this House should be in supporting and encouraging innovation. Defeat of this legislation would not only defeat the standardization of patent term extension requests, as well as important patent protections for the American Legion and the United Daughters of the Confederacy, it would send a signal that this House is not prepared to give minimal support to innovation. It is a signal this House should not send.

I urge my colleagues to support the bill.

Mr. MOORHEAD. Mr. Speaker, I rise in support of H.R. 5475.

I would like to commend the gentleman from New Jersey [Mr. HUGHES] and the gentleman from North Carolina [Mr. COBLE] for the work product they bring before us today. The extensions provided for in this bill are, in my opinion, fair and just.

No one received all of what they asked for but having reviewed the record closely, we did try and provide a fair extension of those who, I think, made a good case.

The immediate problem for the subcommittee and the Judiciary Committee was to deal fairly with a group of very difficult patent extension bills that we found before us. And all of these bills are difficult. Because each of the applicants feels that they have a hardship, that the patent term is not sufficient to get their product approved by the Food and Drug Administration and their patents are going to expire before they have had an opportunity to put their product on the market, or before they could recover any of the costs of their research and development.

Obviously, the purpose of our patent system is so that people who spend their money on research and development of a product and take the risk will have an opportunity to try and recover their costs and make a profit before their patent expires. And the delays that have taken place in many instances, in getting their products to market, have been so long that they haven't had a chance to try and get any return on what are substantial investments.

We have struggled over all of these individual bills for a number of months. And in the end, I totally agree on the result contained in H.R. 5475.

What's important about this legislation are the standards we have developed for future consideration of patent term extensions. To statutorize standards by which to measure future legislation is unprecedented. Never before in the history of patent term extensions has a committee recommended a mechanism for dealing with these important and difficult cases. These standards are intended to be high, and difficult to meet, but they would also provide the subcommittee with the needed flexibility to deal with the extensions that are meritorious.

I think it is necessary that at least some leeway be there. But we want these rules tough enough so that we don't have a flood of bills from people whose patents are expiring, who think that they can come to Congress and receive an easy extension of their patent.

Our job is to try to bring some degree of fairness to these situations. And I believe that this is what H.R. 5475 does, and I certainly hope that it is adopted. If there are changes that are later needed down the line in the standards, they may be made by a future Congress. But for today, I think this is a good bill, and good policy and urge a favorable vote.

Mr. WOLPE. Mr. Speaker, I am one of the original cosponsors of legislation to extend that patent for ansaid, an anti-inflationary drug used to treat diseases like rheumatoid arthritis. Ansaid is manufactured by The Upjohn Co., which is headquartered in my district and which has been an outstanding corporate citizen during the more than 100 years since its founding.

H.R. 5475 provides some patent relief for ansaid, and I support the bill. I believe that the facts of the ansaid case unequivocally indicate this relief is warranted, and I have a lengthy statement that I would like to submit for the record which lays out those facts in significant detail.

I invite my colleagues—those of you who have not been as closely involved in this bill as I have—to examine the facts. These facts have been examined exhaustively by this body, by our Senate counterparts, by the FDA and by the Patent and Trademark Office, and, in an unprecedented step, by the GAO. These facts indicate that, through no fault on the part of the company, the ansaid application was subject to extraordinary regulatory delay.

BILL HUGHES, the chairman of the Intellectual Property Subcommittee of the Judiciary Committee, and the ranking minority member of that subcommittee, CARLOS MOORHEAD, looked at these facts. They looked also at the manner in which we here in Congress deal with patent extension requests, a role which extends back to the earliest days of this body. The subcommittee came up with standards to evaluate patent extension legislation in the future, but agreed that it would be inequitable, based on the facts of the ansaid case, to deny relief.

I think that the facts of the ansaid case are compelling. I believe that H.R. 5475 is a balanced and equitable bill, and I encourage my colleagues to vote yes.

THE FACTS OF THE ANSAID CASE

I. THE DEVELOPMENT OF ANSAID

For many decades, medical researchers have sought safe and effective treatments for the inflammatory diseases which affect large segments of the U.S. population. These diseases include rheumatoid arthritis, degenerative joint disease, bursitis and tendinitis, and they afflict virtually all Americans, from the elderly to the best trained athletes.

Aspirin has long been recognized as a potent anti-inflammatory drug and is still the drug of choice for many patients. Because of the serious gastrointestinal effects of aspirin, however, research continued in an effort to find a safer agent. Research conducted in the late 1950's and early 1960's resulted in the discovery of compounds now classified as "non-steriodal anti-inflammatory drugs" ("NSAIDs"). As a group, these drugs have anti-inflammatory properties comparable to aspirin but with fewer adverse gastrointestinal effects.

Indicin, a product of Merck Sharp & Dohme, was the first of these drugs to be ap-

proved, in 1965, but the approval of Motrin, an Upjohn product, in 1974 opened the gates for the introduction of fifteen more of these drugs over the next fourteen years. The NSAID field is now among the most competitive and consumer-oriented fields in the pharmaceutical marketplace. The development of Ansaid represents the next step in the progress of this important line of drugs.

II. THE ANSAID APPROVAL PROCESS

The Upjohn Company submitted its NDA for Ansaid (flurbiprofen) on March 29, 1982. At that time, the average period for approval of an NDA for an NSAID such as Ansaid was approximately two years. From 1974 through 1982, eight out of ten NSAIDs had been approved in 27 months or less.[1]

The animal studies and clinical trials of Ansaid had shown the drug to be both effective for the treatment of rheumatoid arthritis and osteoarthritis and remarkably free of serious side effects. The drug's profile was, in fact, quite similar to what was anticipated for drugs of this class. Upjohn therefore reasonably expected that its NDA would not present significant problems and that it would be approved within the two-year period required for approval of other NSAIDs in the 1974–1982 period.

Shortly after the Ansaid NDA was submitted, however, a series of events relating to other drugs unfolded, which dramatically lengthened the approval time for Ansaid. After approving ten NSAIDs in the immediately preceding eight years, the FDA did not approve *any* drugs of this class in 1983 or 1984, and only one in each of the next three years. Average NSAID approval times soared from slightly more than two years for drugs approved in 1982 and earlier to almost six years for those approved after that time. Because of these delays, Upjohn did not reach marketing approval for Ansaid until October 31, 1988, more than six years after its NDA was submitted.

These delays were caused by events pertaining to other NSAIDs, principally Oraflex, Feldene, Zomax, and Suprol. As a result of issues raised by those drugs, FDA slowed its new NSAID approvals for two primary reasons. First, significant Agency resources were devoted to resolving the questions raised by those particular drugs and were thus unavailable for reviewing new NSAID applications. Second, when FDA did turn to reviewing the pending NADs for this class of drugs, it gave them much closer scrutiny in light of the problems with other NSAIDs, and this also lengthened the time needed for approval.

In sharp contrast to the drugs and events described below, Ansaid has been used safely by millions of people in the United States and internationally. The safety of the product was never under any dispute at any time during the course of FDA review of the application for approval.

A. Oraflex

On April 19, 1982, FDA approved the NDA for Oraflex (Benoxaprofen), an NSAID indicated, like Ansaid, for treatment of rheumatoid arthritis and osteoarthritis. The Oraflex NDA was submitted in 1980, and approval followed 27 months later, the average time then expected for NSAIDs. Almost immediately after this approval, however, FDA was forced to devote substantial resources to reviewing new information on the drug and reassessing its labeling, dosage, and risk-benefit ratio.

On April 24, 1982, The Lancet, a British medical publication, published a letter to the editor noting jaundice in three patients using benoxprofen in the United Kingdom.[2] A few weeks later, on May 9, 1982, the British Medical Journal published a "short report" describing the death of six elderly patients, all of whom had been taking benoxaprofen, from a liver disorder known as cholestatic jaundice.[3] FDA also received a letter on May 27, 1982, from a British government medical official pertaining to adverse events associated with benoxaprofen.[4]

These events and other reports prompted FDA to reconsider the labeling of Oraflex, especially as it concerned liver and kidney dysfunction, as well as the appropriate dosage for elderly patients. Senior FDA officials gave this matter their personal attention from the outset.[5] In addition, FDA personnel conducted careful investigations into the voluminous clinical data concerning the safety of Oraflex.[6] As part of its overall review, the Agency considered whether certain adverse events raised medical and scientific questions for NSAIDs as a class, in addition to whether they necessitated changes with respect to Oraflex in particular. The Agency also implemented changes in its DNA review procedures to ensure that medical officers based their decisions on the most current safety data available.[7]

FDA devoted a meeting of its Arthritis Advisory Committee on June 3–4, 1982, to the issue of liver toxicity for all NSAIDs. At the meeting, the Director of the FDA division responsible for NSAID approvals indicated his belief that almost all NSAIDs were associated with liver abnormalities and that additional information was needed to help develop classwide labeling revisions.[8] This association had not previously manifested itself as a significant clinical problem.[9]

Following this meeting, FDA reviewed proposed revised labeling for Oraflex. It ultimately approved revisions on July 12, 1982.[10] Reports continued, however, concerning the use of benoxaprofen overseas. Later that month, for example, the regulatory authorities in Denmark decided to restrict the drug to hospital use.[11]

At the same time, the Oraflex controversy continued to receive widespread public and media scrutiny in the United States.[12] The Health Research Group, a consumer advocacy organization, petitioned the Secretary of Health and Human Services to remove Oraflex from the market.[13] Six weeks later, the American Association of Retired Persons also petitioned the Secretary to ban the drug.[14] These organizations, joined by the National Council of Senior Citizens, sued the Department of Health and Human Services in federal court shortly thereafter in an attempt to force FDS to rescind the approval for Oraflex.[15] Responding to these efforts required substantial Agency resources.

On August 3 and 4, 1982, the Intergovernmental Relations and Human Resources Subcommittee of the House Committee on Government Operations held oversight hearings on FDA's regulation of new drugs.[16] The hearings concentrated almost exclusively on matters relating to Oraflex and Feldene (piroxicam), another NSAID (see below). Even before the hearings were held, FDA personnel had responded to congressional staff inquiries concerning Oraflex.[17]

FDA Commissioner Arthur Hull Hayes, Jr., M.D., and other FDA officials gave extensive testimony at these hearings. In fact, FDA officials were the only persons who testified during the two days of hearings. In discussing the NDA approval process, Commissioner Hayes noted that even the two years required for approval of Oraflex was a "lengthy" period, which was required because the NDA was particularly "complicated."[18] More straightforward NSAID applications presu.ably would take less time to approve.

FDA continued responding to congressional requests for information concerning Oraflex after the hearings were concluded.[19] Meanwhile, the manufacturer of Oraflex voluntarily suspended the sale and distribution of the drug on August 5, 1982.[20]

After several months of investigation, the House Committee on Government Operations released a report concerning Oraflex and recommending changes in FDA's adverse event reporting requirements and NDA review procedures.[21] On October 12, 1984, FDA Commissioner Frank E. Young, M.D., provided detailed responses to the Committee's recommendations.[22] In this response, Commissioner Young noted that the Agency had proposed changes in its new drug regulations in October 1982 and June 1983.[23] Those changes included modification of the reporting requirements.

In addition, FDA continued its own investigation of Oraflex. Following an extensive review, FDA referred the matter to the Justice Department in May 1983. A grand jury was later convened, and the manufacturer ultimately pleaded guilty to misdemeanor violations of the Federal Food, Drug, and Cosmetic Act on August 21, 1985.

B. Feldene

A substantial part of the August 1982 oversight hearings were devoted to FDA's approval of another antiarthritic NSAID, Feldene (piroxicam).[24] This drug was approved on April 6, 1982, following extensive FDA review of the clinical trial data in the NDA. Questions were raised at the hearing with respect to the effectiveness of the drug and certain press announcements concerning the drug.[25] Again, senior FDA management testified and responded to the Subcommittee's questions.

In the same report in which it discussed Oraflex, the Committee noted issues pertaining to Feldene as well.[26] As stated by the Committee, an FDA supervisory medical officer investigating Oraflex also raised questions pertaining to Feldene adverse event reporting.[27] The Subcommittee subsequently "brought this matter to the attention of senior FDA managers," and further FDA review ensued.[28] Thus, as with Oraflex, FDA officials spent considerable time investigating the facts pertaining to Feldene. More than a year after the hearing, FDA was still reviewing the reporting of adverse events associated with Feldene and responding to congressional inquiries on this matter.[29]

C. Zomax

In the spring of 1983, as FDA continued its Oraflex and Feldene investigations, the Agency found itself facing yet another controversy involving another NSAID, Zomax (zomepirac sodium). After approval in 1980, Zomax was withdrawn from the market by its manufacturer on March 4, 1983, "because of fatal and near fatal adverse reactions to the drug."[30]

For at least a year prior to the removal of Zomax from the market, FDA medical officials with responsibility for new drugs in general and NSAID's in particular had devoted considerable time and effort to reviewing data on Zomax and considering changes in the drug's labeling.[31] During this period, and especially after the market withdrawal, issues pertaining to Zomax "received a good deal of publicity."[32]

The Intergovernmental Relations and Human Resources Subcommittee held over-

[1] Footnotes at end of article.

sight hearings concerning Zomax on April 26 and 27, 1983.[33] Commissioner Hayes again appeared before the Subcommittee, accompanied by several other senior FDA officials.[34] In his testimony, the Commissioner discussed FDA's adverse event monitoring systems, and in particular a newly developed system that "logs all reports * * * regardless of source and tracks the review process until the report is entered into the [Drug Experience Information System] file."[35] The Commissioner also noted that the adverse events associated with Zomax were considered in light of the drug experience profiles for NSAIDs as a class, and that the Agency carefully considered overall drug experience patterns for the NSAIDs in this context.[36]

The removal of Zomax from the market prompted intense FDA scrutiny of all NSAIDs. For example, FDA prepared an extensive "summary of [adverse drug experience] reports, by year, for all nonsteroidals on the basis of market share."[37] In addition, Agency officials analyzed reports pertaining to several NSAIDs to determine whether those drugs were associated with the same type of hypersensitivity or anaphylactic (allergic) reactions that led to the withdrawal of Zomax.[38] FDA was particularly concerned with the possibility that "the apparent increase in hypersensitivity [to Zomax] * * * [was not] really different from other NSAID drugs used the same way," and that "if other NSAIDs were used intermittently, they too would have a greater frequency of hypersensitivity reactions."[39] FDA therefore conducted an "indepth analysis * * * by examining all nonsteroidal exposed patients" in a data base of records from 300,000 Medicaid patients."[40] In addition, the Agency developed tabulations of more than 18,000 adverse events for all NSAIDs from 1969 through 1983, and presented these to the Subcommittee during the hearings.[41]

The Commissioner and other FDA officials also responded to extensive questioning from the Subcommittee. Most fundamentally, the Subcommittee was concerned whether FDA was "really doing an objective job," or instead "trying to find justification for having approved a product."[42] Commissioner Hayes responded that the Agency was not "seeking a justification but rather * * * trying to find the right answer" in light of all available "scientific data."[43] While the discussion focused primarily on Zomax, the Subcommittee emphasized that "[w]e are really talking about appropriate policy and procedures of the Agency, including questions of adequate staffing and effective management practices."[44]

In this regard, the Subcommittee pointed to a 1982 report of the General Accounting Office concerning areas in which FDA's adverse event monitoring systems could be improved, and asked what steps had been taken to implement the recommendations contained in that report.[45] The Commissioner responded that Agency officials "have addressed and continue to address" these issues.[46] For example, considerable FDA resources were devoted to maintaining and improving FDA's computer tracking system.[47] FDA officials also explained that an indepth epidemiological study of adverse event information for even a single drug is an especially "labor intensive" undertaking.[48] The Subcommittee questioned whether a computer system could be implemented specifically to track adverse events reported with respect to NSAIDs.[49] FDA responded that the issues involved in any tracking system are "very complicated" and its system in particular is "complex."[50] Resources also were devoted to answering inquiries from the Subcommittee about specific Zomax adverse event reports and other issues.[51] Finally, the Subcommittee reviewed documents pertaining to two NSAIDs with NDAs then pending at FDA to determine whether they raised safety issues related to Zomax.[52]

On December 2, 1983, the House Committee on Government Operations issued a report concerning "FDA's Regulation of Zomax."[53] Among other things, the Committee recommended that "FDA establish procedures for prompt processing, review, and analysis of all adverse reaction reports for marketed drugs."[54] The controversial nature of the entire Zomax episode and of certain of the Committee's findings is reflected in the numerous dissenting and additional views accompanying the report.[55]

D. Suprol

After a virtual moratorium on NSAID approvals, FDA finally approved a new NSAID, Suprol (suprofen), on December 24, 1985. A few months later, however, the drug's manufacturer began receiving reports of unusual adverse kidney effects, frequently combined with flank pain, associated with Suprol. Sales of the drug ultimately were halted on May 18, 1987, in the face of mounting criticism.[56]

Reports of the flank pain syndrome associated with Suprol had begun to appear almost immediately after the drug was approved for marketing.[57] Subsequently, numerous reports were made to FDA, and the Agency became occupied with reviewing new and revised labeling for the drug. An article also appeared in the June 1986 edition of the FDA Drug Bulletin.[58] In addition to the Agency itself, Advisory Commission reviewed Suprol in light of the new adverse events reports.[59] FDA resources were also devoted to responding to a petition filed in September 1986 seeking the removal of Suprol from the market.[60]

Once again, FDA officials testified at a House oversight hearing devoted to examining the Agency's NSAID regulatory processes. Among the issues raised by the House Subcommittee at the hearing were whether FDA adequately investigated the drug sponsor's reporting of adverse drug events and whether the Agency had properly weighed the risks and benefits of the drug.[61] The overall goal of the hearing was to use the case of Suprol to evaluate "whether or not our current system of drug regulation and surveillance works."[62]

At the hearing, FDA officials emphasized the difficulty of detecting rare adverse events in the clinical trials prior to NDA approval, since those trials are generally limited to a few thousand patients.[63] Following the hearing, FDA supplied a detailed chronology of events relating to Suprol, as well as written responses to certain questions raised at the hearing.[64] FDA had also answered questions from the Subcommittee chairman prior to the hearing.[65]

E. Contrast: The Approval of Ocufen

Review of the case of FDA approval of Ocufen, an ophthalmic solution containing flurbiprofen sodium—a salt of the active ingredient in Ansaid—suggests that the delay in approving Ansaid was due to events relating to other NSAIDs, and not to the nature of the product itself.

The NADA for Ocufen for use in the inhibition of intraoperative miosis was submitted by Allergan on December 19, 1984—more than two years after the NDA for Ansaid. It was approved in just two years, on December 31, 1986—almost two years before Ansaid would be approved.

The review time for Ocufen was similar to the mean review time (22 months) for all new molecular entities reviewed by the Division of Anti-Infective Drugs during the period 1980 through 1988. Thus, flurbipofen was approved for ophthalmic use without significant regulatory delay. The delay in approving Ansaid, by contrast, can be viewed as directly associated with the crises involving other orally administered NSAIDs.

III. CONGRESSIONAL REVIEW OF ANSAID PATENT EXTENSION LEGISLATION

H.R. 5475 includes a set of standards by which Congress can evaluate future patent extension request. The bill has been criticized for expanding several patents, under previously existing standards of equity and extraordinary circumstances, and applying the new standards only prospectively. The assumption underlying this argument is that because the new standards were not in use, the extensions in H.R. 5475 were granted without regard to any standard or process. In the case of Ansaid, however, nothing could be further from the truth.

Ansaid legislation has been considered by this Congress for well over a year. It was introduced in May of last year, with 28 original co-sponsors. It has been the subject of hearings in three Committees, including: the Intellectual Property Subcommittee of the House Judiciary Committee; the Health and the Environment Subcommittee of the House Energy and Commerce Committee; and the Patent and Trademark Subcommittee of the Senate Judiciary Committee. The Patent Office and the FDA testified at all of those hearings.

At the request of Representative Bill Hughes, Chairman of the Intellectual Property Subcommittee of the House Judiciary Committee, and Senator Dennis DeConcini, Chairman of the Patent and Trademark Subcommittee of the Senate Judiciary Committee, the GAO conducted an unprecedented investigation into the facts of the FDA's approval of Ansaid. The Upjohn Company cooperated completely with GAO investigators.

The following outline indicates the nature and extent of the Congressional consideration of the Ansaid patent term extension.

1. H.R. 2255 introduced May 8, 1991.

29 Cosponsors, including 16 Democrats and 13 Republicans.

Cosponsors: Bonior, Broomfield, Bryant, Camp, Carr, Coble, B. Collins, Conyers, R. Davis, Feighan, Fish, W. Ford, Gekas, Henry, Hertel, Hoagland, Kildee, M. Levine, S. Levin, McCollum, Moorhead, Pursell, Richardson, Schiff, Synar, Traxler, Upton, Vander Jagt and Wolpe

2. Hearing held on August 1, 1991 on S. 1165 (Senate counterpart of H.R. 2255) by the Patents, Copyrights and Trademarks Subcommittee of the Senate Committee on the Judiciary

Testimony by Theodore Cooper, M.D., Ph.D., Chairman and CEO, The Upjohn Company; Harry F. Manbeck, Jr., Commissioner of Patents and Trademarks; Stuart Nightingale, M.D., Associate Commissioner, FDA

3. Hearing held on October 31, 1991 on H.R. 2255 by the Intellectual Property and Judicial Administration Subcommittee of the House Committee on the Judiciary

Testimony by Theodore Cooper, M.D., Ph.D., Chairman and CEO, The Upjohn Company; Stuart Nightingale, M.D., Associate Commissioner, FDA

4. Hearing held on February 20, 1992 by the Health and Environment Subcommittee of the House Committee on Energy and Commerce

Testimony by Theodore Cooper, M.D., Ph.D., Chairman and CEO, The Upjohn Company

5. Markup of S. 1165 held on May 21, 1992 by the Patent Subcommittee

6. Markup of H.R. 2255 held June 11, 1992 by the Intellectual Property Subcommittee: H.R. 2255 reported out as part of a clean bill, H.R. 5475

7. Markup of H.R. 5475 held July 22, 1992 by the full House Judiciary Committee: bill reported favorably to the full House, without amendment (voice vote)

This lengthy process of review was based on a standard that has evolved over the long course of Congressional consideration of patent extensions, which, as Representative Fish pointed out during the full Judiciary Committee markup of H.R. 5475, Congress has approved since its inception.

That standard has been stated in a variety of ways, but it is fundamentally one of equity: Congress has in the past weighed the merits of each individual case, and has made a decision based on the equities. The new standards enunciated in H.R. 5475 are a reasonable attempt to make this general concept of equity more specific. But as Chairman Hughes explained at the markup, it is not fair to require a company which has invested a great many resources in making a case under an older standard to make another case under a new standard.

It would be particularly unfair to Upjohn. The patent for Ansaid expires in February of 1993. Application of the new standards would require additional hearings, another review by the Patent Office and by FDA, a new GAO report, and reconsideration by the appropriate Congressional committees. In light of the lengthy consideration this bill has already had, and the short time remaining on the patent, application of the new standards would not be equitable.

IV. THE GAO REPORT

The GAO conducted an investigation of the circumstances of the FDA delay in the approval of the Ansaid application. This unprecedented step, never before included in a Congressional review of a patent extension request, resulted in a report which was, in part, the basis for the relief granted in the Intellectual Property Subcommittee's bill. The extensions in H.R. 5475 have nevertheless been criticized as unsupported by the GAO report.

As the following excerpts indicate, however, this is a completely specious charge.

Upjohn's preparation of the NDA: No unusual delay.

"[F]rom our review of agency and company documentation and our own analysis, it appears that Upjohn did not unnecessarily delay submitting its NDA." GAO Report at 5.

Application reviews take longer; May 1984 through May 1986

"Upjohn's primary arguments * * * to support its claim that the patent term for Ansaid should be extended are most relevant to this 2-year period. FDA acknowledges that, during this time, its reviews took longer." GAO Report at 8.

The impact of unusual circumstances on the FDA

"FDA did indeed face an unusual set of events from 1982 through 1987, which affected its operations. . . . Compared with the pre-1982 approval time, the average time taken to approve NSAID NDAs nearly doubled." GAO Report at 8.

V. CONCLUSION: THE PUBLIC POLICY REASONS FOR SUPPORTING A PATENT EXTENSION FOR ANSAID

There are general public policy reasons for patent extensions which concern adequate reward for innovation. Congress has traditionally served as a safety valve in the rare situations in which the rigidities of our otherwise effective patent system would prevent appropriate compensation for inventors.

But in the case of Ansaid, there is also a more specific public health reason for supporting the Ansaid extension. The Upjohn Company is sponsoring research into additional uses for Ansaid. Promising work is being done in a variety of areas, including post-surgical pain, fractures, and gout. Upjohn is also supporting research by Dr. Tom Aufdemorte, who is working at the UT Health Science Center in San Antonio. Dr. Aufdemorte has discovered some interesting possibilities for the use of Ansaid in treating osteoporosis, a disease which seriously diminishes the quality of life of many elderly women. Without additional market exclusivity, however, Upjohn will not be able to afford to continue this support.

In summary: H.R. 5475 is a balanced and equitable bill. The case of Ansaid has been meticulously made and documented in several Congressional forums. The legislation has been subject to hearings and public markup. There are sound public policy reasons for this extension. The bill is worthy of support.

FOOTNOTES

[1]This is illustrated in the following table:

Year of approval	Name of drug	Approval time (months)
1974	Motrin (ibuprofen)	18
1976	Nalfon (fenoprofen calcium) ...	22
1976	Naprosyn (naproxen)	23
1976	Tolectin (tolmetin sodium)	20
1978	Clinoril (sulindac)	27
1980	Meclomen (meclofenamate sodium).	39
1980	Zomax (zomepirac sodium)	22
1982	Feldene (piroxicam)	48
1982	Oraflex (benoxaprofen)	27
1982	Dolobid (diflunisal)	22

However, only five NSAIDs were approved from 1933 through 1988, and only three of those are currently being marketed. Suprol (suprofen) was approved in 1985 following an 86-month review period, and was withdrawn from the market in May 1987. Orudis (ketoprofen) was approved in 1985 after 46 months. Voltaren (diclofenac) was approved in 1987 after 55 months. Remedial (karprofen) was approved in 1988 after 87 months, but has not been marketed. Ansaid was approved in 1988 after a 79-month review period.

[2]"Jaundice associated with the use of benoxaprofen," Lancet 959 (Apr. 24, 1982). *See The Regulation of New Drugs by the Food and Drug Administration: The New Drug Review Process*, Hearings Before a Subcomm. of the House Comm. on Gov't Operations, 97th Cong., 2d Sess. 105 (1982) [hereinafter cited as *New Drug Hearings*].

[3]Taggart and Alderice, "Fatal cholestatic jaundice in elderly patients taking benoxaprofen," 284 Brit. Med. J. 1372 (May 8, 1982). *See New Drug Hearings, supra*, at 104.

[4]*See* "Deficiencies in FDA's Regulation of the New Drug 'Oraflex,'" Fourteenth Report by the House Comm. on Gov't Operations, H.R. Rep. No. 511, 98th Cong., 1st Sess. 3 (1983) [hereinafter cited as "Oversight Report"].

[5]*See, e.g., New Drug Hearings*, supra, at 108 (memorandum of phone conversation concerning Oraflex between FDA's Acting Director, Office of New Drug Evaluation, and Lilly physician); id. at 112-113 (memorandum of meeting concerning Oraflex; attendees included FDA's Director and Associate Director, Bureaus of Drugs and Biologics).

[6]*See, e.g.*, id. at 98-99 (setting forth FDA memorandum concerning benoxaprofen adverse event reporting).

[7]*See id.* at 526-527 (setting forth memorandum from Dr. Temple concerning review of investigational files prior to NA approval).

[8]Adv. Comm. Transcript, pp. 156-157.

[9]*See, e.g., id.* at 106.

[10]*See* "Oversight Report," supra, at 3.

[11]*See id.*

[12]*See, e.g.*, "Oraflex Case Seen Changing Drug Industry," Wall St. J., Sept. 20, 1982, at 33.

[13]*See* "Warning About Using Anti-Arthritis Drugs Is Urged by U.S. Panel," Wall St. J., June 18, 1982, at 32.

[14]*See* "Arthritis Drug Stirs Ban Effort," Wash. Post, July 31, 1982, at A-4.

[15]*See* "3 Groups Suing To Bar Arthritis Drug Oraflex," Wash. Post, Aug. 3, 1982, at A-13.

[16]*See New Drug Hearings, supra.*

[17]*See, e.g., id.* at 119 (memorandum of telephone conversation between Dr. Harter of FDA and Mr. Sigelman of the Subcommittee staff).

[18]*Id.* at 16.

[19]*See, e.g., id.* at 532, 559-561 (letters from Commissioner Hayes to Representative Fountain).

[20]*See id.* at 564.

[21]*See* "Oversight Report," *supra*, at 8.

[22]*See* letter from Commissioner Young to Representative Weiss (Oct. 12, 1984).

[23]*See id.*; 47 Fed. Reg. 46622 (Oct. 19, 1982) (NA regulations); 48 Fed. Reg. 25720 (June 9, 1983) (investigational new drug, or "IND," regulations). The revised regulations became final in 1985 and 1987. *See* 50 Fed. Reg. 7452 (Feb. 22, 1985) (NA regulations); 52 Fed. Reg. 8798 (Mar. 19, 1987) (IND regulations).

[24]*See, e.g., New Drug Hearings*, supra, at 367.

[25]*See, e.g., id.* at 368-404, 508-512.

[26]*See* "Oversight Report," *supra*, at 7, 21-22.

[27]*See id.* at 7.

[28]*Id.* at 21.

[29]*FDA's Regulation of Zomax: Hearings Before a Subcomm. of the House Comm. on Gov't Operations*, 98th Cong., 1st Sess. 440-447 (1983) [hereinafter cited as Zomax Hearings].

[30]*Id.* at 2.

[31]*See, e.g., id.* at 108-119, 125-127.

[32]*Id.* at 91. As Dr. Harter of the FDA explained with respect to the withdrawal of Zomax from the market, "I think the news media got more interested; it got more publicity than one might expect, because the Tylenol thing had preceded it, and here was a company with a similiar—not the same problem—but from the news people's viewpoint a similar problem, deaths from a drug." Transcript of Arthritis Advisory Committee Meeting, May 12, 1983, at 9 [hereinafter cited as Advisory Comm. Tr.].

[33]*See Zomax Hearings, supra.*

[34]*See id.* at 85, 124.

[35]*Id.* at 86.

[36]*See id.* at 89. An FDA official explained to the Arthritis Advisory Committee that while it may seem to "be an easy thing" to review the relevant epidemiologic data, "it is clear that it is not" because the "reaction is rare enough that it is hard to get the noise out so you can start seeing the reaction you are really interested in." Advisory Comm. Tr., *supra*, at 10.

[37]*Zomax Hearings, supra*, at 89.

[38]*See id.*

[39]*Id.* at 90.

[40]*Id.* at 89.

[41]*See id.* at 102-104.

[42]*Id.* at 96 (Mr. Weiss).

[43]*Id.* at 97.

[44]*Id.* at 124 (Mr. Weiss).

[45]*See id.* at 132-134.

[46]*Id.* at 133.

[47]*See id.*

[48]*Id.* at 283, 285.

[49]*See id.* at 285 (Mr. Weiss).

[50]*Id.* at 286.

[51]*See id.* at 327-333, 509-532.

[52]*See id.* at 533-555.

[53]*"FDA's Regulation of Zomax,"* Thirty-First Report by the (House Comm. on Gov't Operations, H. Rept. No. 584, 98th Cong., 1st Sess. (1983).

[54]*Id.* at 27.

[55]*See id.* at 28-36.

[56]*See FDA's Regulation of the New Drug Suprol*, Hearing Before a Subcomm. of the House Comm. on Gov't Operations, 100th Cong., 1st Sess. 417-418 (1987).

[57]*See id.* at 35-36.

[58]*See id.* at 36-41.

[59]*See id.* at 42.

[60]*See id.* at 364.

[61]*See id.* at 2.

[62]*Id.* at 3.

[63]*See id.* at 364.

[64]*See id.* at 412-433.

[65]*See id.* at 336-366.

Mr. COBLE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HUGHES. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and pass the bill, H.R. 5475, as amended.

The question was taken.

Mr. STARK. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

LIBERIAN RELIEF, REHABILITATION, AND RECONSTRUCTION ACT OF 1992

Mr. DYMALLY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 994) to authorize supplemental appropriations for fiscal year 1991 for relief, rehabilitation, and reconstruction in Liberia, as amended.

The Clerk read as follows:

H.R. 994

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 "Liberian Relief, Rehabilitation, and Reconstruction Act of 1992".

SEC. 2. LIBERIAN RELIEF, REHABILITATION, AND RECONSTRUCTION.

(a) FINDINGS.—The Congress finds that—

(1) as a result of a protracted civil war, a general breakdown of law and order, the displacement of up to one-half of the country's population, the destruction of significant sections of the infrastructure, and the resulting economic collapse, the people of Liberia are suffering from—

(A) several malnutrition and life-threatening disease conditions;

(B) a total collapse of Liberia's agricultural market due to abandoned farmlands and displaced farmers; and

(C) a nationwide dismantling of the health, educational, and sanitation systems; and

(2) because of a long, historical, and special relationship with the Republic of Liberia, it is in the interest of the United States, and it is also in the interest of the international community, to respond to the urgent needs of the people of Liberia and to assist in every way possible that country's effort to restore democracy and promote democratic institutions.

(b) STATEMENT OF POLICY REGARDING ASSISTANCE FOR LIBERIA.—It is the policy of the United States to continue to commit increased diplomatic resources for the purposes of resolving the fundamental political conflicts that underlie the protracted humanitarian emergency in Liberia.

(c) SUPPORT FOR PEACEKEEPING EFFORTS.—It is the sense of the Congress that the President should continue to support the peacekeeping efforts in Liberia being carried out by the Economic Community of West African States (ECOWAS).

(d) INTERNATIONAL DISASTER ASSISTANCE FOR LIBERIA.—Chapter 9 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2292–2292p) is amended by adding at the end thereof the following new section:

"SEC. 495L. LIBERIAN CIVIL STRIFE ASSISTANCE.

"(a) IN GENERAL.—The President is authorized to provide assistance for civil strife relief, rehabilitation, and general recovery in Liberia. In providing such assistance, priority shall be given to activities that—

"(1) coordinate and enhance the efforts of the United States, Liberia, and international private and voluntary organizations to provide relief, rehabilitation, and recovery projects in Liberia;

"(2) assist in the restoration of services in Liberia that provide water and power;

"(3) encourage and facilitate the provision of health care, including activities relating to the provision of primary health care;

"(4) encourage and facilitate the restoration of educational services, including activities relating to the provision of educational services to displaced children; and

"(5) contribute to efforts by the international community to respond to the relief and development needs of the people of Liberia.

"(b) HUMANITARIAN PURPOSES.—Assistance provided under this section shall be for humanitarian purposes.

"(c) AVAILABILITY OF FUNDS.—Funds made available for the purposes of this chapter may be used to carry out this section.

"(d) GENERAL POLICIES AND AUTHORITIES.—Except as otherwise provided in this section, assistance under this section shall be furnished in accordance with the policies and general authorities contained in section 491.".

"(e) RESTRICTIONS ON ASSISTANCE TO LIBERIA.—For fiscal years 1992 and 1993, assistance under the Foreign Assistance Act of 1961 may be provided to the Government of Liberia only if the President determines and reports to the Congress that the Government of Liberia has achieved substantial progress toward reconciliation and toward free and fair elections that are monitored by international observers. This section shall not be construed to affect the provision of humanitarian assistance of the provision of assistance to nongovernmental organizations for activities to enhance progress toward reconciliation and free and fair elections in Liberia.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. DYMALLY] will be recognized for 20 minutes, and the gentleman from Nebraska [Mr. BEREUTER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 994 supports the democratic process in Liberia and hopes to provide both an incentive as well as broaden the scope of participation in the relief, rehabilitation, and recovery effort in this war-torn country.

This measure was updated and amended recently when it passed the Committee on Foreign Affairs unanimously. The amended version of this bill permits the U.S. Government to provide limited assistance for elections and troop encampment, demobilization, and retraining.

It is important that the United States Congress support diplomatic and peacekeeping efforts in Liberia to remedy the collapse of the economic, agricultural, health and educational systems in this country. It is my hope that we can act favorably on H.R. 994 so the position of the United States in support of the democratic movement in Liberia will be defined and clarified.

Mr. Speaker, this bill basically is a signal to the Liberians, both sides, to say that the United States is willing to lend support to Liberia if they can come to a reconciliation of the conflict which has torn that country apart.

More recently, Mr. Speaker, a staff member met with the Liberians in Dakar, Senegal, during the meeting of ECOWAS, and expressed the anxiety of Congress to see a resolving of that problem there, but further expressed a fear that if the situation is not settled soon enough, they may soon be forgotten.

Mr. Speaker, I am hopeful as a result of this measure and as a result of our discussions with them last week in Dakar, Senegal, during the ECOWAS meeting, that there will be another push to resolve the dilemma that is faced between the two sides.

Mr. Speaker, I have a letter for the RECORD from the Congressional Budget Office, which states:

The Congressional Budget Office has reviewed H.R. 994, the Liberian Relief, Rehabilitation, and Reconstruction Act of 1992, as ordered reported by the House Committee on Foreign Affairs on June 18, 1992. Enactment of the bill would not affect the budgets of Federal, State, or local government.

Mr. Speaker, the letter goes on to say it does not in any way appropriate any funds and gives the President the authority to do essentially what we did under the leadership of the gentleman from Nebraska [Mr. BEREUTER].

Mr. Speaker, this bill is almost a carbon copy of a measure which passed this House to develop the policy and position to bring some peace and stability to Liberia as we did in the Horn.

Mr. Speaker, I submit the letter referred to for the RECORD.

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 29, 1992.

Hon. DANTE B. FASCELL,
Chairman, Committee on Foreign Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 994, the Liberian Relief, Rehabilitation, and Reconstruction Act of 1992, as ordered reported by the House Committee on Foreign Affairs on June 18, 1992. Enactment of the bill would not affect the budgets of federal, state, or local governments.

The bill would authorize the President to provide civil strife and rehabilitation assistance to Liberia, and also would authorize the use of disaster assistance funds for those purposes. Because the President currently has authority to provide assistance to Liberia, and because the bill would not provide any additional authorizations of appropriations, enactment of the bill would not affect federal spending.

The bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

The CBO staff contact is Kent Christensen, who can be reached at 226-2840.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Mr. Speaker, I reserve the balance of my time.

Mr. BEREUTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in Liberia a brutal civil war has brought terrible devastation. In that country, as in so many other places around the world today that are wracked by civil war, we see the terrible results when ethnic strife and class conflict replace orderly government.

We all share a desire to aid the people of Liberia, a nation that enjoys a unique, positive, and longstanding relationship with the United States. It is appropriate, therefore, that H.R. 994 authorizes relief assistance for Liberia, and urges support for the peacekeeping efforts of the Economic Community of West African States [ECOWAS].

This Member would note that the United States has, in fact, already responded rapidly and appropriately to the crisis in Liberia. President Bush has already provided $160 million in aid and almost $25 million to the members and organization of ECOWAS since the war began in late 1989.

It is this Member's understanding that the administration does not oppose passage of this legislation. And, while the administration already has the authority to do much that is provided for in this legislation, passage of H.R. 994 will send an important signal that Congress will not ignore the bloodshed and misery in Liberia.

Mr. Speaker, this Member would commend the efforts of the chairman of the Subcommittee on Africa, the gentleman from California [Mr. DYMALLY]. He has always worked diligently to raise this body's awareness of the suffering and misery in Africa. This Member would commend him for his resolution.

Mr. Speaker, this Member would also urge adoption of this resolution.

□ 1540

Mr. Speaker, this Member would commend highly the efforts of the chairman of the Subcommittee on Africa, the gentleman from California [Mr. DYMALLY]. He has always worked diligently to raise this body's awareness of the suffering and misery in Africa.

This Member would commend him for introducing and championing this resolution. While there are months yet ahead, let me take this opportunity, since I am speaking on this legislation and since he is no seeking reelection, to commend him for the outstanding leadership that he has brought to the House Committee on Foreign Affairs and to the Congress by his many initiatives.

Mr. Speaker, this Member would also strongly urge adoption of the resolution by the U.S. House of Representatives.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DYMALLY. Mr. Speaker, I yield myself such time as I may consume.

I thank my friend for his kind comments. Had he made those comments before February 10, I never would have retired. I thank the gentleman very much for his kind words.

He also has done an outstanding job, and this is really a carbon copy of the leadership he provided on the Horn. We thank him for his leadership.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. DYMALLY] that the House suspend the rules and pass the bill, H.R. 994, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "An act to authorize assistance for civil strife relief, rehabilitation, and reconstruction in Liberia."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DYMALLY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered and passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There is no objection.

COMMENDING THE PEOPLE OF THE PHILIPPINES

Mr. LANTOS. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 348) to commend the people of the Philippines for successfully conducting peaceful general elections and to congratulate Fidel Ramos for his election to the Presidency of the Philippines.

The Clerk read as follows:

H. CON. RES. 348

Whereas achieving the first peaceful and constitutional succession of elected presidents is one of the most difficult and important steps in the establishment of democratic government;

Whereas the Philippines, under the leadership of President Corazon Aquino, has successfully completed this democratic transition, and thereby, secured the final victory of the 1986 "Peoples Power Revolution";

Whereas Fidel Ramos was a key participant in the 1986 Peoples Power Revolution that ended the Marcos dictatorship, and subsequently played a crucial role in opposing 6 abortive coup attempts that threatened to overthrow the democratically elected government;

Whereas newly-elected President Fidel Ramos will face the important challenge of continuing the difficult economic and political reforms begun by his predecessor;

Whereas despite a series of natural disasters (including earthquakes, typhoons, and volcanic eruption), the Philippine economy has turned from annual contraction under the previous regime to a yearly growth rate of 3 to 4 percent;

Whereas the American people can be proud of the role the United States has played in helping Filipinos succeed in the reestablishment of democracy in their country and in beginning free market economic reforms; and

Whereas despite the withdrawal of United States Armed Forces from Clark Air Field and Subic Bay Naval Station, the United States and the Philippines continue to be bound together by their Mutual Defense Treaty and to share important security interests in the region: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That in light of the continued strong security and economic interests shared by the United States and the Philippines as well as our deep cultural and historic ties, the Congress—

(1) congratulates Fidel Ramos on his election to the Presidency of the Philippines;

(2) commends the people of the Philippines for institutionalizing democratic government in their country by supporting peaceful and constitutional elections;

(3) urges the President of the United States to strongly support continued economic and political reform by the new Philippine Government; and

(4) believes a new era has begun in United States-Philippine Government; and

(5) believes a new era has begun in United States-Philippine relations and recommends that a post-bases relationship be built on the cooperative pursuit of mutually beneficial goals.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. LANTOS] will be recognized for 20 minutes, and the gentleman from Nebraska [Mr. BEREUTER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. LANTOS].

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

At the outset, I would like to pay tribute to the distinguished chairman of our subcommittee, the gentleman from New York [Mr. SOLARZ], the distinguished Republican ranking member, the gentleman from Iowa [Mr. LEACH], and our colleague, the gentleman from Guam [Mr. BLAZ] for bringing this resolution before us.

What does this resolution do? It states basically that the Congress of the United States commends the people of the Philippines for institutionalizing Democratic government in their country by supporting peaceful and constitutional elections. Our resolution congratulates Fidel Ramos on his election to the Presidency of the Philippines. It urges President Bush to support strongly continued economic and political reform by the Government of the Philippines.

The resolution reminds us that a new era has begun in United States-Philippine relations and recommends that, in light of United States withdrawal from our bases in the Philippines, a new bilateral relationship be built on a cooperative pursuit of mutually beneficial goals.

It should be recalled, Mr. Speaker, that the people power revolution in the Philippines, some 6½ years ago, was the first in a long series of peaceful and nonviolent democratic revolutions. It was a courageous effort, given the authoritarian tenor of the times. And the fact that it succeeded gave inspiration and confidence to people across this globe to strike out on behalf of democracy.

The question may well be asked: Would the freedom fighters in Warsaw or Prague or Bucharest or Moscow have been so courageous had the Philippine experiment failed? The Filipino democracy movement has made the repression of similar movements in Beijing and Rangoon all the more reprehensible. So whatever may happen in the Philippines, we should be ever grateful to the Filipino people for contributing to the more peaceful and democratic world order that exists today.

Mr. Speaker, a key transitional point in the life of a new democracy is the transfer of power from the first group to the second group of leaders. Just as Thomas Jefferson's inauguration marked the maturing of American democracy, so the assumption of power by Fidel Ramos from Cory Aquino is a significant event in the consolidation of democracy in the Philippines. It is an event well worth commemorating.

Our relationship with the Philippines, Mr. Speaker, was much more than access to Clark Air Force Base and to our naval base at Subic. For the future we should base our relations not on the end of that access but on everything else: The history of our very benign colonial rule, the strong cultural influence we continue to have on the islands, our powerful economic presence in the Philippines represented by about $2 billion in American investment, and our status as the No. 1 trading partner of the Philippines.

Equally important is our political kinship with another democratic people who have made a tremendous contribution to our own society—the 3 million Filipino-Americans.

I believe, Mr. Speaker, that this concurrent resolution will not only pay tribute to the institutionalization of democracy in the Philippines but will serve to strengthen United States-Filipino relations for many years to come.

Mr. Speaker, I reserve the balance of my time.

Mr. BEREUTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the recent elections in the Philippines and the smooth transition from President Aquino to President Ramos are important developments in Philippine politics. They reinforce the momentum toward democracy that we witness around the world. When an elected leader in a country such as the Philippines is able to turn over the reins of power through the election process, this surely advances the growth of democracy in Asia.

The resolution before us today recognizes this fact, and as recognized by my distinguished colleague from California [Mr. LANTOS], congratulates both President Ramos on his election and the Philippine people for their support of the democratic process. It also recognizes the serious economic and political reforms that need to take place in the Philippines, and urges President Bush to support the efforts of the Philippine Government to address them.

The United States has enjoyed a long and special relationship with the Philippines and its people, a relationship that has spanned nearly this entire century. In years past, Americans and Filipinos have stood side by side to fight totalitarian aggression. But, as strategic relationships have evolved, we find ourselves on the threshold of a new era in United States-Philippine relations. This Member sincerely hopes that our ties, our shared and positive history, and our mutual interests will serve as a solid foundation for continued cooperation and friendship between our two nations and peoples.

Mr. Speaker, this Member would congratulate the author of this resolution, the distinguished gentleman from New York [Mr. SOLARZ]—a man who probably knows more about the Philippine political situation than any Member of this body. This Member would also congratulate the distinguished gentleman from Iowa [Mr. LEACH], the ranking member of the Asia Subcommittee for working effectively to move this resolution forward. Lastly, this Member would recognize the leadership of the distinguished chairman and ranking minority member of the Foreign Affairs Committee, the gentlemen from Florida [Mr. FASCELL] and Michigan [Mr. BROOMFIELD] who have spent their career advancing the cause of democracy worldwide.

Mr. Speaker, this Member would urge adoption of House Concurrent Resolution 348.

□ 1550

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend my good friend and colleague, the gentleman from Nebraska [Mr. BEREUTER] for his eloquent support of this legislation, and I want to join him in paying tribute to the two outstanding members of the Committee on Foreign Affairs, our chairman and ranking Republican member, the gentleman from Florida [Mr. FASCELL] and the gentleman from Michigan [Mr. BROOMFIELD], as they are ready to retire from this body. They have both made enormous contributions to the globe in terms of peace, cooperation, and understanding.

Mr. BENNETT. Mr. Speaker, I rise in strong support of House Concurrent Resolution 348.

The Filipino people have demonstrated in war and in peace a strong adherence to democratic principles. The election of President Ramos in a truly democratic election is a tribute to him, to President Aquino, and to all Filipino people. Warm congratulations are due to all of them who made this possible.

Mr. Speaker, as a guerrilla in the Philippines in World War II, I owe my life to my Filipino comrades-in-arms of that time. As an American and a veteran of the war, I am grateful to the Filipino people for this further milestone in the progress of this beautiful country.

Mrs. MINK. Mr. Speaker, I rise in support of House Concurrent Resolution 348 in praise of our friends and allies of the Republic of the Philippines, for the recent free election that saw Mr. Fidel Ramos elected to the Presidency of that democracy. A new age has dawned on this overcast country, and the continued support of the American people and Government is critical to the stability and effectiveness of the Ramos administration to revitalize the Philippine nation.

About one-fifth of the State of Hawaii's population is of Filipino background, 200,000 persons with an abiding interest in the well-being of their ancestral homeland. Across the United States we have more than 2 million Filipinos in all walks of life that share an equal reverence and concern that the bonds that exist between the Philippines and America remain strong and secure. Bonds that were forged in battle and tempered by our common dedication to democracy and economic opportunity.

Our Filipino allies have endured incredible tribulations and misfortunes in recent times, both manmade and natural, that must now be confronted and remedied by President Ramos and his new administration.

The extraordinary "People's Power" legacy of former President Corazon Aquino, which literally revolutionized the Philippines, must be acknowledged as well. Her personal integrity and example inspired her citizens to renew their faith in themselves, and the conduct of the recent Philippine national elections is a tribute to the democratic spirit that once again radiates from this proud, but congenial people.

House Concurrent Resolution 348 congratulates Fidel Ramos on his election, commands the people of the Philippines for institutionalizing democratic government in their country by supporting peaceful and constitutional elections, urges our President to strongly support continued economic and political reform by the new Philippine Government, and expresses our country's belief that a new era has begun in our joint relations built on the cooperative pursuit of mutually beneficial goals.

It is a pleasure and honor to express my approval of this timely resolution, Mr. Speaker, and I look forward to working with our compadres in President Ramos' administration and the Philippine Congress to bring its provisions to fruition.

Mr. LANTOS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. LANTOS] that the House suspend the rules and agree to House Concurrent Resolution 348.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LANTOS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Concurrent Resolution 348, which was just adopted by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ALASKA PENINSULA WILDERNESS DESIGNATION ACT OF 1992

Mr. MILLER of California. Mr. Speaker, I move that the House suspend the rules and pass the bill (H.R. 1219) to designate wilderness, acquire certain valuable inholdings within national Wildlife Refuges and National Park System units, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1219

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 "Alaska Peninsula Wilderness Designation Act of 1992".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term "land" means lands, waters, and interests therein;

(2) The term "public lands" means land situated in Alaska which, after the date of enactment of this Act, the title is in the United States, except—

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provisions of Federal law; and

(B) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished.

(3) The term "Native Corporation" means any Regional Corporation, any Village Corporation, any Native group and those Native entities which have incorporated pursuant to section 14(h)(3) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(3)).

(4) The term "Regional Corporation" has the same meaning as such term has under section 3(g) of the Alaska Native Claims Settlement Act.

(5) The term "Village Corporation" has the same meaning as such term has under section 3(j) of the Alaska Native Claims Settlement Act.

(6) The term "Native group" has the same meaning as such term has under sections 3(d) and 14(h)(2) of the Alaska Native Claims Settlement Act.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Alaska Statehood Act" means the Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (72 Stat. 339), as amended.

(9) The term "State" means the State of Alaska.

(10) The term "Koniag" means Koniag, Incorporated, a Regional Corporation.

(11) The term "Selection Rights" means those rights granted to Koniag pursuant to sections 12(a), 12(b), and 14(h)(8) of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended, to receive title to the oil and gas rights and other interests in the subsurface estate of approximately two hundred and seventy-five thousand acres of public lands in the State of Alaska which lands are identified as "Koniag Selections" on the map entitled "Koniag Interest Lands, Alaska Peninsula", dated May 1989.

(1) The term "agency" includes—

(A) any instrumentality of the United States;

(B) any element of an agency; and

(C) any wholly owned or mixed-owned corporation of the United States Government identified in chapter 91 of title 31, United States Code.

(13) The term "property" has the same meaning as is provided the term in section 12(b)(7) of Public Law 94-204 (43 U.S.C. 1611 note), as amended.".

SEC. 3. DESIGNATION OF WILDERNESS.

(a) DESIGNATION OF WILDERNESS.—The public lands within the boundaries depicted as "Proposed Wilderness" on the following identified maps are hereby designated as wilderness, and therefore as components of the National Wilderness Preservation System, with the nomenclature and approximate acreage as indicated below:

(1) Aniakchak Wilderness of approximately five hundred and three thousand acres within the Aniakchak National Monument and Preserve and which is generally depicted upon the map entitled "Aniakchak Wilderness" dated July 1992.

(2) Alaska Peninsula Wilderness of approximately one million eight hundred and seventy-six thousand acres within the Alaska Peninsula National Wildlife Refuge and which is generally depicted upon the map entitled "Alaska Peninsula Wilderness" dated July 1992.

(3) Approximately three hundred and forty-seven thousand acres within the Becharof National Wildlife Refuge as an addition to the existing Becharof Wilderness, as generally depicted upon the map entitled "Becharof Additional Wilderness" dated July 1992.

(b) MAP AND LEGAL DESCRIPTION.—As soon as practicable after the enactment of this Act, a map and legal description of each wilderness area designated by this Act shall be published in the Federal Register and filed with the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives and with the Committee on Energy and Natural Resources of the Senate. Each such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description and map. A copy of each map shall be available for public inspection in an appropriate office of the National Park Service and the Fish and Wildlife Service, Department of the Interior.

(c) LANDS INCLUDED.—Except for those lands subject to Koniag Selection Rights which are subsequently relinquished pursuant to section 5, only those lands within the boundaries of any wilderness area which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such area. No lands within the boundaries of any wilderness area designated pursuant to section 3(a) hereof and which, before, on, or after the date of enactment of this Act, are conveyed to the State, to any Native Corporation, or to any private party, shall be subject to the regulations applicable solely to public lands within such wilderness areas. Any lands subject to Koniag Selection Rights relinquished to the United States pursuant to section 5 which are within the boundaries of a wilderness area designated by this Act shall become part of such wilderness areas and be administered accordingly.

SEC. 4. MANAGEMENT OF WILDERNESS AREAS.

(a) GENERALLY.—Except as provided in subsection (b) of this section, and subject to valid existing rights, the lands designated as Aniakchak Wilderness by this Act shall be managed by the Secretary of the Interior in the same manner as the lands designated as wilderness by section 701 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), and the other lands designated as wilderness by this Act shall be managed by such Secretary in the same manner as the lands designated as wilderness by section 702 of such Act.

(b) PERMITS.—(1) Any special use or concession permit which was in existence during 1991 for operations on lands designated as wilderness by this Act and which except for designation of such lands as wilderness could have remained in effect or been renewed by or reissued to the same permittee, may be renewed or reissued to such permittee, may be renewed or reissued to such permittee, subject to the provisions of this subsection.

(2) Nothing in this Act shall require renewal or reissuance of a permit if the Secretary, for reasons other than the designation of lands as wilderness, determines that such action would be inconsistent with applicable law or established regulations. Nothing in this Act shall preclude the Secretary from canceling or otherwise restricting any permit for any reasons other than the designation of lands as wilderness.

(3) No renewal or reissuance of a permit described in paragraph (1) of this subsection shall be for a period longer than the lifetime of the permittee, and no such permit shall be transferable or assignable.

(4) Designation of lands as wilderness shall not prevent any structures and other improvements authorized by a permit described in paragraph (1), including cabins, from continuing to be used, maintained, and if necessary, replaced, to the extent otherwise permissible, but no additional structures or other improvements shall be permitted on lands so designated.

SEC. 5. ACQUISITION OF KONIAG SELECTION RIGHTS.

(a) IN GENERAL.—(1) If the Secretary receives from Koniag a timely tender of relinquishment of the Selection Rights, the Secretary shall accept such tender no later than 60 days after its receipt, and shall notify the Secretary of the Treasury of such acceptance.

(2) For purposes of this subsection, a tender by Koniag shall be timely if it is received by the Secretary no later than 180 days after either—

(A) receipt by Koniag of the Secretary's determination of the value of the Selection Rights pursuant to subsection (b) of this section, or

(B) the outcome of the procedures established by subsection (b) of this section for resolution of any dispute regarding such value,

whichever last occurs, unless the Secretary and Koniag agree to modify his deadline.

(b) VALUE.—(1) The value of the Selection Rights shall be equal to the fair market value of the oil and gas interests, and where appropriate the fair market value of the subsurface estate of the lands or interests in lands.

(2) Within 90 days after the date of enactment of this Act, Koniag and the Secretary shall meet to determine the identity of a qualified appraiser who shall meet to determine the identity of a qualified appraiser who shall perform an appraisal of the Selection Rights in conformity with the standards of the Appraisal Foundation and utilizing the methodology customarily used by the Minerals Management Service of the Department of the Interior in valuing such interests. Such appraiser shall be selected by the mutual agreement of Koniag and the Secretary, or if such agreement is not reached within 60 days after such initial meeting, then Koniag and the Secretary, no later than 90 days after such initial meeting, shall each designate an appraiser who is qualified to perform the appraisal. The 2 appraisers so identified shall select a third qualified appraiser who shall perform the appraisal. Within 180 days after the selection of the third appraiser, a written appraisal report setting out the value of the Selection Rights and the methodology used to arrive at it, shall be delivered to the Secretary and to Koniag.

(3) Within 60 days after the receipt of the appraisal report described in paragraph (2), the Secretary shall determine the value of the Selection Rights and shall immediately notify Koniag of such determination. The determination of value shall be considered final agency action for purposes of judicial review under chapter 7 of title 5, United States Code. If Koniag does not agree with the value as determined by the Secretary, the procedures specified in section 206(d) of Public Law 94-579, as amended, shall be used to establish the value, but the average value per acre of the Selection Rights shall not be more than $300.

SEC. 6. KONIAG ACCOUNT.

(a) ESTABLISHMENT.—(1) Notwithstanding any other provision of law, on October 1, 1997, the Secretary of the Treasury, in consultation with the Secretary, shall establish a Koniag Account.

(2) Beginning on October 1, 1997, the balance of the account shall—

(A) be available to Koniag for bidding on and purchasing property sold at public sale, subject to the conditions described in paragraph (3); and

(B) remain available until expended.

(3)(A) Koniag may use the account established under paragraph (1) to bid as any other bidder for property (wherever located) at any public sale by an agency and may purchase the property in accordance with applicable laws and regulations of the agency offering the property for sale. Notwithstanding any other provision of law, the right to draw against such account shall be assignable in whole or in part by Koniag, but no assignment shall be recognized by the Secretary of the Treasury until written notice thereof is filed with the Secretary of the Treasury and the Secretary of the Interior by Koniag.

(B) In conducting a transaction described in subparagraph (A), an agency shall accept, in the same manner as cash, any amount rendered from the account established by the Secretary of the Treasury under paragraph (1). The Secretary of the Treasury shall adjust the balance of the account to reflect the transaction.

(C) The Secretary of the Treasury, in consultation with the Secretary of the Interior, shall establish procedures to permit the account established under paragraph (1) to—

(i) receive deposits;

(ii) make deposits into escrow when an escrow is required for the sale of any property; and

(iii) reinstate to the account any unused escrow deposits in the event sales are not consummated.

(b) AMOUNT.—The initial balance of the account established in subsection (a) shall be equal to the value of the Selection Rights as determined pursuant to section 5 of this Act.

(c) TREATMENT OF AMOUNTS FROM ACCOUNT.—(1) The Secretary of the Treasury shall deem as cash payments any amount tendered from the account established pursuant to subsection (a) and received by agencies as proceeds from a public sale of property, and shall make any transfers necessary to allow an agency to use the proceeds in the event an agency is authorized by law to use the proceeds for a specific purpose.

(2)(A) Subject to subparagraph (B), the Secretary of the Treasury and the heads of agencies shall administer sales pursuant to this section in the same manner as is provided for any other Alaska native corporation authorized by law as of the date of enactment of this section (including the use of similar accounts for bidding on and purchasing property sold for public sale).

(B) Amounts in an account created for the benefit of a specific Alaska native corporation may not be used to satisfy the property purchase obligations of any other Alaska native corporation.

(d) REVENUES.—The Selection Rights shall be deemed to be an interest in the subsurface for purposes of section 7(i) of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. MILLER] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MILLER].

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 15 legislative days in which to revise and extend their remarks on H.R. 1219.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California, I yield such time as I may consume. Mr. Speaker, I rise in support of H.R. 1219, the Alaska Peninsula Wilderness Designation Act of 1992. This is a historic day for the gentleman from Alaska and I am pleased to stand with him in support of this bill that benefits both the environment and the Alaska Native community.

H.R. 1219 designates 2.7 million acres of wilderness within three conservation system units on the Alaska Peninsula and acquires 275,000 acres of inholdings within those units.

Although Alaska wilderness designations have generated significant controversy in the past, this legislation was sponsored by the gentleman from Alaska and received bipartisan support from the Interior Committee.

In the 1980 Alaska National Interest Land Conservation Act [ANILCA], Congress designated 104 million acres of new or expanded conservation system units on public lands in Alaska. The state contains about 75 percent of the Nation's total park land and about 90 percent of the Nation's wildlife refuge lands.

Section 1317 of ANILCA directs the Secretary of the Interior to review all Alaska National Wildlife Refuge System lands and National Park System lands that are not already preserved as wilderness to determine their suitability for wilderness designation. In turn, the President is required to submit recommendations to Congress.

According to a General Accounting Office investigation done at the Interior Committee's request, U.S. Fish and Wildlife Service planning teams determined that an additional 52.6 million acres in Alaska wildlife refuges would qualify for wilderness designation. Despite a 1987 deadline established by section 1317 of ANILCA for submitting recommendations to Congress, the administration has yet to comply with the law.

The wilderness designations included in this legislation are within the Alaska Peninsula National Wildlife Refuge, the Becharof National Wildlife Refuge, and the Aniakchak National Monument and Preserve. The designations largely reflect the recommendations of the managers of each of the three conservation system units.

In order to eliminate inholdings which pose an obstacle to wilderness designation, the legislation provides for the acquisition on a willing seller basis of 275,000 acres of Alaska Native Claims Settlement Act oil and gas selection from Koniag, Inc., an Alaska Native regional corporation. In Exchange for Koniag's selection rights, the fair market value of which will be determined by the Department of the Interior in an appraisal process, Koniag will be compensated with a property account that can be used to purchase

excess Federal property. The Koniag selection rights can be valued at no more than $300 per acre.

Significantly, the legislation specifies that the revenues received by Koniag will be subject to the revenue sharing provisions of section 7(i) of ANCSA.

Under section 7(i), 70 percent of the revenues received by an Alaska Native regional corporation from the development of subsurface estate or timber are required to be shared among the other regional corporations, who in turn make distributions to their village corporations and at large shareholders. Increasingly, it is evident that ANCSA section 7(i) revenue sharing is critical to the economic viability of many Native corporations.

I would like to commend the gentleman from Alaska for his sponsorship of this legislation.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 1219, the Alaska Peninsula Wilderness Designation Act of 1991. This legislation would consolidate land ownership in Alaska, benefit Native Alaskans in the Kodiak Island area, and make possible the designation of wilderness in an area where there are no conflicts with other economic development potential.

I would like to express my appreciation to Chairman MILLER and his staff for the way in which they have worked on this legislation. My guess is that it is such a rare occasion to see DON YOUNG introducing a wilderness bill, that they wanted to move it along as quickly as possible before I changed my mind.

Unfortunately, over the course of the years the perception has grown up that I am opposed to all wilderness designations in the State of Alaska. That's not true—I am not opposed to all wilderness—just most of it. I think wilderness designation must be measured against the needs of the people who live in Alaska and other States. I think lands owned by the public should be used to help alleviate joblessness and to help resolve social ills, just as public resources in the form of moneys are used to alleviate joblessness or compensate the unemployed. I am opposed to the broad, sweeping designations of wilderness simply for the sake of playing the acreage game, without regard for impact that such action has on people. I believe that this bill is an excellent example of what we can do when we work together.

There is no question that the lands being designated as wilderness by H.R. 1219 are eligible wilderness. But H.R. 1219 also avoids including lands which are necessary for the economic survival of Alaskans. The transportation corridors, which were recognized as being important to the development of the region, are left intact and available for use when the need arises.

Likewise, this legislation also contains provisions for the protection of the people who earn their livelihoods from these lands, some of whom have been out there since before the parks and refuges were created.

Under the provisions of this bill, their rights to continue to use the lands for which they hold permits will not be cut off simply because there is a change in the status of the lands and they are designated as wilderness. In keeping with this intent, I fully expect both the Fish and Wildlife Service and the Park Service to honor the commitment that we are making to these individuals—that they will not be harassed because of their use, nor will their permits be changed or revoked.

Another significant aspect of this legislation is the role that Koniag has played in making its inholdings in these wilderness areas available for acquisition in order to make the designations possible. Without its agreement, Koniag's inholdings would have been a major impediment to the wilderness designations.

Because of the nature of these inholdings, Koniag would have the right not only to develop the lands it selected but also the right of access across adjacent Park and Refuge lands. The development of the Koniag lands and its use of its access rights could have made management of the federal lands under a wilderness designation more difficult for the agencies.

Since the hearings were held on my bill, Koniag and the staff have worked out what appears to be a satisfactory method of compensation. Rather than the OCS lease credits in the original bill, Koniag has agreed to accept the right to acquire government property no longer required for the government's use. We have limited the use of this provision until after October 1, 1997.

Again I would like to express my appreciation to the chairman and the staff of the committee in working with us to produce this bill. When we started out, I have to admit that I didn't know whether we would be successful in reaching our goal but it appears that so far we have.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 1219, the Alaska Peninsula Wilderness Designation Act of 1992.

H.R. 1219 addresses the management of two units of the National Wildlife Refuge System. For this reason, the bill was sequentially referred to the Committee on Merchant Marine and Fisheries. The committee ordered the bill reported by voice vote on July 23, 1992.

H.R. 1219 would designate as wilderness about 2.7 million acres within three conservation areas on the Alaska Peninsula. It would also acquire for the Federal Government 275,000 acres of oil and gas selection rights from the Koniag Alaska Native Regional Corporation.

The oil and gas selection rights are inholdings that could disrupt the management of these parks and refuges. H.R. 1219 will eliminate the inholdings, remove obstacles to wilderness designation, and generally improve the management of these conservation areas. H.R. 1219 also provides appropriate, but not excessive, compensation to the Alaska Native Regional Corporations.

I urge my colleagues to support H.R. 1219.

Mr. PANETTA. Mr. Speaker, H.R. 1219 designates certain public land in Alaska as wilderness and authorizes the purchase of rights and interest in those lands held by the Koniag Native Corp. To compensate the corporation, the bill establishes an account in the Treasury that will contain the equivalent of the fair market value of those rights and interests. The corporation will be able to use the account to bid on and purchase Federal property sold at public sale. The bill provides new budget authority and it is direct spending.

When the Committee on Interior and Insular Affairs reported H.R. 1219, it was subject to a point of order under section 302(f) of the Budget Act. The bill was estimated to increase budget authority and outlays by the Federal Government in 1997 by up to $83 million and that new budget authority caused the Committee to exceed its allocation for the 5-year period, 1993–97.

Today, the House is considering H.R. 1219 with an amendment that shifts the date of the establishment of the Koniag Native Corp. account from fiscal year 1997 to fiscal year 1998. Avoiding the Budget Act windows does not, however, resolve the direct spending implications of the bill. H.R. 1219 was not paid for in 1997 and is not paid for in 1998.

I will note that the estimated cost of H.R. 1219 is somewhat fluid. The bill affects 275,000 acres and caps the valuation at $300 per acre, therefore, it could increase direct spending by up to $83 million. However, that figure assumes each acre will be valued at the maximum permitted. According to the cost estimate, CBO expects the value per acre to be significantly less than $300, but does not estimate the low end of the range of possible costs.

In light of the budgetary implications of H.R. 1219, I will continue to monitor its progress through the Senate and House and I continue to urge the committee to resolve the direct spending issues contained in the bill.

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. MILLER] that the House suspend the rules and pass the bill, H.R. 1219, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

TECHNICAL AMENDMENTS TO CERTAIN FEDERAL INDIAN STATUTES

Mr. MILLER of California. Mr. Speaker, I move that the House suspend the rules and pass the bill (H.R. 5686) to make technical amendments to certain Federal Indian statutes, as amended.

The Clerk read as follows:

H.R. 5686

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

SECTION 1. CORRECTION OF LAND DESCRIPTION WITH RESPECT TO THE GRAND RONDE RESERVATION.

Section 4(b) of Public Law 100-425 (25 U.S.C. 713f note) is amended by striking "SE¼NE¼" in the fourth column of the description of the 47th tract of land listed in such subsection and inserting the following: "SE¼NE¼,E½SW¼".

SEC. 2. EXTENSION OF DEADLINE WITH RESPECT TO PONCA ECONOMIC DEVELOPMENT PLAN.

Section 10(a)(3) of the Ponca Restoration Act (25 U.S.C. 983h(a)(3)) is amended by striking "2" and inserting "3".

SEC. 3. EXPENDITURE OF JUDGMENT FUNDS.

(a) CROW TRIBE JUDGMENT FUND.—Notwithstanding any other provision of law, or any distribution plan approved pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary of the Interior may reprogram, in accordance with Crow Tribal Resolution 91-14, any and all remaining funds (principal and interest accounts) which were awarded in satisfaction of the judgments in Indian Claims Commission Docket No. 54 (1961) and United States claims Court Docket Nos. 796-71 and 797-71 (1981).

(b) SHOSHONE-BANNOCK JUDGMENT FUND.—Notwithstanding any other provision of law, or any distribution plan approved pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary of the Interior may reprogram, in accordance with Shoshone-Bannock Tribal Resolution GNCL-91-0616, dated July 19, 1991, any and all remaining funds (principal and interest accounts) which were awarded in satisfaction of the judgment in Indiana Claims Commission Docket No. 326-C-2 (1985).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. MILLER] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chairman recognizes the gentleman from California [Mr. MILLER].

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5686.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MILLER of California. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, H.R. 5686 is sponsored by Congressman RHODES. The amended bill makes technical amendments to four Federal statutes. The first provision would correct a land description contained in the Grand Ronde Reservation Act. The second provision would extend the time period for the Secretary of the Interior to develop an economic development plan for the Ponca Indian Tribe of Nebraska.

The third provision allows the Crow Indian Tribe of Montana to reprogram judgment funds. The fourth provision allows the Shoshone-Bannock Indian Tribe of Idaho to reprogram judgment funds. The measure is noncontroversial and I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5686, which was introduced by the Gentleman from Arizona, [Mr. RHODES]. As the Gentleman from California has indicated, H.R. 5686 would make technical amendments to certain Federal Indian Statutes.

The first is the correction of a land description. Pursuant to the Grand Ronde Reservation Act, the selection of lands available for establishment of the reservation was limited to public lands administered by the BLM. The lands eventually chosen consisted of a tract of Oregon and California Railroad grant lands. To compensate for the BLM's loss of this tract, section 4 of the act redesignated a series of Federal public domain land parcels as revested Oregon and California railroad grant lands.

Section 4(B) sets forth descriptions of the 48 redesignated land parcels. The 47th tract, however, is incorrectly identified. This legislation would correct that oversight. I should note that there have been two prior corrections made to the land descriptions set forth in section 4(B), one in 1988 and another in 1990. I trust this will be the last.

The second technical amendment contained in the bill is to the Ponca Restoration Act of 1990, which restored Federal recognition to the Ponca Tribe of Nebraska. Section 10 of that act directs the Secretary of the Interior to establish an economic development plan with the tribe. Subsection 10(A)(3) directs the Secretary to submit the plan to Congress within 2 years of enactment—by October 31, 1992.

H.R. 5686 would extend the 2-year deadline for submission by a year, and is necessary because the Ponca Act was signed into law on October 31, 1990, in the very early stages of fiscal year 1991. No appropriations were provided to fund the Ponca's development plan that year, and the tribe had to wait a full year, until fiscal year 1992, for the appropriation of its planning funds. By extending the submission deadline by 1 year, the tribe and the Secretary will be allowed a full 2 years to develop and submit the plan, in keeping with the original intent of the Congress.

Section 3 of H.R. 5686 would allow the Secretary of the Interior to reprogram amounts remaining in certain judgment fund accounts of two tribes: The Crow Tribe of Montana and the Shoshone-Bannock Tribe of Idaho.

Under the provisions of the Indian Judgment Fund Distribution Act—25 U.S.C. §1401 et seq—up to 80 percent of any judgment award to a tribe can be distributed on a per capita basis. The remaining funds are to be used for the benefit of the tribe pursuant to a plan reached between the tribe and the Secretary of the Interior. In the case of these two tribes, however, those plans have run their course, leaving a remainder of unspent funds in the accounts. However, the funds cannot be used for any purpose other than those originally specified in the tribe's plan, even if that purpose no longer exists. This bill would remedy that problem, by allowing the two tribes to use the funds remaining in their accounts, with the approval of the Secretary, for projects beneficial to their members.

In the case of the Crow Tribe, about $664,500 remains in the trust accounts set up for the tribe with money from judgment awards in Indian Claims Commission docket No. 54, and U.S. Court of Claims docket Nos. 796-71 and 797-71. In docket No. 54, a programming plan for the claims award was approved in 1962; the balance of that fund is about $121,300. The moneys from judgments in docket. Nos. 796-71 and 797-71, about $247,000, were never programmed. The principal and interest in these funds now equals approximately $543,200. This bill would allow the tribe to use the funds for beneficial projects on the reservation.

As for the Shoshone-Bannock Tribe, the original $5.8 million judgment award to the tribe from Indian Claims Commission docket No. 326-C-2 was subject to a plan devised by the tribe and the Secretary in which 80 percent of the fund was distributed per capita to tribal members. The remaining 20 percent was to be used for land acquisition, and the interest on the 20 percent was supposed to be used for covering the costs of water rights litigation. The per capita distribution was made, and the land acquired, but the water litigation was settled and there remains $900,000 in the interest account.

This legislation would permit the tribe, with the approval of the Secretary, to use that money for the benefit of the tribe.

Mr. Speaker, H.R. 5686 has broad bipartisan support. Congressmen AUCOIN and BEREUTER, in whose districts the Grand Ronde and Ponca Tribes reside, are cosponsors of this legislation. In addition, all of the tribes affected by

H.R. 5686 enthusiastically support it, as does the administration.

In closing, I would like to thank the chairman of the Interior Committee for agreeing to bring this legislation to the floor so expeditiously. Because of the extremely time-sensitive nature of section 2 of this bill, and because we have so few legislative days left this session, I trust that the other body will move as swiftly.

Mr. Speaker, I yield 3 minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, this Member rises today in support of H.R. 5686, legislation to make technical amendments to certain Federal Indian statutes.

This Member would like to thank the distinguished gentleman from Arizona [Mr. RHODES] for introducing this bill that makes an important technical correction to Public Law 101-484.

This law reestablished Federal recognition for the Ponca Tribe of Nebraska. It also required the tribe to submit an economic development plan 2 years from the date of enactment, which would be October 31, 1992. Since no appropriations were provided to fund the Poncas' economic development plan in 1990, the tribe effectively only had 1 year of funding to develop a plan. This technical correction would allow the Ponca Tribe an additional year to complete the plan, thereby giving them the 2 fully funded years that clearly were originally intended by Congress.

An economic development plan is crucial to the success to tribal efforts and will greatly benefit each member of the Ponca Tribe, by providing increased economic opportunities for all involved.

Of course, the Ponca Tribe is very supportive of this change.

It is critical that this bill move quickly. The gentleman from Arizona [Mr. RHODES] introduced the legislation on July 23, and in less than 2 weeks it is being considered by the House. Once it is passed by the House, this Member would strongly hope that this time-sensitive legislation not languish in the other body. Also this Member extends his appreciation to them.

Mr. Speaker, this Member would like to urge his colleagues to support this legislation.

Mr. WILLIAMS. Mr. Speaker, I rise today in support of H.R. 5686, a bill to make technical amendments to certain Federal Indian statutes. There is a provision in this bill that I would like to bring to your attention. It allows the Crow Tribe of Montana to access and spend about $664,500 from trust fund accounts held by the Bureau of Indian Affairs for past judgment awards.

The Indian Justice Fund Distribution Act set up a system by which funds awarded to a tribe can be distributed. Up to 80 percent can be distributed on a per capita basis while the remaining funds must be used for the benefit of the entire tribe. The tribe must formulate a plan to spend the funds and reach agreement with the Secretary of the Interior. In the case of the Crow, their plans have been implemented with $664,500 left unspent. The unspent funds cannot be used for purposes outside of the plan and the original act provides no mechanism for additional planning. Therefore, this bill allows the Crow to formulate a second plan with the approval of the Secretary, to utilize the remaining funds.

The Crow Tribe wants to use part of its funds for an excellent and worthwhile effort, renovation of the Crow youth camp in the Bighorn Mountains for drug treatment and rehabilitation programs. Earlier this year, the University of Minnesota completed a study on native American youth. They found that the death rate for native American teenagers is twice that of adolescents of other racial and ethnic backgrounds. The study reasons that the high rates of mortality among youth related to suicide and motor vehicle crashes are no doubt associated with substance abuse. I think the Crow Tribe's plan to take care of their youth, and in turn the tribe's future, is commendable.

Funds would also be used to expand the existing Crow tribal offices. I wholeheartedly support this bill.

Mr. MARLENEE. Mr. Speaker, I rise today in support of the Indian technical amendments legislation, H.R. 5686. The Crow Tribe of Montana has requested, pursuant to current law, that Congress authorize the release of approximately $600,000 of funds belonging to the tribe that are currently held in the treasuries. This legislation would authorize the Secretary of the Interior to reprogram these funds consistent with purposes outlined in a 1991 Crow tribal resolution.

The tribe intends to use the funds to renovate the Crow youth camp in the Bighorn Mountains to house a drug treatment and rehabilitation program and to enhance the current tribal administration building.

I am particularly pleased with the tribe's ongoing commitment to the needs of its members, especially its youth, in the area of drug treatment and rehabilitation. That the tribe is spending its own funds, not appropriated funds of the BIA for this purpose, is especially significant. I look forward to a time when our Nation's Indian tribes will have the ability to make these funding choices on their own—and am encouraged by the priorities this resolution demonstrates of the Crow Tribe.

□ 1600

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from California [Mr. MILLER] that the House suspend the rules and pass the bill, H.R. 5686, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

REPORT ON NATIONAL EMERGENCY WITH RESPECT TO IRAQ—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 102-367)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, without objection, referred to the Committee on Foreign Affairs and ordered to be printed:

To the Congress of the United States:

I hereby report to the Congress on the developments since my last report of February 11, 1992, concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 of August 2, 1990. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1703(c).

Executive Order No. 12722 ordered the immediate blocking of all property and interests in property of the Government of Iraq (including the Central Bank of Iraq) then or thereafter located in the United States or within the possession or control of a U.S. person. In that order, I also prohibited the importation into the United States of goods and services of Iraqi origin, as well as the exportation of goods, services, and technology from the United States to Iraq. I prohibited travel-related transactions and transportation transactions to or from Iraq and the performance of any contract in support of any industrial, commercial, or governmental project in Iraq. U.S. persons were also prohibited from granting or extending credit or loans to the Government of Iraq.

The foregoing prohibitions (as well as the blocking of Government of Iraq property) were continued and augmented on August 9, 1990, by Executive Order No. 12724 which I issued in order to align the sanctions imposed by the United States with United Nations Security Council Resolution 661 of August 6, 1990.

This report discusses only matters concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 and matters relating to Executive Order No. 12724 ("the Executive orders"). The report covers events from February 2, 1992, through August 1, 1992.

1. The economic sanctions imposed on Iraq by the Executive orders are administered by the Treasury Department's Office of Foreign Assets Control ("FAC") under the Iraqi Sanctions

Regulations, 31 CFR part 575 ("ISR"). There have been no amendments of those regulations since my last report.

2. Investigations of possible violations of the Iraqi sanctions continue to be pursued and appropriate enforcement actions taken. These are intended to deter future activities in violation of the sanctions. Additional civil penalty notices were prepared during the reporting period for violations of the IEEPA and ISR with respect to transactions involving Iraq. Penalties were collected, principally from financial institutions which engaged in unauthorized, albeit apparently inadvertent, transactions with respect to Iraq.

3. Investigation also continues into the roles played by various individuals and firms outside of Iraq in Saddam Hussein's procurement network. These investigations may lead to additions to the FAC listing of individuals and organizations determined to be Specially Designated Nationals ("SDN's") of the Government of Iraq. In practice, an Iraqi SDN is a representative, agent, intermediary, or front (whether open or covert) of the Iraqi government that is located outside of Iraq. Iraqi SDN's are Saddam Hussein's principal instruments for doing business in third countries, and doing business with them is the same as doing business directly with the Government of Iraq.

The impact of being named an Iraqi SDN is considerable: all assets within U.S. jurisdiction of parties found to be Iraqi SDN's are blocked; all economic transactions with SDN's by U.S. persons are prohibited; and the SDN individual or organization is exposed as an agent of the Iraqi regime.

4. Since my last report, one case filed against the Government of Iraq has gone to judgment. *Centrifugal Casting Machine Co., Inc.* v. *American Bank and Trust Co., Banca Nazionale del Lavoro, Republic of Iraq, Machinery Trading Co., Baghdad, Iraq, Central Bank of Iraq, and Bank of Rafidain*, No. 91-5150 (10th Cir., decided June 11, 1992), arose out of a contract for the sale of goods by plaintiff to the State Machinery Co., an Iraqi governmental entity. In connection with the contract, the Iraqi defendants opened an irrevocable letter of credit in favor of Centrifugal, from which Centrifugal drew a 10 percent advance payment. Repayment of the advance payment in case of nonperformance by Centrifugal was guaranteed by a standby letter of credit. Performance did not occur due to the imposition of economic sanctions against Iraq in August 1990, and the United States claimed that an amount equal to the advance payment was blocked property. The district court ruled that the standby letter of credit had expired, that no U.S. party was liable to an Iraqi entity under the standby letter of credit, and that the advance payment funds were therefore not blocked property and could be distributed to U.S. persons. The court of appeals affirmed the ruling of the district court that there was no blocked Iraqi property interest in the advance payment funds, based on applicable principles of letter of credit law.

5. FAC has issued 288 specific licenses regarding transactions pertaining to Iraq or Iraqi assets. Since my last report, 71 specific licenses have been issued. Most of these licenses were issued for conducting procedural transactions such as filing of legal actions, and for legal representation; other licenses were issued pursuant to United Nations Security Council Resolutions 661, 666, and 687, to authorize the exportation to Iraq of donated medicine, medical supplies, and food intended for humanitarian relief purposes. All of these licenses concern minor transactions of no economic benefit to the Government of Iraq.

To ensure compliance with the terms of the licenses which have been issued, stringent reporting requirements have been imposed that are closely monitored. Licensed accounts are regularly audited by FAC compliance personnel and deputized auditors from other regulatory agencies. FAC compliance personnel continue to work closely with both State and Federal bank regulatory and law enforcement agencies in conducting special audits of Iraqi accounts subject to the ISR.

6. The expenses incurred by the Federal Government in the 6-month period from February 2, 1992, through August 1, 1992, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Iraq are estimated at $2,476,000, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in FAC, the U.S. Customs Service, the Office of the Assistant Secretary for Enforcement, the Office of the Assistant Secretary for International Affairs, and the Office of the General Counsel), the Department of State (particularly the Bureau of Economic and Business Affairs and the Office of the Legal Adviser), the Department of Transportation (particularly the U.S. Coast Guard), and the Department of Commerce (particularly in the Bureau of Export Administration and the Office of the General Counsel).

7. The United States imposed economic sanctions on Iraq in response to Iraq's invasion and illegal occupation of Kuwait, a clear act of brutal aggression. The United States, together with the international community, is maintaining economic sanctions against Iraq because the Iraqi regime has failed to comply fully with United Nations Security Council resolutions calling for the elimination of Iraqi weapons of mass destruction, the demarcation of the Iraq-Kuwait border, the release of Kuwaiti and other prisoners, compensation for victims of Iraqi aggression, and the return of Kuwaiti assets stolen during its illegal occupation of Kuwait. The U.N. sanctions remain in place; the United States will continue to enforce those sanctions.

The Saddam Hussein regime continues to violate basic human rights by repressing the Iraqi civilian population and depriving it of humanitarian assistance. The United Nations Security Council passed resolutions that permit Iraq to sell $1.6 billion of oil under U.N. auspices to fund the provision of food, medicine, and other humanitarian supplies to the people of Iraq. Under the U.N. resolutions, the equitable distribution within Iraq of this assistance would be supervised and monitored by the United Nations and other international organizations. The Iraqi regime continues to refuse to accept these resolutions, and has thereby chosen to perpetuate the suffering of its civilian population.

The regime of Saddam Hussein continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, as well as to regional peace and security. The United States will therefore continue to apply economic sanctions to deter Iraq from threatening peace and stability in the region, and I will continue to report periodically to the Congress on significant developments, pursuant to 50 U.S.C. 1703(c).

GEORGE BUSH.

THE WHITE HOUSE, *August 3, 1992.*

MARINE MAMMAL HEALTH AND STRANDING RESPONSE ACT

Mr. CARPER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3486) to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and catastrophic events involving marine mammals, as amended.

The Clerk read as follows:

H.R. 3486

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 "Marine Mammal Health and Stranding Response Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Current stranding network participants have performed an undeniably valuable and ceaseless job of responding to marine mammal strandings over the last 15 years.

(2) Insufficient understanding of the connection between marine mammal health and the physical, chemical, and biological parameters of their environment prevents an adequate understanding of the causes of marine mammal unusual mortality events.

(3) An accurate assessment of marine mammal health, health trends in marine

mammal populations in the wild, and causes of marine mammal unusual mortality events cannot be made without adequate reference data on marine mammals and the environment in which they live.

(4) A systematic assessment of the sources, presence, levels, and effects of potentially harmful contaminants on marine mammals would provide a better understanding of some of the causes of marine mammal unusual mortality events and may serve as an indicator of the general health of our coastal and marine environments.

(5) Responses to marine mammal unusual mortality events are often uncoordinated, due to the lack of sufficient contingency planning.

(6) Standardized methods for the reporting of dying, dead, or otherwise incapacitated marine mammals in the wild would greatly assist in the determination of the causes of marine mammal unusual mortality events and enhance general knowledge of marine mammal species.

(7) A formal system for collection, preparation, and archiving of, and providing access to, marine mammal tissues will enhance efforts to investigate the health of marine mammals and health trends of marine mammal populations, and to develop reference data.

(8) Information on marine mammals, including results of analyses of marine mammal tissues, should be broadly available to the scientific community, including stranding network participants, through a marine mammal data base.

SEC. 3. MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM.

(a) IN GENERAL.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by adding at the end the following new title:

"TITLE III—MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM

"SEC. 301. ESTABLISHMENT OF PROGRAM.

"(a) ESTABLISHMENT.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program, to be known as the 'Marine Mammal Health and Stranding Response Program'.

"(b) PURPOSES.—The purposes of the Program shall be to—

"(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

"(2) correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and

"(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 304.

"SEC. 302. DETERMINATION, DATA COLLECTION AND DISSEMINATION.

"(a) DETERMINATION FOR RELEASE.—The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

"(b) COLLECTION.—The Secretary shall, in consultation with the Secretary of the Interior, collect and update periodically existing information on—

"(1) procedures and practices for—

"(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

"(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

"(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

"(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

"(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

"(c) AVAILABILITY.—The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

"SEC. 303. STRANDING RESPONSE AGREEMENTS.

"(a) IN GENERAL.—The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) or section 112(c) in response to a stranding.

"(b) REQUIRED PROVISION.—An agreement under this subsection shall—

"(1) specify each person who is authorized to perform activities under the agreement; and

"(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

"(c) REVIEW.—The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

"SEC. 304. UNUSUAL MORTALITY EVENT RESPONSE.

"(a) RESPONSE.—

"(1) WORKING GROUP.—

"(A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for—

"(i) determining whether an unusual mortality event is occurring;

"(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

"(iii) developing the contingency plan in accordance with subsection (b), to assist the Secretary in responding to unusual mortality events.

"(B) The Federal Advisory Committee Act shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

"(2) RESPONSE TIMING.—The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable—

"(A) within 24 hours after receiving notification from a stranding network participant that an unusual mortality event might be occurring, contact as many members as is possible of the unusual mortality event working group for guidance; and

"(B) within 48 hours after receiving such notification—

"(i) make a determination as to whether an unusual mortality event is occurring;

"(ii) inform the stranding network participant of that determination; and

"(iii) if the Secretary has determined an unusual mortality event is occurring, designate an Onsite Coordinator for the event, in accordance with subsection (c).

"(b) CONTINGENCY PLAN.—

"(1) IN GENERAL.—The Secretary shall, in consultation with the Secretary of the Interior and the unusual mortality event working group, and after an opportunity for public review and comment, issue a detailed contingency plan for responding to any unusual mortality event.

"(2) CONTENTS.—The contingency plan required under this subsection shall include—

"(A) a list of persons, including stranding network participants, at a regional, State, and local level, who can assist the Secretary in implementing a coordinated and effective response to an unusual mortality event;

"(B) the types of marine mammal tissues and analyses necessary to assist in diagnosing causes of unusual mortality events;

"(C) training, mobilization, and utilization procedures for available personnel, facilities, and other resources necessary to conduct a rapid and effective response to unusual mortality events; and

"(D) such requirements as are necessary to—

"(i) minimize death of marine mammals in the wild and provide appropriate care of marine mammals during an unusual mortality event;

"(ii) assist in identifying the cause or causes of an unusual mortality event;

"(iii) determine the effects of an unusual mortality event on the size estimates of the affected populations of marine mammals; and

"(iv) identify any roles played in an unusual mortality event by physical, chemical, and biological factors, including contaminants.

"(c) ONSITE COORDINATORS.—

"(1) DESIGNATION.—

"(A) The Secretary shall, in consultation with the Secretary of the Interior, designate one or more Onsite Coordinators for an unusual mortality event, who shall make immediate recommendations to the stranding network participants on how to proceed with response activities.

"(B) An Onsite Coordinator so designated shall be one or more appropriate Regional Directors of the National Marine Fisheries Service or the United States Fish and Wildlife Service, or their designees.

"(C) If, because of wide geographic distribution, multiple species of marine mammals involved, or magnitude of an unusual mortality event, more than one Onsite Coordinator is designated, the Secretary shall, in consultation with the Secretary of the Interior, designate which of the Onsite Coordinators shall have primary responsibility with respect to the event.

"(2) FUNCTIONS.—

"(A) an Onsite Coordinator designated under this subsection shall coordinate and direct the activities of all persons respond-

ing to an unusual mortality event in accordance with the contingency plan issued under subsection (b), except that—

"(i) with respect to any matter that is not covered by the contingency plan, an Onsite Coordinator shall use his or her best professional judgment; and

"(ii) the contingency plan may be temporarily modified by an Onsite Coordinator, consulting as expeditiously as possible with the Secretary, the Secretary of the Interior, and the unusual mortality event working group.

"(B) An Onsite Coordinator may delegate to any qualified person authority to act as an Onsite Coordinator under this title.

"SEC. 305. UNUSUAL MORTALITY EVENT ACTIVITY FUNDING.

"(a) ESTABLISHMENT OF FUND.—There is established in the Treasury a fund to be known as the 'Marine Mammal Unusual Mortality Event Fund', which shall consist of amounts deposited into the Fund under subsection (c).

"(b) USES.—

"(1) IN GENERAL.—Amounts in the Fund—

"(A) shall be available only for use by the Secretary, in consultation with the Secretary of the Interior—

"(i) to compensate persons for special costs incurred in acting in accordance with the contingency plan issued under section 304(b) or under the direction of an Onsite Coordinator for an unusual mortality event; and

"(ii) for reimbursing any stranding network participant for costs incurred in preparing and transporting tissues collected with respect to an unusual mortality event for the Tissue Bank; and

"(B) shall remain available until expended.

"(2) PENDING CLAIMS.—If sufficient amounts are not available in the Fund to satisfy any authorized pending claim, such claim shall remain pending until such time as sufficient amounts are available. All authorized pending claims shall be satisfied in the order received.

"(c) DEPOSITS INTO THE FUND.—There shall be deposited into the Fund—

"(1) amounts appropriated to the Fund;

"(2) other amounts appropriated to the Secretary for use with respect to unusual mortality events; and

"(3) amounts received by the United States in the form of gifts, devises, and bequests under subsection (d).

"(d) ACCEPTANCE OF DONATIONS.—For purposes of carrying out this title, the Secretary may accept, solicit, and use the services of volunteers, and may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

"SEC. 306. LIABILITY.

"(a) IN GENERAL.—A person who is authorized to respond to a stranding pursuant to an agreement entered into under section 112(c) is deemed to be an employee of the government for purposes of chapter 171 of title 28, United States Code, with respect to actions of the person that are—

"(1) in accordance with that agreement; and

"(2) in the case of an unusual mortality event, in accordance with—

"(A) the contingency plan issued under section 304(b);

"(B) the instructions of an Onsite Coordinator designated under section 304(c); or

"(C) the best professional judgment of an Onsite Coordinator, in the case of any matter that is not covered by the contingency plan.

"(b) LIMITATION.—Subsection (a) does not apply to actions of a person described in that subsection that are grossly negligent or that constitute willful misconduct.

"SEC. 307. NATIONAL MARINE MAMMAL TISSUE BANK AND TISSUE ANALYSIS.

"(a) TISSUE BANK.—

"(1) IN GENERAL.—The Secretary shall make provision for the storage, preparation, examination, and archiving of marine mammal tissues. Tissues archived pursuant to this subsection shall be known as the 'National Marine Mammal Tissue Bank'.

"(2) GUIDANCE FOR MARINE MAMMAL TISSUE COLLECTION, PREPARATION, AND ARCHIVING.—The Secretary shall, in consultation with individuals with knowledge and expertise in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for marine mammal tissue collection, preparation, archiving, and quality control procedures, regarding—

"(A) appropriate and uniform methods and standards for those activities to provide confidence in marine mammal tissue samples used for research; and

"(B) documentation of procedures used for collecting, preparing, and archiving those samples.

"(3) SOURCE OF TISSUE.—In addition to tissues taken during marine mammal unusual mortality events, the Tissue Bank shall incorporate tissue samples taken from other sources, in the wild including—

"(A) incidental takes of marine mammals;

"(B) subsistence-caught marine mammals;

"(C) biopsy samples; and

"(D) any other samples properly collected.

"(b) TISSUE ANALYSIS.—The Secretary shall, in consultation with the Marine Mammal Commission, the Secretary of the Interior, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, issue guidance, after an opportunity for public review and comment, for monitoring and measuring, by use of the most effective and advanced diagnostic technologies and tools practicable overall health trends in representative species or populations of marine mammals, including—

"(1) the levels of, and if possible, the effects of, potentially harmful contaminants; and

"(2) the frequency of, and if possible, the causes and effects of abnormal lesions or anomalies.

"(c) DATA BASE.—

"(1) IN GENERAL.—The Secretary shall maintain a central data base which provides an effective means for tracking and accessing data on marine mammals, including relevant data on marine mammal tissues collected for and maintained in the Tissue Bank.

"(2) CONTENTS.—The data base established under this subsection shall include—

"(A) reference data on the health of marine mammals and populations of marine mammals; and

"(B) data on species of marine mammals that are subject to unusual mortality events.

"(d) ACCESS.—The Secretary shall, in consultation with the Secretary of the Interior, establish criteria, after an opportunity for public review and comment, for access to—

"(1) marine mammal tissues in the Tissue Bank;

"(2) analyses conducted pursuant to subsection (b); and

"(3) marine mammal data in the data base maintained under subsection (c);

which provide for appropriate uses of the tissues, analyses, and data by qualified scientists, including stranding network participants.

"SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated—

"(1) to the Secretary for carrying out this title (other than sections 305 and 307) $250,000 for each of fiscal years 1993 and 1994;

"(2) to the Secretary for carrying out section 307, $250,000 for each of fiscal years 1993 and 1994; and

"(3) to the Fund, $500,000 for fiscal year 1993.".

(b) IMPLEMENTATION.—The Secretary of Commerce shall—

(1) in accordance with section 302(a) and 302(b) of the Marine Mammal Protection Act of 1972, as amended by this Act, and not later than 24 months after the date of enactment of this Act—

(A) develop and implement objective criteria to determine at what point a marine mammal undergoing rehabilitation is returnable to the wild; and

(B) collect and make available information on marine mammal health and health trends;

(2) in accordance with section 304(b) of the Marine Mammal Protection Act of 1972, as amended by this Act, issue a detailed contingency plan for responding to any unusual mortality event—

(A) in proposed form by not later than 18 months after the date of enactment of this Act; and

(B) in final form by not later than 24 months after the date of enactment of this Act.

SEC. 4. CONFORMING AMENDMENTS.

The Marine Mammal Protection Act of 1972 is amended—

(1) in section 102(a) (16 U.S.C. 1372(a)) by inserting "or title III" after "this title";

(2) in section 109(h)(1) (16 U.S.C. 1379(h)(1)) by inserting "or title III" after "this title"; and

(3) in section 112(c) (16 U.S.C. 1382(c)) by inserting "or title III" after "this title".

SEC. 5. DEFINITIONS.

Section 3 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362) is amended—

(1) in paragraph (11)—

(A) by striking "The term" and inserting "(A) Except as provided in subparagraph (B), the term";

(B) by redesignating subparagraph (A) as clause (i);

(C) by redesignating subparagraph (B) as clause (ii); and

(D) by adding at the end the following:

"(B) In title III, the term 'Secretary' means the Secretary of Commerce."; and

(2) by adding at the end the following:

"(15) The term 'Fund' means the Marine Mammal Unusual Mortality Event Fund established by section 305(a).

"(16) The term 'Office' means the Office of Protected Resources, in the National Marine Fisheries Service.

"(17) The term 'stranding' means an event in the wild in which—

"(A) a marine mammal is dead and—

"(i) is on a beach or shore of the United States, or

"(ii) is in waters under the jurisdiction of the United States (including any navigable waters); or

"(B) a marine mammal is alive and is—

"(i) on a beach or shore of the United States and unable to return to the water;

"(ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or

"(iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its

natural habitat under its own power or without assistance.

"(18) The term 'stranding network participant' means a person who is authorized by an agreement under section 112(c) to take marine mammals as described in section 109(h)(1) in response to a stranding.

"(19) The term 'Tissue Bank' means the National Marine Mammal Tissue Bank provided for under section 307(a).

"(20) The term 'unusual mortality event' means a stranding that—

"(A) is unexpected;

"(B) involves a significant die-off of any marine mammal population; and

"(C) that demands immediate response.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Delaware [Mr. CARPER] will be recognized for 20 minutes, and the gentleman from New Jersey [Mr. SAXTON] will be recognized for 20 minutes.

The Chairman recognizes the gentleman from Delaware [Mr. CARPER].

Mr. CARPER. Mr. Speaker, I yield myself such time as I many consume.

Mr. Speaker, I rise in strong support of H.R. 3486, the Marine Mammal Health and Stranding Response act.

This legislation represents a carefully crafted response to a problem that plagues our shores, and the shores of many other coastal countries: the often inexplicable stranding and death of large numbers of dolphins, whales and other marine mammals. The final straw prompting the development of this bill was the massive die-off of bottlenosed dolphins along the atlantic coast during 1987–88 in which up to half of the coastal population of bottlenosed dolphins perished. Most disturbing was our inability to say with any certainty why the deaths occurred. Granted, causes of these events may be difficult to determine under any circumstances, but this country was grossly unprepared to respond to the event. Thus, we didn't even have a fighting chance to collect the data needed to get to the root cause.

This bill would give us the tools we need to monitor the health of our coastal marine mammals, and to respond quickly when these unusual mortality events occur. The bill creates, through a newly created national marine mammal tissue bank, a systematic process for collecting, preserving, and storing tissues from healthy and stranded marine mammals so that analyses and comparisons can be made. Comparisons of healthy and stranded animals will provide clues to the interplay between the marine environment, coastal pollution, and marine mammal health, and help us determine why these animals sometimes die in such large numbers.

The bill also establishes a quick response program for unusual strandings and die-offs. This program will ensure that sufficient personnel and resources are focused on such events pursuant to a well conceived contingency plan. In the past, the Federal response has generally been ad hoc, underfunded, and too slow to gather the quality information needed to determine the causes and effects of these events. Future responses, under this bill, will be prompt, organized, and adequately funded.

And to ensure that knowledge gained from tissue analyses and other activities related to marine mammals is broadly available to the scientific community, the bill establishes a data base with information on marine mammal health and strandings, results of tissue analyses, and other relevant details.

Under this bill, this Nation will—for the first time—have the tools it needs to monitor the health of marine mammals. With this program in place, we will also have in place a sensitive barometer of the impact of human activities on our coastal environment.

Mr. Speaker, this legislation is the product of several years of discussion with virtually every interested group. That cooperative effort has resulted in a product that—as far as I know—has generated no opposition.

Mr. Speaker, we have a good bill here. I urge my colleagues to support it.

□ 1610

Mr. Speaker, I reserve the balance of my time.

Mr. SAXTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I rise in support of H.R. 3486, the Marine Mammal Health and Stranding Response Act.

Briefly, this bill will establish a contingency program and fund for responding to unusual mortality events—such as the mass die-off in 1987–88 in which half of the Atlantic stock of bottlenosed dolphin perished.

In addition, the bill provides for the collection and analysis of reference tissues of marine mammals migrating along various regions of our Nation's coastlines. This is to address the present lack of knowledge we have regarding the normal health trends of these species.

Although increasingly high counts of contaminants are found in the tissues of dead and stranded marine mammals, we have nothing to reference in determining whether this is normal. Clearly, we need to know if these mammals are telling us something about the condition of their environment.

The bill also provides for the coordination of existing facilities to archive marine mammal tissues and analyses into a data bank that can be accessed by researchers and stranding network participants for comparative study.

Lastly, the bill promulgates guidelines to stranding networks regarding what tissue samples to collect, how to prepare them, how to ensure their integrity, and where to send them for documentation and storage.

The 1987–88 die-off and subsequent die-offs in the gulf have revealed a total lack of preparation for responding to these disturbing events. Federal agencies are left scrambling for funds, collected tissues are often mishandled or lost, and data regarding the health trends of these creatures, as they correspond to the health of our coastal environment, is largely nonexistent.

Although the issue of marine mammals and the causes of their strandings and deaths are not a burning issue on the national agenda at this time, no one knows when a massive die-off might occur again—anywhere.

These massive die-offs are increasing in size and frequency along our Nation's coastline and around the world. Whether it is a natural phenomenon or whether it is in response to the changing condition of our oceans are questions about which we remain uncertain.

H.R. 3486 establishes the critical framework needed for providing the answers to the disturbing questions being raised by these marine creatures.

I want to give a special thanks to staff—Dr. Leslie Dierauf and Ron Moore, and to the Center for Marine Conservation, all of whom contributed a great deal of expertise to the final drafting of this measure.

This bill was unanimously supported by the committee and has the full support of the administration and the marine mammal groups who are on the front lines responding to these tragic events.

I urge my colleagues to support passage of H.R. 3486 today.

Mr. Speaker, I reserve the balance of my time.

Mr. CARPER. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I rise in support of H.R. 3486, the Marine Mammal Health and Stranding Response Act. I'd like to thank the chairmen of the subcommittee, Mr. STUDDS, and the full committee, Mr. JONES, for moving this very important initiative forward. Indeed, this legislation is necessary to address the problems and dearth of information associated with marine mammal strandings and unusual mortality events.

I also want to commend my colleagues, Mr. CARPER, and Mr. SAXTON, for their leadership on this issue. This bill is a culmination of many long hours spent in discussion with members of the committee, the Marine Mammal Commission, the conservation and scientific communities, and the members of the marine mammal stranding network. This bill represents a good compromise between all interested parties.

Soon after dead and dying dolphins began washing up along the Atlantic Coast in 1987 and 1988, it was clear that our national response was disorganized and ineffective. Indeed, our inability to find the cause or solution to this un-

usual event in which hundreds of marine mammals perished was a source of tremendous frustration.

Further, this event highlighted the shortcomings in our knowledge about these mammals and the cause of the dolphin deaths that were occurring in such epidemic proportions. Extensive studies conducted to determine the cause of the mortality raised more questions than they answered and to this day, we do not know the cause of the massive die-off.

This legislation, which establishes programs for responding to marine mammal disasters and assessing the state of marine mammal health, therefore, is a major step forward. Under this bill, information on the rescue and rehabilitation of marine mammals would be compiled, centralized, updated, and made available to scientific researchers and members of the marine mammal stranding network to help in assessing the causes of strandings and unusual mortality events.

This legislation sets up guidelines and standardizes collection, preservation, labeling, transport, and archiving of marine mammal tissue samples which will be essential to establish baseline data that can be used in assessing health trends of marine mammals and making determinations of marine mammal health and the causes of mortality.

Finally, the bill sets up a contingency plan so that response to strandings and unusual mortality events will be timely and coordinated and designed to gather the information necessary to determine the causes and effects of these events.

This legislation will help marine mammal stranding response centers and volunteers throughout the Nation. Indeed, I am very proud of the marine mammal stranding response center in New Jersey. They do excellent work and this legislation will help them increase their effectiveness.

Mr. Speaker, it is important that we support marine mammal research and pursue investigations of strandings and unusual mortality events. Just as importantly, we need to develop better baseline data so that we might better assess the condition of our oceans. Only then may we be able to answer many of the unknowns that still exist and, if possible, prevent a recurrence of the dolphin tragedy.

H.R. 3486 and the substitute amendment is a major step in this direction. The bill provides the Nation with the essential tools for monitoring the health of marine mammals and establishes programs which will act as a barometer of the impact of human activities on our coastal environment. This is a rational bill and I urge my colleagues' strong support for its passage.

Mr. SAXTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just like to point out that this bill is the result of a great deal of hard work by Members of both parties, and it goes to show, I believe, what can be accomplished when we Republicans and Democrats work together on problems that we all have in common.

I would like to again commend the leadership on the other side, particularly my colleague, the gentleman from New Jersey [Mr. HUGHES], for the very strong advocacy role he played in this.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. CARPER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me just echo what the gentleman from New Jersey [Mr. SAXTON] has said. In the Committee on Merchant Marine and Fisheries, we do not give as much thought or time to partisan labels as we do toward getting things done. The legislation that I think is before us today is another piece of evidence that that, indeed, continues to be the case.

To the gentleman from New Jersey [Mr. SAXTON], who is an architect of this bill, to the gentleman from New Jersey [Mr. HUGHES], and the gentleman from Massachusetts [Mr. STUDDS], whose support in drafting has been very helpful, I want to say thank you, as well as to the members of our respective staffs for their assistance.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 3486, the Marine Mammal Health and Stranding Response Act.

Marine mammals have beached or stranded themselves on every coast of the United States. The response to these strandings—carried out primarily by volunteers—has been admirable, but in many cases uncoordinated.

H.R. 3486 would formalize a nationwide coordinated response system for marine mammal strandings and help fund those responses. The bill also provides for the establishment of a national marine mammal tissue bank. It is our committee's hope that scientific evaluation of the tissues taken from these stranded animals will provide a window into the health of not only marine mamals, but our oceans themselves.

I congratulate my colleagues, Mr. CARPER, Mr. STUDDS, and Mr. SAXTON for their bipartisan efforts on behalf of this most worthy of causes.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of H.R. 3486 and urge its adoption.

Mr. Speaker, this bill is designed to provide a formal mechanism for dealing with marine mammals that are unexpectedly stranded on our shores. It also provides funding for a very modest tissue bank program, so that scientists can determine the quality of our ocean waters. This is a bipartisan measure which was reported unanimously by our committee.

Mr. Speaker, I also want to note that during committee markup, my colleagues lavished a great deal of praise on the majority staff for work they did on the bill. I want to point out that two members of minority staff of this committee, Mr. Rod Moore and Ms. Laurel Bryant, spent a great deal of time making sure this bill was put together in an acceptable form. Since this was a bipartisan effort, I think a praise should be given to staff on both sides of the aisle.

Mr. Speaker, I support this bill and its passage by the House.

Mr. CARPER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Delaware [Mr. CARPER] that the House suspend the rules and pass the bill, H.R. 3486, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend the Marine Mammal Protection Act of 1972 to provide for examination of the health of marine mammal populations and for effective coordinated response to strandings and unusual mortality events involving marine mammals.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CARPER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3486, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Delaware?

There was no objection.

ABANDONED BARGE ACT OF 1992

Mr. TAUZIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5397) to amend title 46, United States Code, to prohibit abandonment of barges, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5397

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 "Abandoned Barge Act of 1992".

SEC. 2. ABANDONMENT OF BARGES.

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

"CHAPTER 47—ABANDONMENT OF BARGES

"§ 4701. Definitions

"In this chapter—

"(1) 'abandon' means to moor, strand, wreck, sink, or leave a barge of more than

100 gross tons unattended for longer than forty-five days.

"(2) 'barge removal contractor' means a person that enters into a contract with the United States to remove an abandoned barge under this chapter.

"(3) 'navigable waters of the United States' means waters of the United States, including the territorial sea.

"(4) 'removal' or 'remove' means relocation, sale, scrapping, or other method of disposal.

"§ 4702. Abandonment of barge prohibited

"(a) An owner or operator of a barge may not abandon it on the navigable waters of the United States. A barge is deemed not to be abandoned if—

"(1) it is located at a Federally- or State-approved mooring area;

"(2) it is on private property with the permission of the owner of the property; or

"(3) the owner or operator notifies the Secretary that the barge is not abandoned and the location of the barge."

"§ 4703. Penalty for unlawful abandonment of barge

"Thirty days after the notification procedures under section 4704(a)(1) are completed, the Secretary may assess a civil penalty of not more than $1,000 for each day of the violation against an owner or operator that violates section 4702. A vessel with respect to which a penalty is assessed under this chapter is liable in rem for the penalty.

"§ 4704. Removal of abandoned barges

"(a) AUTHORITY TO REMOVE.—

"(1) IN GENERAL.—The Secretary may remove a barge that is abandoned after complying with the following procedures:

"(A) If the identity of the owner or operator can be determined, the Secretary shall notify the owner or operator by certified mail—

"(i) that if the barge is not removed it will be removed at the owners' or operators' expense; and

"(ii) of the penalty under section 4703.

"(B) If the identity of the owner or operator cannot be determined, the Secretary shall publish an announcement in—

"(i) a notice to mariners; and

"(ii) an official journal of the county in which the barge is located

that if the barge is not removed it will be removed at the owners' or operators' expense.

"(2) UNITED STATES NOT LIABLE.—The United States and any officer or employee of the United States is not liable to an owner or operator for damages resulting from removal of an abandoned barge under this chapter.

"(b) LIABILITY OF OWNER AND OPERATOR.—The owner or operator of an abandoned barge is liable, and an abandoned barge is liable in rem, for all expenses that the United States incurs in removing an abandoned barge under this chapter.

"(c) REMOVAL SERVICES.—

"(1) SOLICITATION.—The Secretary may, after providing notice under subsection (a)(1), solicit by public advertisement sealed bids for the removal of an abandoned barge.

"(2) CONTRACT.—After solicitation under paragraph (1) the Secretary may award a contract. The contract—

"(A) may be subject to the condition that the barge and all property on the barge is the property of the barge removal contractor; and

"(B) must require the barge removal contractor to submit to the Secretary a plan for the removal.

"(3) COMMENCEMENT OF REMOVAL.—Removal of an abandoned barge may begin thirty days after the Secretary completes the procedures under subsection (a)(1).

"§ 4705. Liability of barge removal contractors

"(a) LIABILITY.—

"(1) IN GENERAL.—A barge removal contractor and its subcontractor are not liable for damages that result from actions taken or omitted to be taken in the course of removing a barge under this chapter.

"(2) EXCEPTIONS.—Subparagraph (1) does not apply—

"(A) with respect to personal injury or wrongful death; or

"(B) if the contractor or subcontractor is grossly negligent or engages in willful misconduct.".

(b) APPLICATION TO CERTAIN BARGES.—One year after the date of enactment of this Act, the Secretary may assess a civil penalty under section 4703 against an owner or operator of a barge abandoned before June 11, 1992.

SEC. 3. CLERICAL AMENDMENT.

The analysis of subtitle II at the beginning of title 46, United States Code, is amended by inserting after the item relating to chapter 45 the following:

"47. Abandonment of barges ..... 4701".

SEC. 4. NUMBERING OF BARGES.

Section 12301 of title 46, United States Code, is amended—

(1) by inserting "(a)" before "An undocumented vessel"; and

(2) by adding at the end the following:

"(b) The Secretary shall require an undocumented barge of more than 100 gross tons operating on the navigable waters of the United States to be numbered.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Louisiana [Mr. TAUZIN] will be recognized for 20 minutes, and the gentleman from Texas [Mr. FIELDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to ask my colleagues to support H.R. 5397, the Abandoned Barge Act of 1992. I introduced this bill along with Chairman JONES and Congressman JACK FIELDS to protect our Nation's waterways from the environmental problems resulting from abandoned barges. I chair the Subcommittee on Coast Guard and Navigation, which has held hearings on this issue. We have learned that abandoned barges create a significant source of water pollution on our inland waterways.

At the outset of the subcommittee's investigation, I was amazed to learn that abandoning a barge is not a violation of law. As long as a barge does not pose a threat to navigation, it can legally remain moored on a river bank or stranded in a marsh. An abandoned barge would seem to be nothing more than an eyesore to those of us who enjoy recreation on our waterways. But to those criminals who profit by illegally disposing of chemical and petroleum wastes, an abandoned barge is an easy and efficient repository for toxic dumping.

The primary purpose of H.R. 5397 is to prevent future marine pollution from abandoned barges. Last year the Subcommittee on Coast Guard and Navigation asked the General Accounting Office [GAO] to investigate the problems associated with abandoned vessels. On July 21, 1992, the GAO submitted their report to the Committee on Merchant Marine and Fisheries.

The GAO estimates there are between 600 and 1,200 abandoned barges along our Nation's waterways. Since 1988, the Federal Government has spent almost $6 million to clean up pollutants from 51 abandoned vessels. In only a few of these cases did the owners pay for the cleanup costs. The taxpayers paid for the rest.

In 1988, the Federal Government spent $845,600 to remove 210,000 gallons of waste material from two abandoned tank barges in Empire, LA. Following the cleanup, the tank barges were locked shut. The barges remained abandoned in an unused canal. In 1991 the site was revisited and it was discovered that the barges had been broken into. Midnight dumpers had used the barges to dispose of almost 600,000 gallons of waste chemicals. This time the Federal Government spent $1.7 million to clean and remove the barges.

We drafted the Abandoned Barge Act to correct this environmentally dangerous and unfair loophole in current law.

H.R. 5397:

First, makes abandoning a barge in the Nation's waterways illegal.

Second, establishes a new penalty which we hope will deter those who would abandon a barge on our waterways.

Third, requires that all barges be numbered and thus allows the Coast Guard to better identify the person responsible for the barge, and

Fourth, gives the Coast Guard discretionary authority to contract for the removal of the barge at the owner or operator's cost.

There are existing abandoned barges which will need removal at some point in time. Those that pose the greatest current threat to the environment by containing either oil or hazardous material can be disposed of with funds available under the oil pollution trust fund or the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA]. We may at some point in the future need to determine whether funding will be needed to remove those that may be potential targets of midnight dumpers, but which are not a current threat.

H.R. 5347 is the result of a bipartisan effort by the Subcommittee on Coast Guard and Navigation. It is also the product of a great deal of hard work and cooperation between the General Accounting Office, the Coast Guard and the American waterways operators. I am hopeful that H.R. 5397 will send a signal to those who wish to use our waters as a cheap and easy place for dis-

posal so that this practice will no longer be tolerated. I also want to encourage the industry to seek innovative methods of disposing of barges which are no longer usable. Just as the oil industry has found an environmentally beneficial use for outdated oil rigs in the rigs to reefs program, there may be a beneficial use for these vessels or the metal contained in them. I know that the responsible barge operators share my concern for protecting our waterways from pollution and will continue to work with our subcommittee as cooperatively as they have in the past.

I urge my colleagues to join with me to support H.R. 5397 which will provide needed protection to our Nation's waterways.

□ 1620

Mr. FIELDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as a cosponsor of H.R. 5397, I rise in strong support of this legislation and compliment my distinguished subcommittee chairman, BILLY TAUZIN, for his outstanding leadership in moving this important environmental protection bill.

H.R. 5397 is a product of 2 years of careful consideration by the Coast Guard and Navigation Subcommittee. Our subcommittee conducted two extensive oversight hearings on this issue and we commissioned the General Accounting Office to undertake a study to determine how many vessels had been abandoned, the extent of the environmental damage they have caused, and whether U.S. laws adequately addressed the problem of abandoned barges.

According to the General Accounting Office, there are some 600 abandoned barges in the United States, with the majority of them located in the Gulf of Mexico. In fact, there are at least three abandoned barges in my own congressional district which have been abandoned along the Houston ship channel.

These barges are navigational hazards and some have become convenient disposal sites for the dumping of hazardous materials which are polluting our waterways.

In 1989, the Coast Guard discovered that two abandoned tank barges in Empire, LA, had leaked 1,000 gallons of illegally dumped waste oil into the Mississippi River. Since the owners of these vessels were either deceased or bankrupt, the Coast Guard cleaned up the waste material at a cost of $835,000. Regrettably, however, the Coast Guard chose not to remove or destroy these tank barges.

This was a tragic mistake because on a subsequent visit to the site, the Coast Guard found that illegal dumping had resumed and these barges now contained 571,200 gallons of hazardous material. Using its Superfund authority, Coast Guard contractors removed this waste at an estimated cost of $1.7 million.

While the Empire barge incident may be the most famous, the Coast Guard has investigated dozens of other abandoned barges that have been used as illegal dump sites.

Mr. Speaker, this is a practice that must be stopped and H.R. 5397, introduced by the gentleman from Louisiana, is the right solution to this problem.

Under current law, incredibly, it is not unlawful to abandon a barge and there is no identification system for the thousands of undocumented barges. It is, therefore, difficult, if not impossible, for the Coast Guard to locate the owners of these vessels.

Mr. Speaker, H.R. 5397 will make it illegal to abandon a barge, will authorize the Coast Guard to remove them, will establish civil penalties for abandoning a barge, and will require all barges of 100 gross tons to be numbered. In this way, the Coast Guard will be able to find the rightful owners and to assess removal or cleanup costs for any environmental damage they may have caused.

Furthermore, this bill will send a clear signal to the U.S. Coast Guard that we believe they should remove abandoned barges before, and not after, they pollute our waterways.

Mr. Speaker, I am very pleased that we are considering this important bill and my good friend from Louisiana, Mr. TAUZIN, deserves tremendous credit for leading this timely effort to protect our coastal environment.

This is an excellent bill and I urge my colleagues to vote "aye" on H.R. 5397.

Mr. TAUZIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I simply want to add my congratulations and thanks to the gentleman from Texas [Mr. FIELDS], the ranking minority member, proving again that our subcommittee does work in an extraordinary bipartisan manner. If there is gridlock around here, it does not happen on our subcommittee. We work and try to get things done. This is a good thing that needs to get done, and I urge my colleagues to finally approve it.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 5397, the Abandoned Barge Act of 1992.

For many years, Congress has worked to establish a comprehensive strategy to address maritime oilspills. The Oil Pollution Act of 1990 [OPA '90] was the fruit of that effort. H.R. 5397 addresses an environmental threat from barges that was not adequately addressed by OPA '90 and other environmental laws, such as the Comprehensive Environmental Response, Compensation, and Liability Act, better known as CERCLA or Superfund.

Barges abandoned along this Nation's waterways are a blight on the environment, endangering both human and marine life. Our committee, through field hearings in Louisiana, has seen firsthand the problems created by these barges. We were shocked to learn that current law does not prohibit an owner or operator from abandoning a barge, unless the barge presents a hazard to navigation or creates a clear environmental hazard under OPA '90 or CERCLA.

Barges, as they reach the end of their economic life, present a dilemma for owners. The scrap value of these vessels is minimal and the cost of cleaning them, particularly those used to transport oil and chemicals, is astronomical. For example, two barges abandoned near New Orleans yielded about 260 tons of scrap steel, which had a value of $2,900, but cost over $300,000 for cleanup, removal, and disposal.

As a result, many owners take the irresponsible approach of abandoning these vessels along our waterways. Federal authorities cannot remove the barge unless it is a hazard to navigation or creates a clear and immediate environmental hazard.

However, these abandoned barges can pose a danger to human and marine life. Unscrupulous individuals have found these barges to be convenient receptacles for illegal dumping of oil or hazardous wastes, which often spill into and pollute our waterways. The committee has learned that even after cleaning and removal of hazardous materials by Federal agencies, illegal dumpers have broken into locked barges and refilled them with hazardous materials, thereby requiring further cleanup expenditures.

Starting over a year ago, the General Accounting Office [GAO], at the request, began an extensive study of the abandoned barge problem.

The GAO study found:

Federal laws do not specifically prohibit vessel abandonment;

As a result, at least 1,300 vessels are abandoned in waterways throughout the Nation;

These vessels pollute the marine environment and pose a continual pollution threat;

Abandoned vessels cost millions to clean up and remove; and

Vessel owners are not being held accountable for damages.

GAO advised Congress to enact legislation, first, to make it illegal to abandon barges, second, to provide appropriate administrative fines and penalties to deter abandonment, and third, to require permanent registration and marking of all barges.

To give a sense of the magnitude of this problem it should be noted that the Army Corps of Engineers estimates that 1,201 abandoned barges now clog our waterways.

Since 1988, the Coast Guard has investigated over 100 incidents of potential pollution from abandoned vessels. The cleanup costs associated with these investigations reached almost $6 million. Approximately 40 percent of this has been spent on abandoned barges alone.

To make matters even worse, little of the cleanup expenses have been recovered from the barge owners or operators responsible for the abandonment and resultant pollution. Because barges are exempt from current identification and documentation requirements, it is often impossible to determine the owner or operator of an abandoned barge.

It is high time to give the Federal agencies the authority to remove these barges before they become environmental nightmares, and the ability to track down the persons responsible for this environmental disgrace.

H.R. 5397 would end these problems by—

Prohibiting owners and operators from abandoning a barge;

Authorizing the Coast Guard to remove these environmental eyesores;

Allowing the Coast Guard to recover removal costs from the owners or operators of abandoned barges; and

Requiring the numbering of barges so Federal agencies will be able to identify individuals who illegally abandon a barge.

H.R. 5397 is an appropriate response to the findings of GAO and the Committee on Merchant Marine and Fisheries. It fills gaps in the current regime established by OPA '90 and CERCLA. The Coast Guard, using the tools in H.R. 5397, will be better able to safeguard the environment and hold those who damage it financially responsible. This bill is a necessary addition to the arsenal of weapons essential to defending the marine environment.

I commend Mr. TAUZIN for developing this important legislation and urge its adoption.

Mr. FIELDS. Mr. Speaker, I yield back the balance of my time.

Mr. TAUZIN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Louisiana [Mr. TAUZIN] that the House suspend the rules and pass the bill, H.R. 5397, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

THE GREAT LAKES FISH AND WILDLIFE TISSUE BANK ACT

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5350) to establish the Great Lakes fish and wildlife tissue bank, as amended.

The Clerk read as follows:

H.R. 5350

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

SEC. 101. SHORT TITLE.

This Act may be cited as "The Great Lakes Fish and Wildlife Tissue Bank Act".

SEC. 102. TISSUE BANK.

(a) IN GENERAL.—The Secretary shall coordinate existing facilities for the storage, preparation, examination, and archiving of tissues from selected Great Lakes fish and wildlife, which shall be known as the 'Great Lakes Fish and Wildlife Tissue Bank'.

(b) GUIDANCE.—The Secretary shall, in consultation with appropriate Federal and State agencies and the Council of Great Lakes Research Managers, issue guidance, after an opportunity for public review and comment, for Great Lakes fish and wildlife tissue collection, preparation, archiving, quality control procedures, and access that will ensure—

(1) appropriate uniform methods and standards for those activities to provide confidence in Great Lakes fish and wildlife tissue samples used for research;

(2) documentation of procedures used for collecting, preparing, and archiving those samples; and

(3) appropriate scientific use of the tissues in the Great Lakes Fish and Wildlife Tissue Bank.

SEC. 103. DATA BASE.

(a) MAINTENANCE.—The Secretary shall maintain a central data base which provides an effective means for tracking and assessing relevant reference data on Great Lakes fish and wildlife, including data on tissues collected for and maintained in the Great Lakes Fish and Wildlife Tissue Bank.

(b) ACCESS.—The Secretary shall establish criteria, after an opportunity for public review and comment, for access to the data base which provides for appropriate use of the information by the public.

SEC. 104. DEFINITIONS.

In this Act—

(1) "Secretary" means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(2) "Great Lakes fish and wildlife" means fauna, fish, and invertebrates dependent on Great Lakes resources, and located within the Great Lakes Basin.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary, $250,000 for each of fiscal years 1993 and 1994 to carry out this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts [Mr. STUDDS] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5350. The Great Lakes, like many of our fragile marine environments, have suffered over the years from our human tendency to view these areas as limitless dumping grounds. Thanks to the efforts of my colleagues who represent the various States bordering the Great Lakes, that view is changing.

This bill will help scientists to monitor the general health trends of the wildlife that depend on the Great Lakes ecosystem for survival, and I urge my colleagues to support it.

□ 1630

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the Great Lakes Fish and Wildlife Tissue Bank Act and urge its adoption.

This bill, authorized by Congressman BOB DAVIS, directs the Secretary of the Interior to coordinate existing facilities for handling selected Great Lakes fish and wildlife tissues. The Secretary must also issue guidance for tissue collection, establish criteria for access to the bank, and maintain a data base for tracking data on Great Lakes tissues.

This bill can greatly aid our work in cleaning up the Great Lakes. Coordination of facilities and development of uniform collection and storage standards will also make this information more valuable to users and save time and money.

I urge support for the measure and commend our ranking minority member for his leadership in protecting the Great Lakes.

Mr. Speaker, I urge adoption of the bill.

Mr. DAVIS. Mr. Speaker, I appreciate the cooperation of Chairmen STUDDS, JONES, and HERTEL in supporting this legislation and moving it through committee.

This bill authorizes the Fish and Wildlife Service to coordinate existing facilities to create a Great Lakes Tissue Bank for specimens of fish, wildlife, and even zebra mussels. The bill also authorizes the establishment of a centralized data base for information collected on Great Lakes fish and wildlife to give resource managers one-stop shopping.

The need for a centralized tissue bank in the Great Lakes has been recognized for a decade. The International Joint Commission recommended its creation in 1983, and the need was echoed in 1986, when the Council of Great Lakes Governors signed a toxic pollutant control agreement. More recently, the idea was promoted by the Northeast-Midwest Institute.

Specimen banking is needed to help monitor the environmental health of the lakes, as well as judge the effectiveness of our cleanup and control methods. Current tissue collection and storage methods are haphazard, and no central depository of information about Great Lakes tissues exist. The few banking efforts are uncoordinated, underfunded, and understaffed.

Mr. HERTEL. Mr. Speaker, H.R. 5350, the Great Lakes Wildlife Tissue Bank Act was introduced by Mr. DAVIS on June 9, 1992. I cosponsored this bill along with Mr. NOWAK, Mr. OBERSTAR, Ms. KAPTUR, Mr. BONIOR, Mr. VISCLOSKY, Mr. LAFALCE, Mr. PEASE, and Mr. LIPINSKI. The bill requires that the U.S. Fish and Wildlife Service take steps to provide for the storage, preparation, examination and archiving of Great Lakes wildlife, fish, and invertebrate tissues. H.R. 5350 also requires the establishment of uniform guidance on methods for collection, preparation, analysis, archiving, and quality control, while establishing a data base for tracking and evaluating information on Great Lakes animal tissue.

On April 8, 1992, the Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf held an oversight hearing on Great Lakes Federal research efforts. H.R. 5350 was one outcome of the findings of that hearing. The bill was referred to the Subcommittee on Fisheries and Wildlife Conservation and the Environment which discharged it on July 1, 1992, prior to the bill's markup by the Merchant Marine and Fisheries Committee. I would like to thank Chairman STUDDS for discharging the bill, allowing its subsequent unanimous approval by the committee. This is a valuable contribution to our ongoing effort to manage and protect our Great Lakes.

In 1983, a report by the Science Advisory Board of the United States-Canada International Joint Commission advocated estab-

lishment of a tissue bank as a means of monitoring toxic contaminants in Great Lakes fish and wildlife.

Over 400 man-made contaminants have been identified in Great Lakes fish and wildlife. Unfortunately, we don't have the analytical capabilities, or the resources to keep a running record of the amount of each of these substances existing in Great Lakes fish and wildlife. Moreover, contaminant analysis is very expensive—in some cases, the analysis of a single sample can cost from $1,000 to $2,000.

The establishment of a Great Lakes tissue bank is a cost-saving solution to this dilemma because it will provide for long-term storage of tissue samples that could be analyzed for a suspect contaminant should trouble arise. For example, 10 years into the future, if Great Lakes scientists suspect that a particular compound might be threatening ecosystem health, they could carry out an analysis of tissue bank samples and determine how concentrations of that compound had changed over that 10-year period. Such knowledge is essential for gaining the scientific understanding we need to effectively manage and protect our Nation's vast Great Lakes resources.

I urge passage of H.R. 5350.

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. STUDDS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Massachusetts [Mr. STUDDS] that the House suspend the rules and pass the bill, H.R. 5350, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

NATIONAL MARINE SANCTUARIES REAUTHORIZATION AND IMPROVEMENT ACT OF 1992

Mr. STUDDS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4310) to reauthorize and improve the national marine sanctuaries program, and to establish the Coastal and Ocean Sanctuary Foundation, as amended.

The Clerk read as follows:

H.R. 4310

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

TITLE I—REAUTHORIZATION AND AMENDMENT OF TITLE III OF MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

SEC. 1. SHORT TITLE.

This title may be cited as the "National Marine Sanctuaries Reauthorization and Improvement Act of 1992".

SEC. 2. FINDINGS, PURPOSES, AND POLICIES.

(a) FINDINGS.—Section 301(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431) is amended—

(1) in paragraph (2)—

(A) by inserting "cultural," after "educational,"; and

(B) by inserting ", and in some cases international," after "national";

(2) in paragraph (4)—

(A) by inserting ", research" after "conservation"; and

(B) by striking "and" after the semicolon at the end;

(3) in paragraph (5) by striking the period at the end and inserting a semicolon instead; and

(4) by adding at the end the following:

"(6) protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations; and

"(7) the Nation can contribute to that maintenance by including sites representative of biogeographic regions of its coastal and ocean waters and Great Lakes among the national marine sanctuaries established under this title.".

(b) PURPOSES AND POLICIES.—Section 301(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended to read as follows:

"(b) PURPOSES AND POLICIES.—The purposes and policies of this title are—

"(1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;

"(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

"(3) to support, promote and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

"(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment;

"(5) to allow, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

"(6) to develop and implement coordinated plans for the conservation and management of these areas with assistance from appropriate Federal agencies, State, local and native governments, and other public and private interests;

"(7) to create models of, and incentives for, ways to conserve and manage these areas;

"(8) to cooperate with global programs encouraging conservation of marine resources; and

"(9) to maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.".

SEC. 3. DEFINITIONS.

(a) MARINE ENVIRONMENT.—Section 302(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(3)) is amended by adding "including the Exclusive Economic Zone," after "jurisdiction,".

(b) DAMAGES.—Section 302(6) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(6)) is amended—

(1) in subparagraph (A)(ii) by striking "and" at the end;

(2) in subparagraph (B) by inserting "and" at the end; and

(3) by adding at the end the following:

"(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;".

(c) RESPONSE COSTS.—Section 302(7) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(7)) is amended by inserting "or authorized" after "taken".

(d) SANCTUARY RESOURCE.—Section 302(8) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(8)) is amended—

(1) by inserting "cultural," after "educational,";

(2) by striking the period after "value of the sanctuary" and inserting instead "; and"; and

(3) by adding the following after paragraph (8):

"(9) 'Exclusive Economic Zone' means the Exclusive Economic Zone as defined in the Magnuson Fishery Conservation and Management Act.".

(e) TECHNICAL CORRECTION.—Section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432) is amended—

(1) in paragraph (1) by striking "304(a)(1)(E)" and inserting "304(a)(1)(C)(v)"; and

(2) in paragraph (5) by striking "and" after the semicolon.

SEC. 4. SANCTUARY DESIGNATION STANDARDS.

(a) STANDARDS.—Section 303(a)(2)(B) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(a)(2)(B)) is amended by inserting "or should be supplemented" after "inadequate".

(b) FACTORS AND CONSULTATIONS.—

(1) Section 303(b)(1)(A) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(b)(1)(A)) is amended by inserting "maintenance of critical habitat of endangered species," after "assemblages,".

(2) Section 303(b)(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(b)(3)) is amended—

(A) by inserting ", governmental," after "other commercial" and inserting ", governmental," after "any commercial";

(B) by adding at the end "The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report regarding any past, present, or proposed future disposal of materials or detonation of ordnance in the vicinity of the proposed sanctuary."; and

(C) by striking "304(a)(1)" and inserting "304(a)(2)".

SEC. 5. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

(a) SANCTUARY PROPOSAL.—Section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434) is amended—

(1) by striking "prospectus" wherever it appears and inserting instead "documents";

(2) in subparagraph (a)(1)(C) by striking "a prospectus on the proposal which shall contain—" and inserting instead "documents, including an executive summary, consisting of—";

(3) by adding after paragraph (a)(3) the following:

"(4) FEDERAL AGENCY COMMENTS.—Comments by Federal agencies on any notice or documents issued under this section must be provided to the Secretary by the close of the official public comment period required by the National Environmental Policy Act of 1969.";

(4) by renumbering the remaining paragraphs accordingly;

(5) by altering any reference to the renumbered paragraphs accordingly;

(6) in former paragraph (a)(4) by inserting "cultural," after "educational,"; and

(7) in former paragraph (a)(5)—

(A) by striking "United States Fishery Conservation Zone" and inserting instead "United States Exclusive Economic Zone"; and

(B) by adding at the end "The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.".

(b) TAKING EFFECT OF DESIGNATIONS.—Section 304(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(b)) is amended—

(1) in paragraph (1) by striking the dash after "unless" and inserting instead ", in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.";

(2) by striking subparagraphs (b)(1)(A) and (b)(1)(B);

(3) in paragraph (b)(2) by—

(A) striking "(A) or (B)" before "will affect";

(B) by striking "not disapproved under paragraph (1)(A) or"; and

(C) by striking "(B)" before "shall take effect."; and

(4) by striking paragraph (b)(3) and renumbering the following paragraph.

(c) ACCESS AND VALID RIGHTS.—Section 304(c)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(c)) is amended to read as follows:

"(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.".

(d) ANNUAL REPORT.—Section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434) is amended by adding at the end the following:

"(d) ANNUAL REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress, no later than February 15 of each year, a status report on the National Marine Sanctuary Program.

"(e) INTERAGENCY COOPERATION.—(1) Subject to any guidelines the Secretary may establish, the head of a Federal agency shall consult with the Secretary on a prospective agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource.

"(2) Promptly after the conclusion of consultations under paragraph (1), the Secretary shall provide to the head of a Federal agency a written statement setting forth the Secretary's determination whether the agency action is likely to destroy, cause the loss of, or injure any sanctuary resource. The statement shall also include a summary of the information on which the determination is based. If the Secretary finds that the action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall suggest reasonable and prudent alternatives which can be taken by the Federal agency in implementing the agency action which will conserve sanctuary resources.".

SEC. 6. INTERNATIONAL COOPERATION.

Section 305 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1435) is amended—

(1) in the heading of the section by striking "**APPLICATION OF REGULATIONS AND INTERNATIONAL NEGOTIATIONS**" and inserting instead "**INTERNATIONAL REGULATION AND COOPERATION**"; and

(2) by adding at the end the following:

"(c) INTERNATIONAL COOPERATION.—The Secretary, in consultation with the Secretary of State and the heads of other appropriate Federal agencies, shall cooperate with foreign countries and international organizations to further the purposes and policies of this title, consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.".

SEC. 7. PROHIBITED ACTIVITIES.

Section 306 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1436) is amended to read as follows:

"SEC. 306. PROHIBITED ACTIVITIES.

"It is unlawful to—

"(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;

"(2) possess, sell, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;

"(3) interfere with the enforcement of this title; or

"(4) violate any provision of this title or any regulation or permit issued pursuant to this title.".

SEC. 8. ENFORCEMENT.

(a) CIVIL PENALTIES.—

(1) Section 307(c)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(c)(1)) is amended by striking "$50,000" and inserting instead "$100,000".

(2) Section 307(c)(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(c)(3)) is amended by adding at the end "The penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.".

(b) FORFEITURE.—Section 307(d)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(d)(1)) is amended by adding at the end "The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as damages under section 312 of this title.".

(c) USE OF RECEIVED AMOUNTS.—Section 307 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437) is amended by striking subsection (e)(1) and inserting the following:

"(1) EXPENDITURES.—

"(A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act.

"(B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this title or any regulation or permit issued under this title.

"(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—

"(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

"(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or any regulation or permit issued under this title; and

"(iii) manage and improve any other national marine sanctuary.".

(d) CONFORMING AMENDMENT.—Section 312(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(d)) is amended by—

(1) striking "and civil penalties under section 307";

(2) striking paragraph (3); and

(3) renumbering the remaining paragraph.

(e) ENFORCEABILITY.—Section 307 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437) is amended by adding at the end the following:

"(j) AREA OF APPLICATION AND ENFORCEABILITY.—The area of application and enforceability of this title includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.".

SEC. 9. MONITORING AND EDUCATION.

Section 309 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1440) is amended—

(1) by inserting ", **MONITORING, AND EDUCATION**" at the end of the section heading;

(2) by inserting "take such action as is necessary to";

(3) by inserting ", monitoring, and education" before "purposes";

(4) in paragraph (1)—

(A) by striking "National Oceanic and Atmospheric Administration" and inserting instead "Under Secretary of Commerce for Oceans and Atmosphere";

(B) by inserting ", monitoring, and education" before ", give priority"; and

(C) by striking "to research involving" and inserting instead ", to the extent practicable, to activities which involve"; and

(5) in paragraph (2) by inserting before the period at the end ", monitoring, and education, including coordination with the system of national estuarine reserves established under section 315 of the Coastal Zone Management Act of 1972".

SEC. 10. COOPERATIVE AGREEMENTS AND DONATIONS.

Section 311 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1442) is amended to read as follows:

"SEC. 311. COOPERATIVE AGREEMENTS, GRANTS, DONATIONS, AND ACQUISITIONS.

"(a) AGREEMENTS AND GRANTS.—The Secretary may enter into cooperative agreements and financial agreements, including contracts and grants, with any State, tribal or local government, regional or interstate agency, private person, or nonprofit organization to assist the Secretary in carrying out the purposes and policies of this title.

"(b) DONATIONS.—

"(1) ACCEPTANCE OF DONATIONS.—The Secretary may solicit and accept donations of funds, property, and services as gifts or bequests for use in designating and administering national marine sanctuaries under this title.

"(2) AGREEMENTS.—The Secretary may enter into agreements with any nonprofit organization authorizing the organization to solicit donations for the Secretary under this subsection.

"(3) ACQUISITIONS.—The Secretary may acquire by purchase, lease, or exchange, any

land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this title.".

SEC. 11. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES.

(a) LIABILITY FOR INTEREST.—Section 312(a)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)(1)) is amended to read as follows:

"(1) LIABILITY TO UNITED STATES.—Any person who destroys, causes the loss of, or injuries any sanctuary resource is liable to the United States for an amount equal to the sum of—

"(i) the amount of response costs and damages resulting from the destruction, loss, or injury; and

"(ii) interest on that amount calculated under section 1005 of the Oil Pollution Act of 1990.".

(b) LIABILITY IN REM.—Section 312(a)(2) of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)(2)) is amended by adding at the end: "The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.".

(c) LIMITS TO LIABILITY.—Section 312(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)) is amended by adding at the end the following:

"(4) LIMITS TO LIABILITY.—Nothing in sections 4281–4289 of the Revised Statutes of the United States or section 3 of the Act of February 13, 1893, shall limit the liability of any person under this title.".

(d) RESPONSE ACTIONS.—Section 312(b)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(b)(1)) is amended by inserting "or authorize" after "undertake".

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

Section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444) is amended to read as follows:

"SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to the Secretary to carry out this title the following—

"(1) $8,000,000 for fiscal year 1993;

"(2) $16,000,000 for fiscal year 1994;

"(3) $20,000,000 for fiscal year 1995; and

"(4) $25,000,000 for fiscal year 1996.".

SEC. 13. ADVISORY COUNCILS AND SHORT TITLE.

The Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended by adding at the end the following:

"SEC. 315. ADVISORY COUNCILS.

"(a) ESTABLISHMENT.—The Secretary may establish one or more advisory councils (in this section referred to as an 'Advisory Council') to provide assistance to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.

"(b) MEMBERSHIP.—Members of the Advisory Councils may be appointed from among—

"(1) persons employed by Federal or State agencies with expertise in management of natural resources;

"(2) members of relevant Regional Fishery Management Councils established under section 302 of the Magnuson Fishery Conservation and Management Act; and

"(3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

"(c) LIMITS ON MEMBERSHIP.—For sanctuaries designated after the date of enactment of the National Marine Sanctuaries Reauthorization and Improvement Act of 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

"(d) PAY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), members of an Advisory Council shall serve without pay.

"(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

"(e) STAFFING AND ASSISTANCE.—The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

"(f) PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

"(1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.

"(2) Emergency meetings may be held at the call of the chairman or presiding officer.

"(3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register.

"(4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

"SEC. 316. SHORT TITLE.

"This title may be cited as 'The National Marine Sanctuaries Act'.".

SEC. 14. GRAVEYARD OF THE ATLANTIC ARTIFACTS.

(a) ACQUISITION OF SPACE.—Pursuant to section 314 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1445) and consistent with the Cooperative Agreement entered into in October, 1989, between the National Oceanic and Atmospheric Administration and the Mariner's Museum of Newport News, Virginia, the Secretary shall make a grant for the acquisition of space in Hatteras Village, North Carolina, for—

(1) the display and interpretation of artifacts recovered from the area of the Atlantic Ocean adjacent to North Carolina generally known as the Graveyard of the Atlantic, including artifacts recovered from the Monitor National Marine Sanctuary; and

(2) administration and operations of the Monitor National Marine Sanctuary.

(b) AUTHORIZATION.—To carry out the Secretary's responsibilities under this section, there are authorized to be appropriated to the Secretary a total of $800,000 for fiscal years 1993 and 1994, to remain available until expended.

(c) FEDERAL SHARE.—Not more than two-thirds of the cost of space acquired under this section may be paid with amounts provided pursuant to this section.

TITLE II—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY

SEC. 21. SHORT TITLE.

This title may be cited as the "Hawaiian Islands Humpback Whale National Marine Sanctuary Act".

SEC. 22. FINDINGS.

The Congress finds the following:

(1) Many of the diverse marine resources and ecosystems within the Western Pacific region are of national significance and importance.

(2) There are at present no ocean areas in the Hawaiian Islands designated as national marine sanctuaries or identified on the Department of Commerce's Sanctuary Evaluation List of sites to be investigated as potential candidates for designation as a national marine sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

(3) The Hawaiian Islands consist of 8 major islands and 124 minor islands, with a total land area of 6,423 square miles and a general coastline of 750 miles.

(4) The marine environment adjacent to and between the Hawaiian Islands is a diverse and unique subtropical marine ecosystem.

(5) The Department of Commerce recently concluded in its Kahoolawe Island National Marine Sanctuary Feasibility Study that there is preliminary evidence of both biological, cultural, and historical resources adjacent to Kahoolawe Island to merit further investigation for national marine sanctuary status.

(6) The Department of Commerce also concluded in its Kahoolawe Island National Marine Sanctuary Feasibility Study that there are additional marine areas within the Hawaiian archipelago which merit further consideration for national marine sanctuary status and the national marine sanctuary program could enhance marine resource protection in Hawaii.

(7) The Hawaiian stock of the endangered humpback whale, the largest of the three North Pacific stocks, breed and calve within the waters of the main Hawaiian Islands.

(8) The marine areas surrounding the main Hawaiian Islands, which are essential breeding, calving, and nursing areas for the endangered humpback whale, are subject to damage and loss of their ecological integrity from a variety of disturbances.

(9) The Department of Commerce recently promulgated a humpback whale recovery plan which sets out a series of recommended goals and actions in order to increase the abundance of the endangered humpback whale.

(10) An announcement of certain Hawaiian waters frequented by humpback whales as an active candidate for marine sanctuary designation was published in the Federal Register on March 17, 1982 (47 FR 11544).

(11) The existing State and Federal regulatory and management programs applicable to the waters of the main Hawaiian Islands are inadequate to provide the kind of comprehensive and coordinated conservation and management of humpback whales and their habitat that is available under title III of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

(12) Authority is needed for comprehensive and coordinated conservation and management of humpback whales and their habitat that will complement existing Federal and State regulatory authorities.

(13) There is a need to support, promote, and coordinate scientific research on, and monitoring of, that portion of the marine environment essential to the survival of the humpback whale.

(14) Public education, awareness, understanding, appreciation, and wise use of the marine environment is fundamental to the protection and conservation of the humpback whale.

(15) The designation, as a national marine sanctuary, of the areas of the marine environment adjacent to the main Hawaiian Is-

lands which are essential to the continued recovery of the humpback whale is necessary for the preservation and protection of this important national marine resource.

(16) The marine sanctuary designated for the conservation and management of humpback whales could be expanded to include other marine resources of national significance which are determined to exist within the sanctuary.

SEC. 23. DEFINITIONS.

In this title, the following definitions apply:

(1) The term "adverse impact" means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

(2) The term "Sanctuary" means the Hawaiian Islands Humpback Whale National Marine Sanctuary designated under section 25.

(3) The term "Secretary" means the Secretary of Commerce.

SEC. 24. POLICY AND PURPOSE.

(a) POLICY.—It is the policy of the United States to protect and preserve humpback whales and their habitat within the Hawaiian Islands marine environment.

(b) PURPOSE.—The purposes of this title are—

(1) to protect humpback whales and their habitat in the area described in section 25(b);

(2) to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;

(3) to manage such human uses of the Sanctuary consistent with this title and title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this Act; and

(4) to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary designated in section 25(a).

SEC. 25. DESIGNATION OF SANCTUARY.

(a) DESIGNATION.—Subject to subsection (c), the area described in subsection (b) is designated as the Hawaiian Islands Humpback Whale National Marine Sanctuary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1451 et seq.).

(b) AREA INCLUDED.—

(1) Subject to subsections (c) and (d), the area referred to in subsection (a) consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward of the upper reaches of the wash of the waves on shore—

(A) to the 100-fathom (183-meter) isobath adjoining the islands of Lanai, Maui, Kahoolawe, and Molokai, including Penguin Bank; and

(B) to the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward.

(2) The Secretary shall generally identify and depict the Sanctuary on National Oceanic and Atmospheric Administration charts. Those charts shall be maintained on file and kept available for public examination during regular business hours at the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration. The Secretary shall update the charts to reflect any boundary modification under subsection (d).

(c) EFFECT OF OBJECTION BY GOVERNOR.—

(1) If within 45 days after the date of enactment of this Act the Governor of Hawaii certifies to the Secretary that the designation is unacceptable, the designation shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

(2) If within 45 days after the date of issuance of the comprehensive management plan and implementing regulations under section 26 the Governor of Hawaii certifies to the Secretary that the management plan, any implementing regulation, or any term of the plan or regulations is unacceptable, the management plan, regulation, or term, respectively, shall not take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii.

(3) If the Secretary considers that an action taken under paragraph (1) or (2) will affect the Sanctuary in a manner that the policy and purposes of this title cannot be fulfilled, the Secretary may terminate the entire designation under subsection (a). At least 30 days prior to such termination, the Secretary shall submit written notification of the proposed termination to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives. .

(d) BOUNDARY MODIFICATIONS.—No later than the date of issuance of the draft environmental impact statement for the Sanctuary under section 304(a)(1)(C)(vii) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(a)(1)(C)(vii)), the Secretary, in consultation with the Governor of Hawaii, if appropriate, may make modifications to the boundaries of the Sanctuary as necessary to fulfill the purpose of this title. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a written notification of such modifications.

SEC. 26. COMPREHENSIVE MANAGEMENT PLAN.

(a) PREPARATION OF PLAN.—The Secretary, in consultation with interested persons and appropriate Federal, State, and local government authorities, shall develop and issue not later than 18 months after the date of enactment of this Act a comprehensive management plan and implementing regulations to achieve the policy and purpose of this title. In developing the plan and regulations, the Secretary shall follow the procedures specified in sections 303 and 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433 and 1434). Such comprehensive management plan shall—

(1) allow all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of the protection of humpback whales and their habitat;

(2) set forth the allocation of Federal and State enforcement responsibilities, as jointly agreed by the Secretary and the State of Hawaii;

(3) identify research needs and establish a long-term ecological monitoring program with respect to humpback whales and their habitat;

(4) identify alternative sources of funding needed to fully implement the plan's provisions and supplement appropriations under section 27 of this title and section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444);

(5) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities with jurisdiction within or adjacent to the Sanctuary; and

(6) promote education among users of the Sanctuary and the general public about conservation of humpback whales, their habitat, and other marine resources.

(b) PUBLIC PARTICIPATION.—The Secretary shall provide for participation by the general public in development of the comprehensive management plan or any amendment thereto.

SEC. 27. AUTHORIZATION OF APPROPRIATIONS.

For carrying out this title, there are authorized to be appropriated to the Secretary $500,000 for fiscal year 1993 and $300,000 for fiscal year 1994. Of the amounts appropriated under this section for fiscal year 1993—

(1) not less than $50,000 shall be used by the Western Pacific Regional Team to evaluate potential national marine sanctuary sites for inclusion on the Department of Commerce's Sanctuary Evaluation List; and

(2) not less than $50,000 shall be used to continue the investigation of biological, cultural, and historical resources adjacent to Kahoolawe Island.

TITLE III—MISCELLANEOUS

SEC. 31. STELLWAGEN BANK NATIONAL MARINE SANCTUARY.

(a) DESIGNATION.—The area described in subsection (b) is designated as the Stellwagen Bank National Marine Sanctuary (hereafter in this section referred to as the "Sanctuary").

(b) AREA.—The Sanctuary shall consist of all submerged lands and waters, including living and nonliving marine resources within those waters, bounded by the area described as Boundary Alternative 3 in the Draft Environmental Impact Statement and Management Plan for the Proposed Stellwagen Bank National Marine Sanctuary, published by the Department of Commerce in January 1991, except that the western boundary shall be modified as follows:

(1) The southwestern corner of the Sanctuary shall be located at a point off Provincetown, Massachusetts, at the following coordinates: 42 degrees, 7 minutes, 44.89 seconds (latitude), 70 degrees, 28 minutes, 15.44 seconds (longitude).

(2) The northwestern corner of the Sanctuary shall be located at a point off Cape Ann, Massachusetts, at the following coordinates: 42 degrees, 37 minutes, 53.52 seconds (latitude), 70 degrees, 35 minutes, 52.38 seconds (longitude).

(c) MANAGEMENT.—The Secretary of Commerce shall issue a management plan for the Sanctuary in accordance with section 304 of the Marine Protection, Research, and Sanctuary Act of 1972 (16 U.S.C. 1434).

(d) SAND AND GRAVEL MINING ACTIVITIES PROHIBITED.—Notwithstanding any other provision of law, exploration for, and mining of, sand and gravel and other minerals in the Sanctuary is prohibited.

(e) CONSULTATION.—Pursuant to section 304(e) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended by this Act, the appropriate Federal agencies shall consult with the Secretary of Commerce on all prospective agency actions in the vicinity of the Sanctuary regarding the potential impact of those activities on sanctuary resources.

(f) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Commerce for carrying out the purposes of this section $570,000 for fiscal year 1993 and $250,000 for fiscal year 1994.

SEC. 32. MONTEREY BAY NATIONAL MARINE SANCTUARY.

(a) ISSUANCE OF DESIGNATION NOTICE.—Notwithstanding section 304(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(b))—

(1) by not later than September 16, 1992, the Secretary of Commerce shall publish

under that Act in the Federal Register a notice of designation of the Monterey Bay National Marine Sanctuary (hereafter in this section the "Sanctuary"); and

(2) the designation of the Sanctuary pursuant to that notice shall take effect on September 18, 1992.

(b) EXCEPTIONS.—The designation or a term of the designation under subsection (a)—

(1) shall not apply if it is disapproved by a joint resolution enacted by the Congress prior to September 18, 1992; and

(2) shall not take effect in areas within the seaward boundary of the State of California, if the Governor of the State of California certifies to the Secretary of Commerce before that date that it is unacceptable.

(c) FAILURE TO DESIGNATE.—If the Secretary of Commerce fails to meet the requirements of subsection (a), the area described and depicted as Boundary Alternative 5 in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary, published by the Department of Commerce in June 1992, is designated as the Monterey Bay National Marine Sanctuary, effective September 18, 1992.

(d) SANCTUARY MANAGEMENT.—

(1) MANAGEMENT PLAN.—

(A) The Secretary of Commerce shall issue a management plan and implementing regulations for the Sanctuary in accordance with section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434).

(B) The Sanctuary shall be managed and regulations enforced under all applicable provisions of title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) as if the Sanctuary had been designated under that title.

(2) OIL AND GAS ACTIVITIES PROHIBITED.—Notwithstanding any other provision of law, no leasing, exploration, development, or production of minerals or hydrocarbons shall be permitted within the Sanctuary.

SEC. 33. SAN LUIS OBISPO STUDY.

(a) IN GENERAL.—The Secretary of Commerce shall conduct a study of the area described in subsection (d) for purposes of making determinations and findings in accordance with section 303(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(a)), regarding whether or not all or any part of that area is appropriate for designation as a national marine sanctuary under that Act. Not less than ½ of the cost of the study shall be contributed by non-Federal sources prior to beginning the study.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Commerce shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that sets forth the determinations and findings referred to in subsection (a).

(c) LIMITATION ON APPLICATION.—If not less than ½ of the cost of a study under subsection (a) have not been provided by non-Federal sources before January 1, 1994, the requirements of this section shall no longer apply.

(d) AREA INCLUDED.—The area referred to in subsection (a) includes—

(1) the area of the marine environment off the coast of California generally known as Estero Bay; and

(2) significant, adjacent marine environments associated with Estero Bay.

SEC. 34. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES.

(a) IN GENERAL.—Beginning on the date of enactment of this Act, the Secretary shall conduct a 2-year pilot project to enhance funding for designation and management of national marine sanctuaries.

(b) PROJECT.—The project shall consist of—

(1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries;

(2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;

(4) the authorization by the Secretary of the use of any symbol published under paragraph (1) by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(5) the establishment and collection by the Secretary of fees from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);

(6) the retention of any fees assessed under paragraph (5) by the Secretary in an interest-bearing revolving fund; and

(7) the expenditure of any fees and any interest in the fund established under paragraph (6), without appropriation, by the Secretary to designate and manage national marine sanctuaries.

(c) CONTRACT AUTHORITY.—The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (b).

(d) RESTRICTIONS.—The Secretary may restrict the use of the symbols published under subsection (b), and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.

(e) PROPERTY OF UNITED STATES.—Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (b) is deemed to be the property of the United States.

(f) PROHIBITED ACTIVITIES.—(1) It is unlawful for any person—

(A) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;

(B) to represent himself or herself to be an official sponsor absent a designation by the Secretary;

(C) to manufacture, reproduce, or use any symbol adopted by the Secretary absent designation as an official sponsor and without payment of a fee to the Secretary; and

(D) to violate any regulation promulgated by the Secretary under this section.

(2) Violation of this section shall be considered a violation of title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.).

(g) REPORT.—No later than 30 months after the date of enactment of this Act, the Secretary shall submit a report on the pilot project to Congress regarding the success of the program in providing additional funds for management and operation of national marine sanctuaries.

(h) DEFINITIONS.—In this section—

(1) "national marine sanctuary" or "national marine sanctuaries" means a national marine sanctuary or sanctuaries designated under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), or by other law in accordance with title III of the Marine Protection, Research, and Sanctuaries Act of 1972;

(2) "official sponsor" means any person designated by the Secretary who is authorized to manufacture, reproduce, or use any symbol created, adopted, and published in the Federal Register under this section for a fee paid to the Secretary; and

(3) "Secretary" means the Secretary of Commerce.

(i) USE OF APPROPRIATIONS.—Of sums appropriated to the Secretary under title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), for administration of the national marine sanctuary program, the Secretary may expend a total of $100,000 for fiscal years 1993 and 1994 to carry out this section.

SEC. 35. TECHNICAL CORRECTIONS RELATING TO COASTAL ZONE MANAGEMENT ACT OF 1972.

(a) AMENDMENT OF COASTAL ZONE MANAGEMENT ACT OF 1972.—Except as otherwise expressly provided, whenever in this section an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(b) TECHNICAL CORRECTIONS.—

(1) The Act is amended by—

(A) striking "coastal State" each place it appears and inserting "coastal state";

(B) striking "coastal States" each place it appears and inserting "coastal states"; and

(C) striking "coastal State's" each place it appears and inserting "coastal state's".

(2) Section 6203(b)(1) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-301, relating to section 303(2) of the Coastal Zone Management Act of 1972) is amended by striking "as well as the" the first place it appears and inserting "as well as to".

(3) Section 6204(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-302, relating to section 304(1) of the Coastal Zone Management Act of 1972) is amended—

(A) in the matter preceding paragraph (1) by striking "The third sentence of section" and inserting "Section";

(B) in paragraph (1) by inserting after "period at the end" the following: "of the third sentence"; and

(C) in paragraph (2) by inserting after "territorial sea.'" the following: "at the end of the second sentence".

(4) Section 6204(b) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388-302) is amended by striking "following'" and inserting "following:".

(5) Section 304(1) (16 U.S.C. 1453(1)) is amended in the second sentence—

(A) by striking "the outer limit of" the first place it appears; and

(B) by striking "1705," and inserting "1705),".

(6) Section 304(2) (16 U.S.C. 1453(2)) is amended by striking "the term" and inserting "The term".

(7) Section 304(9) (16 U.S.C. 1453(9)) is amended to read as follows:

"(9) The term 'Fund' means the Coastal Zone Management Fund established under section 308(b).".

(8) Section 306(b) (16 U.S.C. 1455(b)) is amended by striking the semicolon at the end and inserting a period.

(9) Section 6216(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1368–314, relating to section 306A(b)(1) of the Coastal Zone Management Act of 1972) is amended by striking "306a(b)(1)" and inserting "306A(b)(1)".

(10) Section 306A(a)(1)(B) (16 U.S.C. 1455a(a)(1)(B)) is amended by striking "specified" and all that follows through the end of the sentence and inserting "specified in section 303(2)(A) through (K).".

(11) Section 306A(b) (16 U.S.C. 1455a(b)) is amended—

(A) in paragraph (2) by striking "that are designated" and all that follows through the end of the paragraph and inserting "that are designated in the state's management program pursuant to section 306(d)(2)(C) as areas of particular concern."; and

(B) in paragraph (3) by—

(i) striking "access of" and inserting "access to"; and

(ii) striking "in accordance with" and all that follows through the end of the paragraph and inserting "in accordance with the planning process required under section 306(d)(2)(G).".

(12) Section 306A(c) (16 U.S.C. 1455a(c)) is amended in paragraph (2)(C) in the matter following clause (iii) by striking "shall not by" and inserting "shall not be".

(13) Section 6208(b)(3)(B) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388–308, relating to section 307(c)(3)(B) of the Coastal Zone Management Act of 1972) is amended by inserting "with" after "complies".

(14) Section 307(i) (16 U.S.C. 1456(i)) is amended—

(A) by inserting "(1)" after "(i)";

(B) in paragraph (1) (as designated by subparagraph (A) of this paragraph) by striking the second sentence; and

(C) by adding at the end the following:

"(2)(A) The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).

"(B) If the Secretary waives the application fee under paragraph (1) for an applicant, the Secretary shall waive all other fees under this subsection for the applicant.

"(3) Fees collected under this subsection shall be deposited into the Coastal Zone Management Fund established under section 308.".

(15) Section 6209 of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388–308, relating to section 308 of the Coastal Zone Management Act of 1972) is amended in the matter preceding the quoted material by striking "1456" and inserting "1456a".

(16) Section 308(a)(1) (16 U.S.C. 1456a(a)(1)) is amended in the first sentence by striking "pursuant to this Act" and inserting "pursuant to this title".

(17) Section 308(b)(1) (16 U.S.C. 1456a(b)(1)) is amended by striking "(hereinafter" and all that follows through "Fund)".

(18) Section 308(b)(1) (16 U.S.C. 1456a(b)(1)) is amended by inserting after "subsection (a)" the following: "and fees deposited into the Fund under section 307(i)(3)".

(19) The first section 313 (16 U.S.C. 1459) is amended—

(A) in subsection (a) by striking "section 308" and inserting "section 308, as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990,"; and

(B) in paragraph (1) of subsection (b) by striking "section 308(d)" and all that follows through the end of the paragraph and inserting "section 308, as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990; and".

(20) The second section 313 (16 U.S.C. 1460, relating to Walter B. Jones excellence in coastal zone management awards) is amended—

(A) by redesignating that section as section 314;

(B) in subsection (a) by inserting after "under section 308" the following: "and other amounts available to carry out this title (other than amounts appropriated to carry out sections 305, 306, 306A, 309, 310, and 315)"; and

(C) in subsection (e) by inserting after "under section 308" the following: "and other amounts available to carry out this title (other than amounts appropriated to carry out sections 305, 306, 306A, 309, 310, and 315)".

(21) Section 315(a) (16 U.S.C. 1461(a)) is amended by striking "National Estuarine Reserve Research System" and inserting "National Estuarine Research Reserve System".

(22) Section 315(c)(4) (16 U.S.C. 1461(c)(4)) is amended by striking "subsection (1)" and inserting "paragraph (1)".

(23) Section 316(a) (16 U.S.C. 1462(a)) is amended in clause (5) by striking "subsections (c) and (d) of this section" and inserting "subsections (c) and (d) of section 312".

(24) Section 6217(i)(3) of the Coastal Zone Act Reauthorization Amendments of 1990 (104 Stat. 1388–319, relating to definitions under that Act) is amended—

(A) by striking the comma; and

(B) by inserting "Zone" after "Coastal".

SEC. 36. REAUTHORIZATION OF FLORIDA KEYS NATIONAL MARINE SANCTUARY WATER QUALITY PROTECTION PROGRAM.

In addition to amounts otherwise available, there are authorized to be appropriated $1,000,000 for each of the fiscal years 1993 through 1996 for the water quality protection program for the Florida Keys National Sanctuary developed under section 8 of the Florida Keys National Marine Sanctuary and Protection Act (Public Law 101–605).

SEC. 37. RESEARCH TO IMPROVE MANAGEMENT.

(a) FLORIDA NATIONAL MARINE SANCTUARY.—Section 7(a) of the Florida Keys National Marine Sanctuary and Protection Act (Public Law 101–605) is amended by striking paragraph (4), inserting the following new paragraphs, and renumbering subsequent paragraphs accordingly:

"(4) identify priority needs for research and amounts needed to—

"(A) improve management of the Sanctuary, and in particular, the coral reef ecosystem within the Sanctuary; and

"(B) identify clearly the cause and effect relationships between factors threatening the health of the coral reef ecosystem in the Sanctuary;

"(5) establish a long-term ecological monitoring program and data base, including methods to disseminate information on the management of the coral reef ecosystem;".

(b) DEADLINES NOT AFFECTED.—The provisions of this section shall not be construed to modify, by implication or otherwise, the deadlines established under—

(1) section 7(a) of the Florida Keys National Marine Sanctuary and Protection Act regarding completion of the comprehensive management plan and final regulations; or

(2) section 8(a) of that Act regarding development of the water quality protection program.

SEC. 38. OLYMPIC COAST NATIONAL MARINE SANCTUARY.

No oil or gas leasing or preleasing activity shall be conducted within the area designated as an Olympic Coast National Marine Sanctuary in accordance with Public Law 100-627.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Massachusetts [Mr. STUDDS] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, as one of the authors of this bill, Mr. Speaker, I cannot emphasize enough its importance to protecting the marine environment. Ever since its creation 20 years ago, the National Marine Sanctuary Program has been visionary in one very important aspect—preserving special areas of the marine environment for a variety of uses.

Balancing humans needs against the fragility of our coastal marine environments is not easy. We in Massachusetts know that as well as anyone. But the National Marine Sanctuary Program manages to juggle those needs. It has served to protect marine resources as diverse as the commerical fisheries of the Gulf of the Farallones and the wreck of the U.S.S. *Monitor*.

Today the House will debate H.R. 4310, the National Marine Sanctuary Reauthorization and Improvement Act of 1992. The bill streamlines the designation process, clarifies and strengthens NOAA's management authority, and authorizes funding at the needed levels. With the designation of three new sanctuaries in the bill, and sanctuaries off the Olympic Coast of Washington; Norfolk Canyon off Virginia; and Thunder Bay in Michigan undergoing evaluation for designation within the next 2 years, it is clearly time to reauthorize and improve this program.

Before I explain the amendments to H.R. 4310, I would like to add a point of explanation for the record. The phrase "treaty right" added to section 304(c)(1), is deleted under the substitute amendment. The deletion eliminates concerns that the proposed language could be construed to expand the Secretary's authority to regulate Indian treaty right activities beyond the Secretary's existing authority to enact nondiscriminatory regulations to the extent necessary for resource protection. It is not the intent of this committee or of this body that H.R. 4310 in any way abrogate, modify, or diminish treaty rights.

The bill before this body today contains a committee amendment which was not in this bill as reported out of

Merchant Marine and Fisheries Committee. The amendment designates three sanctuaries that have been under NOAA consideration: The Hawaiian Islands Humpback Whale National Marine Sanctuary, the Stellwagen Bank National Marine Sanctuary, and the Monterey Bay National Marine Sanctuary. With the adoption of H.R. 4310, the National Marine Sanctuary Program will cover twice the area of the 10 sanctuaries designated from 1975 through 1991.

The amendment also instructs NOAA to conduct a study of San Luis Obispo, CA, for possible sanctuary designation, and to undertake a pilot project—modeled after the Olympics—to develop a symbol and seek out sponsors for the sanctuary program.

Two provisions relating to the Florida Keys National Marine Sanctuary are included in the committee's amendment. The first extends NOAA's authority to complete a study for water quality protection in the Florida Keys, and the second instructs NOAA to undertake the development of a coral reef research and management program unique to the Keys.

Finally, the committee's amendment establishes a ban on oil and gas leases in the Olympic Coast National Marine Sanctuary, and includes a number of technical and conforming amendments to the Coastal Zone Management Act.

A number of these amendments have been triggered by the fact that this administration and the previous one have occasionally forgotten that resource protection is a sanctuary's primary goal under the law, and have unreasonably delayed the designation of new sanctuaries in order to protect private interests. Most recently, these delaying tactics have been led by the Vice President's Council on Competitiveness. This convenient lack of memory is occurring right now in relation to the proposed Stellwagen Bank National Marine Sanctuary in the waters of Massachusetts, and has led to the inclusion of that designation in H.R. 4310.

For almost a decade, Stellwagen Bank languished on the back burners of NOAA's National Marine Sanctuary Program. During that time, threats to the integrity of this incredible marine ecosystem have continued to build. In 1990, NOAA finally began the process of making Stellwagen Bank a sanctuary—with support from virtually the entire Commonwealth of Massachusetts. NOAA has so far done an excellent job of moving Stellwagen toward sanctuary status, and I would like to take this opportunity to thank them for their efforts. However, a philosophical debate within the administration now threatens to kill this designation—a debate over the legitimacy of leaving Stellwagen Bank open to offshore sand and gravel mining.

The fact that the Department of the Interior would even consider the possibility of sand and gravel mining in a highly productive marine ecosystem is nothing short of ludicrous. Stellwagen Bank is sand and gravel—mine it, and you destroy the very reason for establishing this sanctuary in the first place. NOAA's draft environmental impact statement for the Stellwagen Bank Sanctuary recognized how harmful mining could be to this ecosystem, and the Department of the Interior should do the same. This ridiculous debate must be stopped here and now. Government by special interest does not fly in the Commonwealth of Massachusetts—government by the people does.

We have also included a provision in the Stellwagen Bank Sanctuary designation that requires Federal agencies to consult with NOAA on all proposed actions in the vicinity of the sanctuary regarding their potential impact on sanctuary resources. This provision is more stringent than the general consultation provision included in H.R. 4310, which does not require consultation on all Federal actions, only on those that are likely to harm sanctuary resources. Due to the special nature of the Stellwagen Bank ecosystem, and the variety of activities that occur in Massachusetts Bay, it is essential that we take extra care.

I would like to close by stressing the importance of this bill, and by thanking my colleagues on the Committee on Merchant Marine and Fisheries who worked so hard to bring it before you today. I urge its support.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. YOUNG of Alaska. Mr. Speaker, I rise in support of H.R. 4310 and urge its adoption.

This bill is the product of many compromises worked out by the majority and the minority sides of our committee. It is not a perfect bill and there are still changes that some Members would like to see made. Nevertheless, I believe it is the best compromise that could be obtained under the circumstances.

I do want to call the Members' attention to section 7 of the bill dealing with prohibited activities. As the committee report—House Report 102-565—explains, we are not attempting to prohibit activities such as commercial fishing that occur outside of a sanctuary, even though those same fish may be found in the sanctuary. This same understanding applies to section 301(b)(2) of the Marine Sanctuaries Act, as amended by this bill.

Further, in regard to the Hawaiian Islands Humpback Whale Sanctuary that is created in title II of this bill, Members should note that this language does not prevent NOAA from examining other areas around the Hawaiian Islands for use as marine sanctuaries. Also, it is the intent of our committee that NOAA follow the normal procedure for developing the management plan for this sanctuary and may include regulations protecting other nationally significant marine resources within the sanctuary.

Mr. Speaker, again I believe this bill is an excellent compromise and should be supported.

Mr. Speaker, I reserve the balance of my time.

Mr. STUDDS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Washington [Mrs. UNSOELD].

Mr. Speaker, I rise in support of H.R. 4310 and to thank our committee leadership on both sides of the aisle for their efforts in bringing this bill to the floor today. I particularly appreciate their efforts to address some of my concerns surrounding designation of the Olympic Coast National Marine Sanctuary. I also appreciate the support from my friends and Washington State colleagues SID MORRISON and JOHN MILLER to ensure responsible management of the unique marine resources found within the Olympic Coast Sanctuary region. We are all indebted to the esteemed chairman from Massachusetts, Mr. STUDDS, for his typically fine leadership.

Congress directed the National Oceanic and Atmospheric Administration [NOAA] to designate a portion of the Washington coast as a national marine sanctuary in 1988. This direction recognized the unique natural resource values of the Olympic Coast and the opportunity under the National Marine Sanctuary Program to promote public education and scientific research.

Unfortunately, designation of this sanctuary is 2 years behind schedule. This delay has been caused by poor program management, lack of sufficient resources, and the insistence of the Minerals Management Service that oil and gas drilling be allowed within the sanctuary boundaries.

Last July, NOAA issued its preferred management plan in a draft environmental impact statement and management plan [EIS]. This plan would designate a discrete area off the Olympic National Park and prohibit oil and gas development within the boundaries. NOAA based this preferred management option on two points: First, its findings that the area has "significant natural resource values and qualities that are especially sensitive to potential impacts from OCS activities," and second, findings of the Minerals Management Service [MMS] that this area has "a higher environmental productivity and sensitivity ranking, and even lower hydrocarbon potential, than the Monterey Bay, CA, planning area which was recently closed off to oil and gas activities"—draft EIS, page 157.

The substitute offered today includes my provision to codify NOAA's pre-

ferred management option of prohibiting oil and gas development within the sanctuary. This prohibition will apply only to the area designated by NOAA in its final EIS. I propose this amendment because, despite NOAA's best judgment, there are some within the administration who still want to leave open the option of OCS development within the sanctuary.

This language is nearly identical to a provision I included in the comprehensive energy bill already adopted by this House. I am serious about permanent protection from oil and gas development along our coast, and ensuring such protection for the sanctuary region of our coast is an important first step.

Finally, Mr. Speaker, in addition to oil and gas development, there are a number of other outstanding issues that were raised during the public hearings on the draft EIS. These include authority to regulate ship traffic, sanctuary boundaries, and the Navy's use of an area known as sea lion rock as a bombing target. Although these concerns were raised nearly a year ago at public hearings, NOAA has failed to respond to them. My provision in today's bill is intended to permanently resolve just one issue—oil and gas development. The remaining ones must still be resolved by NOAA under authority of the National Marine Sanctuary Program. But we can only wait so long. Continued failure by NOAA to fulfill its responsibility to protect the unique resources of the Olympic Coast in a timely fashion, as required by law, will result in further legislation by this Member.

Mr. STUDDS. Mr. Speaker, I yield 1 minute to the gentleman from West Virginia [Mr. RAHALL].

Mr. RAHALL. I thank the subcommittee chairman for yielding this time to me.

Mr. Speaker, I requested this time in order to engage in a colloquy with the chairman of the subcommittee.

Mr. Speaker, the committee amendment includes a provision that extends the authorization of the water quality protection program for the Florida Keys National Marine Sanctuary authorized in section 8 of the Florida Keys National Marine Sanctuary and Protection Act, enacted in 1990. This provision falls within the water quality jurisdiction of the Committee on Public Works and Transportation. We have reviewed the provision, and support its adoption.

Mr. STUDDS. Mr. Speaker, will the gentleman yield?

Mr. RAHALL. I yield to the chairman of the subcommittee.

Mr. STUDDS. I thank the gentleman for yielding.

Mr. Speaker, I appreciate the gentleman's statement. I concur in the jurisdictional point he has raised.

Mr. Speaker, I yield 2 minutes to the gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. I thank the gentleman for yielding to me.

Mr. Speaker, I would like very much to commend and thank the chairman of the subcommittee, the gentleman from Massachusetts [Mr. STUDDS], and the ranking minority member, the gentleman from Alaska [Mr. YOUNG], my good friend, for their commitment to the National Marine Sanctuaries Program.

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I think, being from Hawaii and from Alaska [Mr. YOUNG] and I have a particular affinity in that regard, and the gentleman from Massachusetts [Mr. STUDDS] of course, with his long and commendable service with respect to the Atlantic and his general knowledge with respect to matters regarding the ocean, has served this House in very good stead.

I would also like to thank the members of the Committee on Merchant Marine and Fisheries for including language in the committee amendment which will establish, as noted by the gentleman from Alaska [Mr. YOUNG], the National Humpback Whale Marine Sanctuary in Hawaiian waters. This provision will permit us to reverse a century of destruction and neglect.

Mr. Speaker, I want to note very particularly that this sanctuary is in regard to an area which is the breeding, calving, and nursing areas for the humpback whale, the breeding, calving and nursing areas. The humpback whales migrate yearly from Alaskan waters to Hawaii for calving. These 40-ton acrobats have inspired awe and enchantment for generations. Today, people visit Hawaii from all over the world to view the sight of these magnificent creatures.

But there is a downside to all this attention. The humpback whale is on the Endangered Species List and its population continues to decline. The need for Federal protection is obvious. Establishment of the Hawaiian Islands National Humpback Whale Marine Sanctuary is a welcome step in creating a protected environment for these unique animals and unique circumstances within which we find the calving and the breeding.

However, I am aware that the chairman and I share some concerns regarding the waters surrounding Kahoolawe and unexploded ordnance. People may not be aware that the Island of Kahoolawe has in the past been utilized in wartime activities, and there is the possibility of unexploded ordnance there.

Therefore, Mr. Speaker, I would like to engage in a brief colloquy with the chairman:

Do I have the gentleman's assurance that he will address this issue in conference with the Senate?

Mr. STUDDS. Mr. Speaker, will the gentleman yield?

Mr. ABERCROMBIE. I yield to the gentleman from Massachusetts.

Mr. STUDDS. Mr. Speaker, out of gratitude to the gentleman for his pronouncing the aforementioned island, the gentleman has my assurance.

Mr. ABERCROMBIE. Mr. Speaker, I say to the gentleman from Massachusetts, Thank you very much. "Kahoolawe" is a word that might prove formidable to virtually any other Member, but I am certain that the chairman, of all the Members, would be able to handle it, and we most certainly want to invite you to come out and see the situation, not necessarily where the unexploded ordnance is. Maybe I'll invite Mr. YOUNG to come with me on that one.

Mr. YOUNG of Alaska. All right.

Mr. ABERCROMBIE. Mr. Speaker, I thank the gentleman, and I most certainly thank the gentleman from Alaska [Mr. YOUNG], and for purposes of the RECORD let it be noted that he nodded his head most vigorously in the affirmative with respect to the invitation to come to Kahoolawe, and I offer my wholehearted support for this legislation, and the people from Hawaii say, "Mahalo."

Mr. STUDDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just think the RECORD should reflect there are equally unpronounceable places in the gentleman's State of Alaska. I urge all our colleagues to support this bill.

Mr. HERTEL. Mr. Speaker, this year marks the 20th anniversary of the National Marine Protection, Research, and Sanctuaries Act of 1972. It is appropriate today that the House will debate legislation to extend title III of that landmark legislation. I am pleased to request consideration of H.R. 4310, the National Marine Sanctuary Reauthorization and Improvement Act of 1992, which I introduced on February 25, 1992. The bill is cosponsored by Mr. HUGHES, Mr. DAVIS, Mr. PANETTA, Mr. FASCELL, Mr. SCHEUER, Mr. MANTON, Mr. MCDERMOTT, Ms. NORTON, and Mr. SAXTON.

The National Marine Sanctuary Program was created by Congress to protect and conserve distinct areas of ocean, coastal and Great Lakes waters recognized for their unique qualities. The Secretary of Commerce was given authority to evaluate discrete sites for designation as National Marine Sanctuaries and to develop and implement the management plan for each sanctuary, to preserve its vast resources.

In the early stages of the program, the National Oceanic and Atmospheric Administration [NOAA] drafted regulations to take on the task of site selection, evaluation, and designation of sanctuaries. The first two National Marine Sanctuary designations were accomplished in 1975; these were the U.S.S. *Monitor* off North Carolina and Key Largo, FL. In 1980, the Channel Islands National Marine Sanctuary off California was designated. Then in 1981, three more sanctuaries of varying size and characteristics were designated. These were located at Gray's Reef, GA; Looe Key, FL; and the Gulf of Farallones, CA.

For the better part of the 1980's the National Marine Sanctuary Program was at a standstill. Denied budget support by the past administration, those sanctuaries that were designated had few, if any, resources for management. Proposals for new sites were stifled.

It was not until the smallest of all existing sanctuaries—0.2 square nautical miles—in Fagatele Bay, American Samoa was designated in 1986 that it appeared there was any life left in the National Marine Sanctuary Program. Three years later, Cordell Bank, CA was designated.

In the first 17 years of the program, the administration's interest in the sanctuary program was minimal and neglectful. By the late 1980's, congressional interest intensified. Intervention by Congress propelled the final designations, in 1990 and 1991 respectively, of the Florida Keys and the Flower Garden Banks National Marine Sanctuaries.

Today, as we reexamine the history of the National Marine Sanctuary Program, the Congress will again intervene by statute to designate sanctuaries, because several of our colleagues are interested in finalizing the lengthy and tedious designation process where the merits of specific sites are clear and where these sites require immediate management consideration.

Slated for statutory designation are Stellwagen Bank, MA, a 600-square-mile area whale summering ground, and areas around the Hawaiian Islands amounting to 830 square miles, where humpback whales and various coral reef resources can be found. In addition, Monterey, CA, Olympic Coast, WA, and the Florida Keys may each be guided through designation to management by various directives and limitations on activities in the sanctuaries. Other provisions included in the substitute amendment offered today will require new studies or projects to improve the sanctuary program.

By the time the House has adopted H.R. 4310, with final designations of Stellwagen Bank, Monterey, and the Hawaiian Islands, the National Marine Sanctuary Program will cover twice the square mile area of the 10 sanctuaries designated from 1975 through 1991. With sanctuaries off Olympic Coast, WA; Northwest Straits, WA; Norfolk Canyon, VA; and Thunder Bay, MI undergoing evaluation for designation in the next 2 years, it is clearly time to reauthorize and improve upon the purposes and policies of the National Marine Sanctuary Program. In this process, we must be farsighted and willing to ensure that NOAA has adequate resources to carry out the missions that are delineated by statute. If Congress expects NOAA to develop and implement management plans through collaboration, cooperation, and consultation, with multiple-use objectives, authorized funding levels must be based on realistic program requirements.

LEGISLATIVE HISTORY

Mr. Speaker, allow me to summarize our legislative activity and the provisions of H.R. 4310. Let me also urge support by our colleagues for this worthwhile legislation.

In contemplation of reauthorization of the National Marine Sanctuary Program, the Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf hosted two hearings jointly with the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

The first hearing was held on November 7, 1991. Several of our colleagues testified concerning the priorities of the National Marine Sanctuary Program: that for 1993 the administration should request $30 million to administer the program; that training must support effective managers interacting with local communities; that research and education must be integrated fully into the management plans; and that cooperation from local and nonprofit organizations in program operations should be encouraged. Administration witnesses recounted the progress of the program; and affected industry witnesses registered support, yet cautioned against statutory bans on activities in sanctuaries, such as oil and gas exploration. Environmental and conservation organization representatives testified about the necessity for additional funding to carry out program management plans effectively. An independent review team representative submitted an extensive report providing a scientific, economic, and environmental review of the program and recommendations for future action.

A second hearing on reauthorization of the National Marine Sanctuary Program was held on March 31, 1991, following introduction of H.R. 4310, and legislation by the chairman of the Fisheries and Wildlife Conservation and the Environment Subcommittee. In addition to administration witnesses, various environmental organizations, State government, ocean industries, and scientific representatives testified. Central to the discussions were the issues of the timeliness of sanctuary designations; the reach of regulations on permitted or licensed activities affecting sanctuary resources; local consultation in developing management plans; the continuation and limitation of multiple use management regulations; promotion of research, monitoring and education; international cooperation; the scientific bases for selecting new sites; and the adequacy of funds to carry out management of existing and new expansive sanctuary areas.

Following the hearings and discussion among subcommittee members, modifications to H.R. 4310 were suggested. These were incorporated into an amendment adopted at a joint subcommittee markup on May 12, 1992. On May 14, 1992, the Merchant Marine and Fisheries Committee marked up H.R. 4310, incorporating a technical amendment and an amendment by Chairman JONES relating to the artifacts of the U.S.S. *Monitor* National Marine Sanctuary.

On June 16, 1992, on behalf of the Merchant Marine and Fisheries Committee, I requested that the Rules Committee provide an open rule for consideration of H.R. 4310. House Resolution 488, providing an open rule for debate, was subsequently reported. Since that time, members of the Committee on Merchant Marine and Fisheries on both sides of the aisle have taken the opportunity to review amendments to be offered to H.R. 4310. Consensus on the substance of those amendments has allowed for the inclusion of these amendments as titles II and III of the substitute amendment brought before the House today. The text of title I is the same as reported by the House Merchant Marine and Fisheries Committee on June 15, 1992 (House Report 102–565). Given broad support for the substitute, consideration of H.R. 4310 under suspension of the rules provides the most expeditious and efficient procedure for adopting the bill.

DESCRIPTION OF PROVISIONS

With that brief history, allow me to outline the provisions of the bill beginning with title I.

Sections 1 through 3 of the bill refine the purposes and policies of the National Marine Sanctuary Program and clarify definitions in the Act. These sections include cultural qualities, international significance, and research as factors considered in designating a sanctuary. In addition protection of the natural assemblage of living resources and biogeographic representation can be considered in site selections.

In the revised purposes and policies of the act, sanctuaries will serve as models and incentives for conservation and management and to enhance living resources by providing places for species to survive and propagate. Sanctuaries will continue to allow for lawful public and private use of marine areas, and coordinated plans for conservation and management will include a variety of affected interests. New language in these sections promotes scientific research, long-term monitoring, and education. Cooperation in international programs for conserving marine resources is also encouraged.

Sections 4 through 6 amend designation procedures to allow for additional factors to be considered. The resource assessment that serves as a baseline for determining damages is amended under section 5 to include a report on past, present, or proposed disposal of materials or detonation of ordnance affecting a sanctuary.

Section 5 requires interagency cooperation and consultation with the Secretary of Commerce to determine if a permitted activity may potentially harm sanctuary resources.

These sections streamline the designation process by requiring less paperwork, a 60-day agency review of environmental impact statements, expanded and cooperative consultations in selecting sanctuaries and implementing management plans, and a brief annual progress report on program activities and requirements.

Sections 7, 8, and 11 define prohibited, unlawful activities in a sanctuary; establish enforcement procedures and penalties; describe how amounts recouped from damages or penalties may be collected, accrued, and spent; and clarify the limits of liability for loss of, or injury to sanctuary resources.

Sections 9, 10, and 13 will greatly enhance public awareness and participation in the National Marine Sanctuary Program. First, these sections promote education, research, and monitoring. Second, they allow new, supportive cooperative agreements, and financial arrangements, including the acceptance by the Secretary of tax-free donations, for use in meeting the management and operational goals of a sanctuary. Third, the Secretary is given direct authority to purchase or lease facilities, such as docks or visitors stations, necessary for routine sanctuary field operations. Fourth, the Secretary is allowed to enter into agreements for nonprofit organizations to so-

licit donations on behalf of the sanctuary program, thus obviating the need for a separate foundation as proposed in H.R. 4310 and H.R. 3694. Finally, the Secretary may establish advisory councils to assist in designation and management of a sanctuary.

Section 12 augments the authorization of funds for the Marine Sanctuary Program to $15 million in fiscal year 1993, with incremental increases of $5 million each year through 1996. Of these amounts, it is expected that 75 percent of the amounts provided will be used for onsite management and operations of designated sanctuaries. This new focus on management and operations is key to this reauthorization, recognizing that the number of designated sanctuaries has recently grown quite significantly. As a point of clarity, it is recognized that some activities that support on-site management may be more efficiently contracted through a central office and would not be charged against headquarters functions. However, the shift in focus from analysis to management remains.

Section 14 of the bill authorizes $800,000 for the acquisition of facilities for artifacts recovered from the graveyard of the Atlantic and for office space for the *Monitor* Marine Sanctuary.

Title II of the substitute amendment provides for the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary. This new sanctuary provides a management plan for protecting humpback whales and their delicate habitat, as well as ensuring the balance of multiuse in the designated area.

Title III includes in the substitute amendment a variety of important designations. First, section 31 designates the long delayed Stellwagen Bank National Marine Sanctuary off Massachusetts. Restrictions are placed on sand and gravel mining that could be detrimental to the area, and consultation on dredge disposal is required.

Second, section 32 requires issuance of a designation notice for the Monterey Bay National Marine Sanctuary by September 18, 1992, granting automatic designation if the deadline is not met. In addition, section 33 requires a study of San Luis Obispo, CA for purposes of determining whether it is an appropriate area for a sanctuary designation.

Section 34 establishes a 2-year pilot promotion project for sanctuaries that encourages sponsors and donations from the private sector.

Section 35 includes technical corrections recommended by the Law Revision Counsel to the 1972 Coastal Zone Management Act. These technical adjustments are nonsubstantive and will cure statutory references and omissions in the 1990 amendments.

Section 36 of the substitute amendment bolsters the Florida Keys National Marine Sanctuary Water Quality Program by increasing the authorization by $1 million. Section 37 provides for a coral reef research and management program unique to the Keys.

Finally, section 38 restricts oil and gas leasing and preleasing activities in the Olympic Coast National Marine Sanctuary.

VIEWS AND SUMMARY

The National Marine Sanctuary Program survived in very bleak years of budget austerity. Now, because the program is achieving a higher level of visibility and popularity, the committee agreed unanimously to increase the authorization and appropriation levels that support the program. During our discussions on reauthorization, recommendations of the National Marine Sanctuary Review Team were considered. Although the committee did not elect at this time to elevate the Marine Sanctuary Program to a separate program office within NOAA's National Ocean Service, this is a proposal that merits certain consideration in the next reauthorization cycle.

As initially introduced, I recommended $28 million in fiscal year 1993 for the National Marine Sanctuary Program with reasonable inflationary increases provided in subsequent years. This amount was justified by an analysis of requirements for site designation, management plan development and implementation, and operational resources based on the schedule of designations presented by the administration in 1991. This amount did not assume statutory designations of new sanctuaries or require their implementation ahead of that schedule.

In the course of committee deliberations, several Members advocated that $10 million would be adequate for the National Marine Sanctuary Program in 1993. Given the statutory mandates in this legislation, coupled with the size and total number of designated sanctuaries, it would be impossible to authorize less than the compromise amount of $15 million for fiscal year 1993 and expect the program to function. Anything less, in my opinion, would force NOAA to operate without sufficient resources, ultimately making the program ineffective, damaging its reputation, and undermining its potential for success.

As a final note, Mr. Speaker, I would hope that the reputation of the National Marine Sanctuary Program will be held in positive high regard and that the commitment of appropriations and resources made by the Congress will steadily grow to meet the size of that national trust we have designated.

I urge the support of our colleagues of H.R. 4310 and for the future of the National Marine Sanctuary Program.

The need for additional Marine Sanctuary Program funds is demonstrated best by the administration's acknowledgment that areas designated require more management and operations resources.

For example, the President's fiscal year 1993 budget request for the sanctuary program included a 46-percent increase over 1992 appropriations. Passbacks from the Department of Commerce indicate that $14 million—a 164-percent increase was initially requested for 1993; however, OMB scaled back the request to $7.3 million—the 46-percent increase.

The administration's reauthorization bill authorizes $7.3 million for fiscal year 1993 and "such sums as may be necessary" through 1996. Given the scope of expanded responsibilities and the dramatic increase in size of areas to be managed, the sums necessary to meet program requirements assume significant increases in the outyears.

The statement of administration policy [SAP] issued by OMB indicates that the administration supports House passage of H.R. 4310.

During the course of committee consideration of H.R. 4310, the 1993 authorization level was scaled back from $28 million to $15 million, a compromise that recognizes fiscal constraints. Only incremental increases were allowed for inflation and operating costs through 1996.

H.R. 4310 increases civil penalties that flow to the program. Additional damages collections are included in statutes directed for restoration and monitoring of sanctuary resources.

The committee provided statutory authority in three areas intended to enhance resources to the program: First, is direct statutory authority for donations to the Secretary of Commerce for sanctuaries; second, cooperative agreements with Federal, State, and local government agencies and nonprofit organizations are permitted for sanctuary management related activities; and third, the substitute provides for promotional arrangements that will hopefully provide private sector support to the program.

No funds were provided for over $65 million in capital expenditures and major equipment costs estimated as startup requirements for sanctuaries.

An independent review panel appointed by the administration projected costs of the Marine Sanctuary Program in upcoming years based on the current schedule of designations by NOAA. The amount estimated for on-going management, start-up costs at new sites, and continuing analyses, research and monitoring required by law was $50 million in 1994. H.R. 4310 authorizes $20 million in fiscal year 1994—less than half the amount recommended by the panel.

The Science and Technology Committee took the opportunity to review H.R. 4310 and provided the chairman with a letter of support for the bill as reported to committee. No changes were recommended to the bill.

Based on the current schedule of designations, the National Marine Sanctuary Program will in 1993 encompass an area twice the size as it did in 1992. Basic operations and management of these areas require at least the commitment of funds provided in H.R. 4310.

STATEMENT OF ADMINISTRATION POLICY

H.R. 4310—NATIONAL MARINE SANCTUARIES ACT AMENDMENTS

The Administration supports House passage of H.R. 4310, which would strengthen the marine sanctuaries program, with amendments to:

Delete the earmarking of funds in section 12. This provision would severely restrict other important activities, including designation of new sanctuaries and central management responsibilities.

Revise section 8(c)(3) to list the Exclusive Economic Zone (EEZ) of the United States as an area in which the marine sanctuaries program applies and is enforceable. This will clarify that marine sanctuaries located in whole or in part in the EEZ are covered.

Revise section 12, which authorizes appropriations for the marine sanctuaries program, to conform with the President's budget request of $7.3 million for FY 1993.

Delete provisions requiring grants for the acquisition of space in Hatteras Village, North Carolina. Funding specific activities or sanctuary operations does not recognize competing priorities within the national marine sanctuaries program.

The Administration opposes amendments that may be offered to H.R. 4310 designating

or regulating activities in individual marine sanctuaries. Those amendments would bypass congressionally-established administrative procedures concerning designation and management of sanctuaries.

Pay-as-You-Go Scoring

H.R. 4310 would increase receipts because it increases the maximum civil money penalty for violations of the law. It would also require a grant to be made and would authorize the acceptance of gifts and bequests. Therefore, H.R. 4310 is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990.

OMB's preliminary scoring estimates for this bill are presented in the table below. Final scoring of this legislation may deviate from these estimates. If H.R. 4320 were enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA. The cumulative effects of all enacted legislation on direct spending will be issued in monthly reports transmitted to the Congress.

ESTIMATES FOR PAY-AS-YOU-GO
[In millions of dollars]

	1992	1993	1994	1995	1996	1997	1992–97
Outlays	+[1]	+[1]	+[1]	+[1]	+[1]	+[1]	+[1]
Receipts	+[1]	+[1]	+[1]	+[1]	+[1]	+[1]	+[1]
Net Deficit- Increase (+) /decrease (−)	−[1]	+[1]	−[1]	−[1]	−[1]	−[1]	+[1]

[1]Less than $500,000.

Mr. DAVIS. Mr. Speaker, I am a strong advocate of the bill and the committee amendment supported by the Merchant Marine and Fisheries Committee. It combines the best of the bills authored by Chairman STUDDS and Chairman HERTEL, and adds several ideas from a bill submitted to Congress by President Bush last month. It is a truly bipartisan effort.

The amendments to the National Marine Sanctuary Program in H.R. 4310 will make designation of new sanctuaries easier and, once designated, will strengthen existing educational uses and provide greater protection of sanctuary resources. I am pleased that the proposed Thunder Bay sanctuary in Lake Huron—the first freshwater national marine sanctuary—will be able to take advantage of these improvements.

In addition, I thank Chairman HERTEL for including in the committee amendment a measure I authored which creates a pilot program to help increase funding for management of national marine sanctuaries.

My amendment authorizes the creation of a marine sanctuaries logo and initiates a pilot program that will allow solicitation of corporate sponsorship fees for use of that logo. It will allow for the designation of official sponsors of the marine sanctuary program, and the fees raised from official sponsors will go directly to the sanctuary program.

The amendment is written to ensure that the logo and sponsorship designation are used only in a manner consistent with the overall objectives of the sanctuary program. We do not want this pilot program to detract in any way from the high regard in which the sanctuary program is held. In addition, the amendment expressly prohibits sponsors from having any undue influence on sanctuary policy.

The best analogy, I believe, is to the United States Olympic Committee [USOC]. In the mid-1980's, in a search for increased revenues, the USOC developed an unprecedented sponsorship and licensing program. That program has progressed to the point where today 42 percent of the USOC's revenues—more than $125 million between 1988–92—comes from licensing and sponsorships.

I believe we can have similar success with the sanctuary program, and at the end of this pilot program we will know for sure. We are in an era of extraordinarily tight budgets, a time when we have no choice but to take innovative, creative steps. This amendment is such a step. I urge its adoption.

I look forward to quick passage of H.R. 4310 and the committee amendment.

Mr. JONES of North Carolina. Mr. Speaker, I rise in support of H.R. 4310.

It is appropriate that the Congress take up a major reauthorization of this program during the year of its 20th anniversary. For many years, this program languished in administration indifference. Now, with renewed enthusiasm downtown and on the hill, the National Marine Sanctuary Program is finally coming into its own.

The committee is indebted to Mr. HERTEL for his enthusiasm and support for marine sanctuaries and for his leadership in bringing this bill before the house. Mr. STUDDS, Mr. DAVIS, and Mr. YOUNG have all shown great interest and leadership on this issue as well. Last, I would like to thank our colleagues LEON PANETTA and DANTE FASCELL, who are not committee members but who have been enthusiastic supporters of the program and strong advocates of marine resource protection in general.

The committee amendment before you enjoys strong bipartisan support from the Committee on Merchant Marine and Fisheries. The amendment strengthens the National Marine Sanctuary Program by clarifying and enhancing the purposes of the program and by providing NOAA with new authority to improve sanctuary management and to better protect sanctuary resources.

I urge my colleagues to support this legislation.

Mr. PANETTA. Mr. Speaker, I rise today in strong support of H.R. 4310, the National Marine Sanctuary Program Reauthorization and Improvement Act of 1992. I would like to commend Chairman JONES, Chairman HERTEL, and Chairman STUDDS for their diligent work on this legislation and thank them for their efforts on behalf of the Monterey Bay National Marine Sanctuary. The committee had made the Monterey Sanctuary designation a priority and its support has been invaluable.

The committee substitute contains two sections I authored to expedite the designation of the Monterey Sanctuary and require a study of Estero Bay in San Luis Obispo County, CA, for a possible national marine sanctuary designation.

Ensuring adequate protection for the Monterey Bay through a sanctuary designation has been one of my highest priorities since I was first elected to the Congress in 1976. The upcoming designation of the Monterey Sanctuary signals the final victory of a long, hard fought battle. With the support of this committee, we have overcome the resistance of two administrations and their attempts to stonewall a strong designation for Monterey Bay. After the Reagan administration effectively prohibited the designation of the Monterey Sanctuary through the administrative process, I introduced legislation to statutorily mandate the designation of the Monterey Sanctuary. This legislation was entered into law in 1988 and required the designation of the Monterey Sanctuary by the end of 1989.

Obviously, this designation is long overdue. Much of the delay associated with the Monterey site has been due to the national marine sanctuary program's unfortunate lack of resources. Many months have been lost however due to conflicts within the administration concerning the strength and effectiveness of the sanctuary designation. For example, in 1990 I engaged in a 6-month battle with the administration who refused to accept a proposed oil and gas ban for the Monterey Sanctuary. While we were eventually successful in securing this ban, valuable time was wasted deciding whether to allow oil and gas activities in a national marine sanctuary, a decision that never should have been an issue.

The National Oceanic and Atmospheric Administration [NOAA] released the final environmental impact statement/management plan—management plan—for the Monterey Sanctuary in June and I expect the final designation notice for Monterey will be released in mid-August. Unfortunately, there are not enough legislative days left in the session for the Congress to complete its review period of the designation notice prior to its adjournment in October. Section 32 of the legislation considered today would mandate the designation of the Monterey Bay National Marine Sanctuary by September 18, 1992—with the largest boundary alternative and an oil and gas prohibition—but would preserve the Congress and State of California's right to review and amend the rest of the Monterey Sanctuary regulations per section 304 of the Marine Protection, Resources and Sanctuaries Act [MPRSA].

It is important that the legislation protects Congress' right to amend the Monterey Sanctuary regulations as I have concerns with some of the regulations, as proposed. While I am generally supportive of the management plan's provisions, I object to the management plan's unconditional exemption of potential dredge disposal sites being considered as part of the San Francisco Bay Long-Term Management Strategy from regulation under the sanctuary regime.

NOAA's ability to regulate the discharge of substances from beyond the boundaries of the

Sanctuary is one of the management plans most important terms, section 944.5(a)(3). Boundaries drawn on a map do not necessarily protect Sanctuary resources from the potential harmful effects of activities beyond its borders. In NOAA's defense, I would say it is possible that, due to the depth of the disposal site and the nature of the material being disposed, this proposed disposal site will not harm sanctuary resources. However, it would be my opinion that such a finding would be best determined during the permit review process for the disposal site, not prior to its selection. Furthermore, I am concerned that this exemption may set a weak precedent of NOAA's regulation of dredge disposal sites in future sanctuaries. At a minimum, NOAA should retain the authority to consult with the other appropriate agencies regulating this site.

Second, I remain concerned with the regulation of vessel traffic in the Monterey Sanctuary. Although vessel traffic is in the scope of regulations, the proposed regulations do not regulate vessel traffic upon designation. In my comments on the management plan, I encouraged NOAA to work with the U.S. Coast Guard to devise commercial vessel traffic lanes that would steer vessel traffic outside of the most sensitive areas.

If the issues of dredge disposal and vessel traffic regulations are not adequately addressed in the final designation document for the Monterey Sanctuary, I reserve the right to object to those terms of designation and will seek legislation to amend these regulations so they provide strong, adequate protection to the Monterey Bay.

Section 33 of the legislation considered today is a provision I authored to direct NOAA to undertake a study of Estero Bay and adjacent marine environments in San Luis Obispo County, CA to determine if the area warrants a national marine sanctuary designation.

Earlier this year, I introduced legislation, H.R. 3099, to designate this area as a national marine sanctuary. Ideally, I would have liked to enact the San Luis Obispo designation as part of the program reauthorization. It does not appear, however, that enacting such legislation would be possible at this time. Realizing that, I have decided to pursue the San Luis Obispo designation through the enactment of this amendment.

Given the large variety of significant and sensitive marine resources in Estero Bay, I am confident the study will conclude that the area warrants a sanctuary designation. It is my hope that this study will provide us with the documentation needed to achieve that eventual designation.

I would also point out to my colleagues that in the interest of conserving NOAA's financial resources, my amendment requires that one-half of the study be funded by non-Federal sources.

It is my belief that the marine area of the central coast of California noted in this amendment possesses the ecological, historical, recreational, and educational qualities noted above which make it an area of national significance and a beneficial addition to the national marine sanctuary program.

This coastal area represents one of the most significant marine ecosystems along the Nation's west coast. It has a rich variety of sensitive coastal habitats including significant wetlands and estuaries as well as rocky intertidal zones and subtidal rocky reef communities. The area is home to many threatened and endangered species including the California sea otter, seven endangered species of whale, and four species of sea turtles, and is also a major feeding and resting area for migratory birds protected under international treaties.

Mr. Chairman, Estero Bay is an important, significant, and sensitive marine resource worthy of consideration for inclusion in the national marine sanctuary program. I urge my colleagues to aid this effort and to ensure the timely designation of the Monterey Bay National Marine Sanctuary by supporting this legislation.

Mr. HUGHES. Mr. Speaker, I rise in support of H.R. 4310, the National Marine Sanctuaries Reauthorization and Improvement Act. Through hard work the committee has produced legislation that is a good compromise and will enhance the success of the program.

The National Marine Sanctuaries Program protects our vital marine resources from degradation, provides important natural research laboratories, and helps educate the public concerning the coastal oceans, as well as provides recreational opportunities.

I am particularly pleased that the legislation increases the authorization level of the program. This increase is crucial if the program is to meet its goal of sustaining, conserving and replenishing the natural and functional diversity of significant and ecologically representative marine areas.

I am also pleased that the legislation streamlines the designation process, broadens the criteria for designation and strengthens enforcement.

Further, the management of marine sanctuaries is a particularly difficult task as we must balance economic considerations with recreational and conservational uses. This bill goes a long way to achieving this balance.

The National Marine Sanctuaries Reauthorization bill will enhance the program's ability to maintain the health and integrity of a variety of ecosystems in our coastal, ocean and Great Lakes regions.

I offer my strongest support for its passage and urge my colleagues to do the same.

Mrs. MINK. Mr. Speaker, I rise today in strong support of H.R. 4310, legislation to reauthorize and improve the National Marine Sanctuaries Program.

Since 1972, when Congress passed the National Marine Protection, Research, and Sanctuaries Act, this valuable program has undertaken a formidable task—the protection of special areas of the marine environment for conservation and multiple use. And it has done this despite the fact that like so many other Federal programs, it received a low priority throughout the 1980's. In fact, the administration's support was so meager through these years that the policies and purpose of the enacting legislation were threatened because such limited resources were made available to carry them out.

I am truly gratified to see the Congress acting to give the Marine Sanctuaries Program the funding it needs to fulfill its mission.

In my home State of Hawaii we are well aware that effective marine conservation is an essential building block of our economy and our future. Without it, we risk losing the fishing and tourism industries that have served so well and so long as our economic foundation. The sanctuaries program is a solid contributor to the goal of dependable marine conservation, and it should be improved and expanded.

This legislation is also particularly important for my district because it includes the National Humpback Whale Marine Sanctuary in Hawaiian waters. The humpback whale is on the endangered species list and its population is declining. The new sanctuary in the waters surrounding the island of Kahoolawe, and adjacent to the islands of Maui, Molokai, and Lanai, will protect the breeding, calving, and nursing areas of these beautiful creatures.

My only regret about this bill is that in designating the Humpback Whale Marine Sanctuary we have not included the waters around the island of Kauai. We know well that the humpback whales live and frolic under the watchful eye of the national wildlife refuge at Kilauea Point. The bill is deficient in that we don't include this region. I also would like to someday see the sanctuary expanded to include other species of marine life.

For too long we have neglected the magnificent animals in our oceans, and it is imperative that we reverse the trend. H.R. 4310 does this and more; it is with great enthusiasm that I join my colleagues in support of this legislation.

Mr. LANCASTER. Mr. Speaker, I rise in strong support of the National Marine Sanctuaries Reauthorization Act of 1992. I would like to particularly address my colleagues' favorable attention to section 14 of the bill, which authorizes the Secretary to make a grant for the acquisition of appropriate facilities for display and interpretation of the artifacts recovered from the Graveyard of the Atlantic off Cape Hatteras, NC.

The location of such a museum at Hatteras, NC, would be beneficial to the local economy and a great honor to the local people, many of whom are direct descendents of shipwreck survivors whose vessels went down in storms and battles and pirate raids in the Graveyard of the Atlantic. Others manned the life saving stations—later Coast Guard Stations—that protected the lives of those whose ships perished in these treacherous waters. No location would be more appropriate, and no

location would better enhance the historical significance of these artifacts from ships that sailed during the formative years of our Nation.

Mr. Speaker, I commend my fellow members of the Committee on Merchant Marine and Fisheries, especially Chairman WALTER JONES, for their hard work and good judgment in this bipartisan effort to improve our National Marine Sanctuaries program and to preserve and enhance or priceless marine heritage and resources.

Mr. STUDDS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Massachusetts [Mr. STUDDS] that the House suspend the rules and pass the bill, H.R. 4310, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to reauthorize and improve the national marine sanctuaries program, and for other purposes.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. STUDDS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

FAA CIVIL PENALTY ADMINISTRATIVE ASSESSMENT ACT OF 1992

Mr. OBERSTAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5481) to amend the Federal Aviation Act of 1958 relating to administrative assessment of civil penalties, as amended.

The Clerk read as follows:

H.R. 5481

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 "FAA Civil Penalty Administrative Assessment Act of 1992".

SEC. 2. ADMINISTRATIVE ASSESSMENT.

(a) IN GENERAL.—Section 901(a)(3) of the Federal Aviation Act of 1958 (49 U.S.C. 1471(a)(3)) is amended to read as follows:

"(3) ADMINISTRATIVE ASSESSMENT.—

"(A) GENERAL AUTHORITY.—Upon written notice and finding of a violation by the Administrator, the Administrator or the delegate of the Administrator, may assess a civil penalty for a violation of title III, V, VI, or XII or section 1101 or 1115(e)(2)(B) or any rule, regulation, or order issued thereunder.

"(B) NO REEXAMINATION OF LIABILITY OR AMOUNT.—In the case of a civil penalty assessed by the Administrator under this paragraph, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

"(C) CONTINUING JURISDICTION OF DISTRICT COURTS.—Notwithstanding subparagraph (A), the United States district courts shall have exclusive jurisdiction of any civil penalty initiated by the Administrator—

"(i) which involves an amount in controversy in excess of $50,000;

"(ii) which is an in rem action or in which an in rem action based on the same violation has been brought;

"(iii) regarding which an aircraft subject to lien has been seized by the United States; and

"(iv) in which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

"(D) PROCEDURES WITH RESPECT TO VIOLATIONS BY PILOTS, FLIGHT ENGINEERS, MECHANICS, AND REPAIRMEN.—

"(i) NOTICE OF CHARGES.—Before issuing an order assessing a civil penalty under this paragraph against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman, the Administrator shall advise such person of the charges or any reasons relied upon by the Administrator for the proposed action and shall provide such person an opportunity to answer any charges and be heard as to why such order should not be issued.

"(ii) APPEAL TO NTSB.—Any person acting in the capacity of a pilot, flight engineer, mechanic, or repairman against whom an order assessing a civil penalty is issued by the Administrator under this paragraph may appeal the order to the National Transportation Safety Board, and the Board shall, after notice and a hearing on the record in accordance with section 554 of title 5, United States Code, affirm, modify, or reverse the order of the Administrator.

"(iii) WEIGHT AFFORDED TO FINDINGS AND INTERPRETATIONS OF FAA.—In the conduct of its hearings under this subparagraph, the National Transportation Safety Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law. The Board may, consistent with this subsection, modify the type of sanctions to be imposed from assessment of a civil penalty to suspension or revocation of a certificate.

"(iv) EFFECT OF FILING OF APPEAL.—The filing of an appeal of an order of the Administrator with the National Transportation Safety Board under this subparagraph shall stay the effectiveness of the order.

"(v) JUDICIAL REVIEW.—A person substantially affected by an order of the National Transportation Safety Board under this subparagraph or the Administrator, in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this clause. In any such proceedings, the findings of fact of the Board shall be conclusive if supported by substantial evidence.

"(E) PROCEDURES WITH RESPECT TO VIOLATIONS BY OTHER PERSONS.—

"(i) GENERAL PROCEDURES.—A civil penalty may be assessed against any person (other than a person acting in the capacity of a pilot, flight engineer, mechanic or repairman) by the Administrator under this paragraph only after notice and an opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code.

"(ii) STANDARD OF REVIEW.—In any appeal from a decision of an administrative law judge, the Administrator shall consider only the following issues:

"(I) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence.

"(II) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

"(III) Whether the administrative law judge committed any prejudicial errors that support the appeal.

"(iii) TIME FOR COMMENCING PROCEEDING.—Except where good cause exists, a civil penalty action shall not be initiated under this subparagraph after 2 years from the date the violation occurred.

"(F) LIMITATION ON APPLICABILITY.—This paragraph only applies to violations occurring on or after the date of the enactment of the FAA Civil Penalty Administrative Assessment act of 1992.

"(G) MAXIMUM AMOUNT.—The maximum amount of a civil penalty which may be assessed by the Administrator or the National Transportation Safety Board under this paragraph may not exceed $50,000.

"(H) DEFINITIONS.—In this paragraph, the following definitions apply:

"(i) FLIGHT ENGINEER.—The term 'flight engineer' means a person who holds a flight engineer certificate issued under part 63 of title 14 of the Code of Federal Regulations.

"(ii) MECHANIC.—The term 'mechanic' means a person who holds a mechanic certificate issued under part 65 of title 14 of the Code of Federal Regulations.

"(iii) PILOT.—The term 'pilot' means a person who holds a pilot certificate issued under part 61 of title 14 of the Code of Federal Regulations.

"(iv) REPAIRMEN.—The term 'repairman' means a person who holds a repairman certificate issued under part 65 of title 14 of the Code of Federal Regulations.".

(b) REPEAL OF DEMONSTRATION PROGRAM.—Section 905 of such Act (49 U.S.C. App. 1475) is repealed.

(c) CONTINUATION OF FORMER PROGRAMS WITH RESPECT TO PREENACTMENT VIOLATIONS.—Notwithstanding subsections (a) and (b) of this section, sections 901(a)(3) and 905 of the Federal Aviation Act of 1958 as in effect on July 31, 1992, shall continue in effect on and after such date of enactment with respect to violations of the Federal Aviation Act of 1958 occurring before such date of enactment.

SEC. 3. CONFORMING AMENDMENTS TO REVOCATION OF CERTIFICATES PROCEDURE.

(a) GENERAL AUTHORITY.—Section 609(a) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1429(a)) is amended—

(1) by striking the fifth sentence and inserting the following: "In the conduct of its hearings under this subsection, the Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under

this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law. The Board may, consistent with this subsection, modify the type of sanction to be imposed from suspension or revocation of a certificate to assessment of a civil penalty."; and

(2) by striking the last sentence and inserting the following: "A person substantially affected by an order of the Board under this subsection, or the Administrator in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this subsection. In any such proceeding, the findings of fact of fact of the Board shall be conclusive if supported by substantial evidence.".

(b) CONTROLLED SUBSTANCE ACTIVITIES.—Section 609(c)(3) of such Act is amended—

(1) by striking the third sentence and inserting the following: "In the conduct of its hearings under this paragraph, the Board shall not be bound by any findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration and of written agency policy guidance available to the public relating to sanctions to be imposed under this subsection unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law."; and

(2) by striking the last sentence and inserting the following: "A person substantially affected by an order of the Board under this paragraph, or the Administrator in any case in which the Administrator determines that such an order will have a significant adverse impact on the implementation of this Act, may obtain judicial review of such order under the provisions of section 1006 of this Act. The Administrator shall be a party to all proceedings for judicial review under this paragraph. In any such proceeding, the findings of fact of the Board shall be conclusive if supported by substantial evidence.".

SEC. 4 CONFORMING AMENDMENT TO ISSUANCE OF CERTIFICATE PROCEDURE.

Section 602(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C. 1422(b)(1)) is amended by inserting "but shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law" after "findings of fact of the Administrator.".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Minnesota [Mr. OBERSTAR] will be recognized for 20 minutes, and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. OBERSTAR].

GENERAL LEAVE

Mr. OBERSTAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation presently under consideration.

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The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. OBERSTAR. Mr. Speaker, H.R. 5481 would permanently reauthorize FAA's authority to assess civil penalties for violations of Federal aviation regulations. Congress first approved this authority for the FAA in 1987 on an experimental basis and twice approved temporary extensions of that authority. This legislation will fix civil penalty authority permanently in statutory law. Civil penalty authority is used quite commonly throughout the executive branch by a number of agencies which administer more than 200 civil penalty statutes similar to this one. Civil penalties in the field of aviation are an important tool in promoting aviation safety and security.

One important example of how the FAA has effectively used its civil penalty authorities in the area of airline security, which represents 32 percent of all the penalty cases in the air carrier security program under this initiative are tested by FAA employees who try to slip through air carrier x-ray machines and metal detectors simulated weapons. Since 1988 the policy of the FAA has been to seek a civil penalty whenever an airline failed to detect one of those test objects. The airlines have been quite vocal in the opposition to the use of civil penalties to enforce security compliance, yet the record clearly shows that there is no denying that carrier detection rates have improved by almost 20 percentage points, from 76 percent to 95 percent, when our strict security enforcement policy was backed up with swift and effective adjudication.

Although security is the most obvious example of the civil penalty program, the record shows generally that swift and sure enforcement serves as a detriment to potential violators in other areas of aviation as well. Small civil penalty cases ought to be handled by the FAA rather than by the Federal courts. We first made that observation and determination and gave the FAA civil penalty authority in 1977 because we found that the U.S. District Courts, which previously held the civil penalty authority, and U.S. attorneys were overburdened and cannot give adequate attention to the relatively small civil penalty cases which began to backlog and build up in large numbers. The FAA has administered the civil penalty program efficiently and fairly. The Administrative Conference of the United States [ACUS] commissioned a study of the FAA civil penalty program, which was conducted by Professor Perritt, a professor at Villanova University Law School. ACUS endorsed the conclusion of Professor Perritt that there was "no evidence of actual unfairness or mishandling of cases resulting from commingling prosecutorial and judging functions under the present system." Indeed, in 32 percent of cases which an independent ALJ decided in favor of the FAA prosecutors, the FAA Administrator reversed the ALJ's decision.

That this bill comes before the House on the Suspension Calendar which is normally reserved for relatively noncontroversial legislation, Mr. Speaker, belies both the complexity of the issues covered by the law and the controversy attending the implementation of civil penalties, as evidenced by the several hearings the subcommittee has held on the subject, the complex and often contentious markups in subcommittee and full committee. But the bill now before us makes adjustments in the program to accommodate concerns raised by aviation groups. With these changes, Mr. Speaker, the organizations representing airline pilots, airline mechanics, general aviation pilots and the airlines themselves now support the bill.

□ 1650

In other words, it has not been easy getting to this point.

As recommended by ACUS, the bill gives pilots and flight engineers the right to appeal civil penalties to the National Transportation Safety Board. The bill also meets concerns raised by the airlines by continuing the provisions in existing law that limit PAA's penalty authority to only those penalties of under $50,000. In larger cases, airlines and other respondents will continue to have the right to a judicial hearing before a civil penalty is imposed.

The bill also includes amendments which will incorporate into the statute two provisions now in FAA rules. The first of these establishes the standards by which the Administrator will review decisions of an ALJ. Under this provision, the Administrator in reviewing an ALJ decision shall consider: First, whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence; second, whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and, third, whether the administrative law judge committed any prejudicial errors that support the appeal.

The second establishes a statute of limitations for bringing civil penalty proceedings of 2 years from the date the violation occurred.

The majority of cases remaining in the program are security cases against individuals, carriers, and airports. It is important that the FAA retain these cases since the National Transportation Safety Board does not have any expertise in security matters.

Mr. Speaker, I want to take this opportunity to express my appreciation to the ranking member of the subcommittee, the gentleman from Pennsylvania [Mr. CLINGER], and the rank-

ing member of the full committee, the gentleman from Arkansas [Mr. HAMMERSCHMIDT], who have labored mightly throughout many long weeks to bring about the compromise that results in the legislation today and results in our being able to bring this bill under suspension rather than on an open rule, where I am sure we would have had a very long debate had the principal issues not been ironed out as they have been beforehand.

Mr. Speaker, I also want to express my appreciation to Secretary of Transportation Card and to the FAA, to Administrator Tom Richards and General Counsel Quinn, who have devoted a great deal of their time, many, many hours of time and debate and discussion, in ironing out these problems and bringing us to a program that I really believe is going to be effective and workable.

Mr. Speaker, I reserve the balance of my time.

Mr. HAMMERSCHMIDT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when we first authorized the Civil Penalty Demonstration Program 5 years ago, we did not fully appreciate the storm of controversy it would create. At that time, we were mainly concerned about the inefficiency of forcing the FAA to work through the U.S. Attorney's Office every time it wanted to impose a fine.

The civil penalty program we adopted allowed the FAA to prosecute small civil penalties itself, without having to go into court. Because it was a new program, we authorized it for only a 2-year trial period to see how it would work.

In fact, it turned out to be very controversial. Airlines and pilots strongly opposed it and sought its termination or at least substantial modifications.

To address the concerns that had been raised, we extended the program and asked for a study by the administrative conference. The administrative conference is the expert on these sorts of questions involving administrative law and procedure.

The administrative conference completed the study last January and filed its report. It is a very extensive and scholarly piece of work and the conference is to be commended for the job it has done.

The report makes a number of recommendations, most of which tend to vindicate the FAA's handling of the program. However, it did include one recommendation that is controversial. That is, the recommendation that only cases involving pilots and flight engineers should be transferred to the NTSB.

Our aviation subcommittee held an extensive hearing on this subject where it heard the arguments of the pilots, the airlines, and the FAA. The issues were fully considered during markups in both the Aviation Subcommittee and the Public Works and Transportation Committee.

On balance, we concluded that the recommendation of the administrative conference is the correct approach. The conference is the expert on this sort of issue and it favored transferring only the pilot and flight engineer cases from the FAA to the NTSB.

However, we have modified this legislation somewhat in order to achieve enough support for passage. In committee, cases involving mechanics were added to those being transferred to the Safety Board.

In addition, the bill now retains the $50,000 cap on the penalty that can be assessed under this program. It also contains a 2-year statute of limitations and some restrictions on the FAA's ability to reverse the decision of an administrative law judge. But in most other respects, we have tried to follow the recommendations of the administrative conference.

One technical item requires some clarification. It concerns the Safety Board's review of FAA findings of fact and interpretation.

In the civil penalty cases for which it is responsible, the Safety Board is not required to accept the FAA's view of the facts of the case. On the other hand, it is bound to accept FAA's interpretation of its laws, regulations, and sanction policies that apply to the case.

I would like to make clear however, that if the Board finds that FAA is interpreting its laws and regulations, or implementing its sanction guidelines, in an arbitrary or capricious manner, then the Board is not obliged to follow the FAA's approach.

Mr. Speaker, this legislation had been very controversial. But I believe we have worked out the main differences now.

This bill will help avoid the potential for forum shopping and conflicts of interest on the part of the FAA. And most importantly, it will enhance safety by streamlining FAA enforcement and ensure fairness by giving the NTSB an important role to play in the process.

I would like to commend the chairman of the subcommittee, Mr. OBERSTAR, as well as the subcommittee ranking minority member, Mr. CLINGER, for their diligent efforts to bring the bill to the floor. I would also like to thank the chairman of the committee for expediting the measure through committee.

Therefore, I support the approach to the FAA's civil penalty program that is taken by this bill. I urge the House to support it as well.

Mr. OBERSTAR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to concur in the several observations and interpretations of the provisions of the bill as offered by the gentleman from Arkansas [Mr. HAMMERSCHMIDT]. I think our two statements round out and complete the interpretation of this very complex legislation.

Mr. Speaker, in closing I would like to further express appreciation to Deputy Secretary of Transportation Arthur Rothkopf, who has been in communication with us almost on a daily basis and given a great deal of his personal time to resolving many of these thorny and complex subjects, and to our colleagues on the subcommittee, the gentleman from North Carolina [Mr. VALENTINE] and the gentleman from Oklahoma [Mr. INHOFE], both of whom have had a very keen interest and have helped us work our way through some of the complexities of the bill on the policy side.

Mr. Speaker, I would like to express a very special appreciation for diligent and undying effort and commitment to professionalism to our staff, Mary Walsh, who bore the heat of the day on this issue, and David Heymsfeld, Charlie Ziegler, and David Schaeffer, all four of whom are probably very happy to see this bill passed on to the other body.

Mr. MCEWEN. I would like to take just a moment to commend the efforts of the distinguished chairman of the Aviation Subcommittee, Mr. OBERSTAR of Minnesota, and the ranking member, Mr. CLINGER of Pennsylvania, for bringing this important legislation to the floor of the House today. I would also like to express my personal thanks to my colleague from Oklahoma, Mr. INHOFE, and the gentleman from North Carolina, Mr. VALENTINE, for their efforts to include the transfer of appeals of all certificate cases from the FAA to the National Transportation Safety Administration.

As you may know, I recently introduced legislation, H.R. 5384, to transfer the appeal of civil penalties against any airman or air carrier to the NTSB. Thus, I am very pleased that the final legislation transfers to the NTSB cases involving pilots, flight engineers, mechanics and repairmen. This provision is a significant step forward, and I again commend the work of the chairman to address this issue here today.

Mr. HAMMERSCHMIDT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. OBERSTAR. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. MAZZOLI). The question is on the motion offered by the gentleman from Minnesota [Mr. OBERSTAR] that the House suspend the rules and pass the bill, H.R. 5481, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 5517. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1992, and for other purposes, and

H.R. 5678. An act making appropriations for the Departments of Commerce, Justice and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1993, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5517) "An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1993, and for other purposes", requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. ADAMS, Mr. FOWLER, Mr. KERREY, Mr. BYRD, Mr. BOND, Mr. GORTON and Mr. HATFIELD, to be the conferees on the part of the Senate.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 5678) "An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1993, and for other purposes", requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HOLLINGS, Mr. INOUYE, Mr. BUMPERS, Mr. LAUTENBERG, Mr. SASSER, Mr. ADAMS, Mr. BYRD, Mr. RUDMAN, Mr. STEVENS, Mr. HATFIELD, Mr. KASTEN, and Mr GRAMM to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2624. An act to authorize appropriations for the Interagency Council on the Homeless, the Federal Emergency Management Food and Shelter Program, and for other purposes.

□ 1700

JUVENILE JUSTICE AND DELINQUENCY PREVENTION AMENDMENTS OF 1992

Mr. MARTINEZ. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5194) to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5194

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 "Juvenile Justice and Delinquency Prevention Amendments of 1992".

TITLE I—AMENDMENTS TO THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

SEC. 101. PURPOSE.

Section 102(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5602(b)) is amended—

(1) by striking "and (4)" and inserting "(4)", and

(2) by inserting before the period at the end the following:

"; (5) to encourage parental involvement in treatment and alternative disposition programs; and (6) to provide for coordination of services between State, local, and community-based agencies and to promote interagency cooperation in providing such services".

SEC. 102. DEFINITIONS.

Section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603) is amended—

(1) by amending paragraph (16) to read as follows:

"(16) the term 'valid court order' means a court order given by a juvenile court judge to a juvenile—

"(A) who was brought before the court and made subject to such order;

"(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States;

"(C) with respect to whom an appropriate public agency (other than a court or law enforcement agency), before the issuance of such order—

"(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

"(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

"(iii) determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

"(iv) submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii);",

(2) in paragraph (17) by striking "and" at the end,

(3) in paragraph (18) by striking the period at the end and inserting a semicolon, and

(4) by adding at the end the following:

"(19) the term 'comprehensive and coordinated system of services' means a system that—

"(A) ensures that services and funding for the prevention and treatment of juvenile delinquency are consistent with policy goals of preserving families and providing appropriate services in the least restrictive environment so as to simultaneously protect juveniles and maintain public safety;

"(B) identifies, and intervenes early for the benefit of, young children who are at risk of developing emotional or behavioral problems because of physical or mental stress or abuse, and for the benefit of their families;

"(C) increases interagency collaboration and family involvement in the prevention and treatment of juvenile delinquency; and

"(D) encourages private and public partnerships in the delivery of services for the prevention and treatment of juvenile delinquency;

"(20) the term 'gender-specific services' means services designed to address needs unique to the gender of the individual to whom such services are provided;

"(21) the term 'hate crime' means an offense that manifests evidence of prejudice based on race, religion, sexual orientation, or ethnicity;

"(22) the term 'home-based alternative services' means services provided to a juvenile in the home of the juvenile as an alternative to incarcerating the juvenile, and includes home detention; and

"(23) the term 'jail or lockup for adults' means a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults—

"(i) pending the filing of a charge of violating a criminal law;

"(ii) awaiting trial on a criminal charge; or

"(iii) convicted of violating a criminal law.".

SEC. 103. ESTABLISHMENT OF OFFICE.

Section 201(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611(b)) is amended—

(1) in the first sentence by striking "in juvenile justice programs" and inserting "as practitioners in the field of juvenile justice", and

(2) by striking the last sentence and inserting the following:

"There shall be a direct reporting relationship between the Administrator and the Attorney General. In the performance of the functions of the Administrator, the Administrator shall be directly responsible to the Attorney General. The Attorney General may not delegate any power, duty, or function vested under this title or title II in the Attorney General.".

SEC. 104. CONCENTRATION OF EFFORT.

(a) FUNCTIONS OF ADMINISTRATOR.—Section 204(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after "(a)", and

(B) by striking "implement overall policy and develop objectives and priorities" and inserting "develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan,", and

(2) by adding at the end the following:

"(2)(A) Such plan shall—

"(i) contain specific goals and criteria for making grants and contracts, for conducting research, and for carrying out other activities under this title;

"(ii) provide for coordinating the administration programs and activities under this title with the administration of all other Federal juvenile delinquency programs and activities, including proposals for joint funding to be coordinated by the Administrator.

"(B) The Administrator shall review such plan annually, revise such plan as the Administrator considers appropriate, and publish such plan in the Federal Register—

"(i) not later than 240 days after the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, in the case of the initial plan required by paragraph (1); and

"(ii) except as provided in clause (i), in the 30-day period ending on October 1 of each year.".

(b) DUTIES.—Section 204(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614(b)) is amended—

(1) in paragraph (5) by striking "and" at the end,

(2) in paragraph (6) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(7) not later than 1 year after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, issue model standards for providing health care to incarcerated juveniles.".

(c) REPEALER.—Section 204 the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614) is amended by striking subsections (f) and (g).

SEC. 105. COORDINATING COUNCIL.

Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "the Director of the Office of Community Services" and all that follows through the period, and inserting the following:

"the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of Drug Abuse Policy, the Director of the ACTION Agency, and individuals appointed under paragraph (2).", and

(B) by amending paragraph (2) to read as follows:

"(2)(A) Nine members shall be appointed, without regard to political affiliation, to the Council in accordance with this paragraph from among individuals who are practitioners in the field of juvenile justice and who are not officers or employees of the United States.

"(B)(i) Three members shall be appointed by the Speaker of the House of Representatives, after consultation with the minority leader of the House of Representatives.

"(ii) Three members shall be appointed by the majority leader of the Senate, after consultation with the minority leader of the Senate.

"(iii) Three members shall be appointed by the President.

"(C)(i) Of the members appointed under each of clauses (i), (ii), and (iii)—

"(I) 1 shall be appointed for a term of 1 year;

"(II) 1 shall be appointed for a term of 2 years; and

"(III) 1 shall be appointed for a term of 3 years;

as designated at the time of appointment.

"(ii) Except as provided in clause (iii), a vacancy arising during the term for which an appointment is made may be filled only for the remainder of such term.

"(iii) After the expiration of the term for which a member is appointed, such member may continue to serve until a successor is appointed.",

(2) in subsection (c)—

(A) by inserting "(1)" after "(c)",

(B) in the second sentence by inserting "shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles and" after "Council"

(C) by adding at the end thereof the following:

"(2) In addition to performing their functions as members of the Council, the members appointed under subsection (a)(2) shall collectively—

"(A) make recommendations regarding the development of the objectives, priorities, and the long-term plan, and the implementation of overall policy and the strategy to carry out such plan, referred to in section 204(a)(1); and

"(B) not later than 180 days after the date of the enactment of the Juvenile Justice and Delinquency Prevention Act of 1992, submit such recommendations to the Administrator, the Chairman of the Committee on Education and Labor of the House of Representatives, and the Chairman of the Committee on the Judiciary of the Senate.", and

(3) in subsection (f)—

(A) by inserting after "(f)" the following:

"Members appointed under subsection (a)(2) shall serve without compensation.", and

(B) by striking "who are employed by the Federal Government full time".

SEC. 106. ANNUAL REPORT.

Section 207(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5617(1)) is amended—

(1) in subparagraph (D)—

(A) by inserting "(including juveniles treated as adults for purposes of prosecution)" after "juveniles", and

(B) by striking "and" at the end,

(2) in subparagraph (E) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(F) the educational status of juveniles, including information relating to learning disabilities, failing performance, grade retention, and dropping out of school.".

SEC. 107. ALLOCATION.

The first sentence of section 222(c) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632(c)) is amended by striking "and evaluation" and inserting ", evaluation, and one full-time staff position".

SEC. 108. STATE PLAN.

(a) PLAN REQUIREMENTS.—Section 223(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(a)) is amended—

(1) in paragraph (3)(B) by inserting "recreation," after "special education,",

(2) in paragraph (8)(A) by inserting "(including educational needs)" after "delinquency prevention needs" each place it appears,

(3) in paragraph (9) by inserting "recreation," after "special education,"

(4) in paragraph (10)—

(A) in subparagraph (A) by inserting "(including home-based alternative services)" after "services" the first place it appears,

(B) by amending subparagraph (B) to read as follows:

"(B) community-based programs and services designed to work with—

"(i) parents and other family members to maintain and strengthen the family unit so that juveniles may be retained in their homes; and

"(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the family unit;"

(C) in subparagraph (C)—

(i) by striking "youth" the second and third places it appears and inserting "juveniles", and

(ii) by striking "delinquents" and inserting "delinquent juveniles",

(D) in subparagraph (D) by striking "youth" and inserting "juveniles",

(E) by amending subparagraph (E) to read as follows:

"(E) educational programs and supportive services designed—

"(i) to encourage delinquent juveniles and other juveniles to remain in elementary and secondary schools or in alternative learning situations, including programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and

"(ii) enhance coordination with the local schools such juveniles would otherwise attend, to ensure that—

"(I) the instruction such juveniles receive outside such schools is closely aligned with the instruction provided in such schools; and

"(II) information regarding any learning problems identified in such alternative learning situations are communicated to such schools;",

(F) in subparagraph (F) by striking "youth" and inserting "juveniles",

(G) in subparagraph (G)—

(i) by striking "youth" each place it appears and inserting "juveniles", and

(ii) by inserting "(including juveniles with limited-English speaking ability)" before "who",

(H) in subparagraph (H)—

(i) in clause (iv) by inserting "(including home-based treatment programs)" after "facilities", and

(ii) in clause (v) by inserting before the semicolon at the end the following:

", with special emphasis on involving parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability",

(I) in subparagraph (I) by striking "learning disabled and other handicapped juveniles" and inserting "juveniles who are learning disabled or otherwise handicapped or who have educational problems",

(J) in subparagraph (K) by striking "and" at the end,

(K) by adding at the end the following:

"(M) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and cultural barriers that may prevent the complete treatment of such juveniles and the preservation of the family unit; and

"(N) programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration;",

(5) in paragraph (12)(B)(i) by striking "child" and inserting "juvenile",

(6) in paragraph (13)—

(A) by striking "youths" and inserting "juveniles",

(B) by striking "regular", and

(C) by inserting before the semicolon at the end "or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults",

(7) in paragraph (14) by striking "provide that" and all that follows through "1980,",

(8) in paragraph (17)—

(A) by striking "and other youth" and inserting "juveniles and other juveniles",

(B) by striking ". Such" and inserting "(such", and

(C) by inserting before the semicolon the following:

"and should include providing family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible)",

(9) in paragraph (19) by striking "this Act" each place it appears and inserting "this title",

(10) by redesignating paragraph (24) as paragraph (26),

(11) in paragraph (23) by striking "and" at the end,

(12) by redesignating paragraphs (9) through (23) as paragraphs (12) through (26), respectively,

(13) by inserting after paragraph (8) the following:

"(9) contain—

"(A) an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for such services for females; and

"(B) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

"(10) contain—

"(A) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services ; and

"(B) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas;

"(11) contain—

"(A) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particular placements of juveniles in order to receive such services) and of barriers to access to such services; and

"(B) a plan for providing needed mental health services to juveniles in the juvenile justice system;", and

(14) by inserting after paragraph (26), as so redesignated, the following:

"(27) provide an assurance that if the State receives under section 222 for any fiscal year an amount that exceeds 105 percent of the amount the State received under such section for fiscal year 1992, all of such excess shall be expended through or for programs that are part of a comprehensive and coordinated community system of services; and".

(b) APPROVAL OF PLAN; REDUCTION OR TERMINATION OF FUNDS.—Section 223(c) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(c)) is amended to read as follows:

"(c)(1) Subject to paragraph (2), the Administrator shall approve any State plan, and any modification thereof, that meets the requirements of this section.

"(2) If a State fails to comply with the requirements of paragraph (12)(A), (13), (14), or (23) in any fiscal year beginning after January 1, 1993, then—

"(A) subject to subparagraph (B), the amount allotted under section 222 to the State for such fiscal year shall be reduced by 25 percent for each such paragraph with respect which to noncompliance occurs; and

"(B) the State shall be ineligible to receive any allotment under such section for such fiscal year unless—

"(i) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with subsections (c) and (d) of section 222 and with section 223(a)(5)(C)) for such fiscal year only to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

"(ii) the Administrator determines, in the discretion of the Administrator, that the State has—

"(I) achieved substantial compliance with each such paragraph with respect to which the State is in noncompliance; and

"(II) made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time.".

(c) LACK OF APPROVED STATE PLAN.—Section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(d)) is amended—

(1) in the first sentence—

(A) by inserting ", excluding funds the Administrator shall make available to satisfy the requirement specified in section 222(d)," after "section 222(a)", and

(B) by striking "the purposes of subsection (a)(12)(A), subsection (a)(13), or subsection (a)(14)" and inserting "activities of the kinds described in paragraphs (12)(A), (13), (14), and (23) of subsection (a)", and

(2) in the last sentence by striking "under subsection" and all that follows through "subsection (a)(13)", and inserting the following: "of paragraphs (12)(A), (13), (14), and (23)".

SEC. 109. INFORMATION FUNCTION.

Section 242(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5652(3)) is amended by inserting "(including drug and alcohol programs and gender-specific programs)" after "treatment programs".

SEC. 110. RESEARCH, DEMONSTRATION, AND EVALUATION FUNCTIONS.

Section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5653) is amended—

(1) by striking "The" and inserting "(a) The",

(2) in paragraph (8) by striking "and" at the end,

(3) in paragraph (9) by striking the period at the end and inserting a semicolon, and

(4) by adding at the end the following:

"(10) support research related to achieving a better understanding of the commission of hate crimes by juveniles and designed to identify educational programs best suited to prevent and reduce the incidence of hate crimes committed by juveniles; and

"(11) routinely collect, analyze, compile, publish, and disseminate uniform national statistics concerning—

"(A) all aspects of juveniles as victims and offenders;

"(B) the processing and treatment, in the juvenile justice system, of juveniles who are status offenders, delinquent, neglected, or abused; and

"(C) the processing and treatment of such juveniles who are treated as adults for purposes of the criminal justice system.

"(b) The Administrator shall make available to the public—

"(1) the results of evaluations and research and demonstration activities referred to in subsection (a)(6); and

"(2) the data and studies referred to in subsection (a)(7);

that the Administrator is authorized to disseminate under subsection (a).".

SEC. 111. TECHNICAL ASSISTANCE AND TRAINING FUNCTIONS.

Section 244 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5654) is amended—

(1) in paragraph (2) by inserting "(including juveniles who commit hate crimes)" after "offenders",

(2) in paragraph (3) by striking "and" at the end,

(3) in paragraph (4) by striking the period at the end and inserting "; and", and

(4) by adding at the end the following:

"(5) provide technical assistance and training to assist States and units of general local government to adopt the model standards issued under section 204(b)(7).".

SEC. 112. ESTABLISHMENT OF TRAINING PROGRAM.

The first sentence of section 245 is amended by inserting before the period at the end the following: ", including methods and techniques specifically designed to prevent and reduce the incidence of hate crimes committed by juveniles".

SEC. 113. CURRICULUM FOR TRAINING PROGRAM.

Section 246 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5660) is amended by inserting before the period at the end the following: "and shall include training designed to prevent juveniles from committing hate crimes".

SEC. 114. SPECIAL STUDIES AND REPORTS.

Section 248 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5662) is amended by adding at the end the following:

"(d)(1) Not later than 180 days after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, the Administrator shall begin to conduct a study of the incidence of violence committed by or against juveniles in urban and rural areas in the United States.

"(2) Such areas shall include—

"(A) the District of Columbia;

"(B) Los Angeles, California;

"(C) Milwaukee, Wisconsin; and

"(D) such other cities as the Administrator determines to be appropriate.

"(3) With respect to each area included in the study, the objectives of the study shall be—

"(A) to identify characteristics and patterns of behavior of juveniles who are at risk of becoming violent or victims of homicide;

"(B) to identify factors particularly indigenous to such area that contribute to violence committed by or against juveniles;

"(C) to determine the accessibility of firearms and the use of firearms by or against juveniles;

"(D) to determine the conditions that cause any increase in violence committed by or against juveniles;

"(E) to identify existing and new diversion, prevention, and control programs to ameliorate such conditions;

"(F) to improve current systems to prevent and control violence by or against juveniles; and

"(G) to develop a plan to assist State and local governments to establish viable ways to reduce homicide committed by or against juveniles.

"(4) Not later than 3 years after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, the Administrator shall submit a report, to the Chairman of the Committee on Education and Labor of the House of Representatives and the Chairman of the Committee on the Judiciary of the Senate, detailing the results of the study addressing each objective specified in paragraph (3).

"(e)(1) Not later than 1 year after the date of the enactment of the Juvenile Justice and Delinquency Prevention Amendments of 1992, the Administrator shall—

"(A) conduct a study described in paragraph (2), using data available from Federal, State, and local enforcement agencies, and

"(B) submit to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate the results of such study.

"(2) Such study shall assess—

"(A) the characteristics of juveniles who commit hate crimes, and to prepare a profile of such juveniles, based on—

"(i) the types of hate crimes committed;

"(ii) their motives for committing hate crimes;

"(iii) the extent to which such juveniles were influenced by publications and organized groups intended to encourage the commission of hate crimes; and

"(iv) the impact of their race, ethnic background, sex, age, neighborhood, and family income on such juveniles;

"(B) the characteristics of hate crimes committed by juveniles, including—

"(i) the types of such crimes;

"(ii) the number of individuals who participated with juveniles in committing such crimes;

"(iii) the types of law enforcement investigations conducted with respect to such crimes;

"(iv) the law enforcement proceedings commenced against juveniles for committing hate crimes; and

"(v) the penalties imposed on such juveniles as a result of such proceedings; and

"(C) the characteristic of the victims of hate crimes committed by juveniles, including—

"(i) a profile of such victims; and

"(ii) the frequency with which institutions and individuals, separately determined, were the targets of such crimes.".

SEC. 115. SPECIAL EMPHASIS PREVENTION AND TREATMENT PROGRAMS.

Section 261 Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665) is amended—

(1) in subsection (a)—

(A) by striking "(a) The" and inserting "(a) Except as provided in subsection (f), the",

(B) in paragraph (1) by inserting "(including home-based treatment programs)" after "alternatives",

(C) in paragraph (4)—

(i) by inserting "(including self-help programs for parents)" after "programs", and

(ii) by inserting before the period at the end the following:

", including programs that work with families during the incarceration of juvenile family members and which take into consideration the special needs of families with limited-English speaking ability".

(D) in paragraph (6)—

(i) in subparagraph (C) by striking the period at the end and inserting a semicolon, and

(ii) by adding at the end the following:

"that targets juveniles who have had contact with the juvenile justice system or who are likely to have contact with such system.", and

(E) by adding at the end the following:

"(8) Establishing or supporting programs designed to prevent and to reduce the incidence of hate crimes committed by juveniles, including—

"(A) model educational programs that are designed to reduce the incidence of hate crimes by means such as—

"(i) addressing the specific prejudicial attitude of each offender;

"(ii) developing an awareness in such offender, of the effect of the hate crime on the victim; and

"(iii) educating such offender about the importance of tolerance in our society; and

"(B) sentencing programs that are designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration.",

(2) in subsection (b)—

(A) by striking "(b) The" and inserting "(b) Except as provided in subsection (f), the", and

(B) in paragraph (2) by inserting "to assist in identifying learning difficulties (including learning disabilities)," after "schools,", and

(3) by adding at the end the following:

"(f) The Administrator shall not make a grant or a contract under subsection (a) or (b) to the Department of Justice or to any administrative unit or other entity that is part of the Department of Justice.".

SEC. 116. CONSIDERATIONS FOR APPROVAL OF APPLICATIONS.

(a) Section 262(d)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665a(d)(1)) is amended—

(1) by amending subparagraph (B) to read as follows:

"(B) The competitive process described in subparagraph (A) shall not apply to programs to be carried out in areas with respect to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq) that a major disaster or emergency exists.", and

(2) by striking subparagraph (C).

SEC. 117. GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION.

Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5667–5667a) is amended to read as follows:

"PART D—GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION

"Subpart I—Gang-Free Schools and Communities

"AUTHORITY TO MAKE GRANTS AND CONTRACTS

"SEC. 281. (a) The Administrator shall make grants to or enter into contracts with public agencies (including local educational agencies) and private nonprofit agencies, organizations, and institutions to establish and support programs and activities that involve families and communities and that are designed to carry out any of the following purposes:

"(1) To prevent and to reduce the participation of juveniles in the activities of gangs that commit crimes. Such programs and activities may include—

"(A) individual, peer, family, and group counseling, including the provision of life skills training and preparation for living independently;

"(B) education and social services designed to address the social and developmental needs of juveniles which such juveniles would otherwise seek to have met through membership in gangs;

"(C) the organization of neighborhood and community groups to work closely with parents, schools, law enforcement, and other public and private agencies in the community; and

"(D) training and assistance to adults who have significant relationships with juveniles who are or may become members of gangs, to assist such adults in providing constructive alternatives to participating in the activities of gangs.

"(2) To develop within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses.

"(3) To provide treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

"(4) To promote the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

"(5) To promote and support, with the cooperation of community-based organizations experienced in providing services to juveniles engaged in gang-related activities and the cooperation of local law enforcement agencies, the development of policies and activities in public elementary and secondary schools which will assist such schools in maintaining a safe environment conducive to learning.

"(6) To assist juveniles who are or may become members of gangs to obtain appropriate educational instruction, in or outside a regular school program, including the provision of counseling and other services to promote and support the continued participation of such juveniles in such instructional programs.

"(7) To expand the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 102 of the Controlled Substances Act (21 U.S.C. 802) by juveniles, provided through State and local health and social services agencies.

"(8) To provide services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity.

"(9) To support activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

"(b) From not more than 15 percent of the amount appropriated to carry out this part in each fiscal year, the Administrator may make grants to and enter into contracts with public agencies and private nonprofit agencies, organizations, and institutions—

"(1) to conduct research on issues related to juvenile gangs;

"(2) to evaluate the effectiveness of programs and activities funded under subsection (a); and

"(3) to increase the knowledge of the public (including public and private agencies that operate or desire to operate gang prevention and intervention programs) by disseminating information on research and on effective programs and activities funded under this subpart.

"APPROVAL OF APPLICATIONS

"SEC. 282. (a) Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application submitted under subsection (a) shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 281 and specifically identify each such purpose such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

"(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this title, and under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801–11805);

"(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

"(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

"(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

"(c) In reviewing applications for grants and contracts under section 281(a), the Administrator shall give priority to applications—

"(1) submitted by, or substantially involving, local educational agencies (as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891));

"(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(3) for assistance for programs and activities that—

"(A) are broadly supported by public and private nonprofit agencies, organizations, and institutions located in such geographical area; and

"(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

"Subpart II—Community-Based Gang Intervention

"SEC. 285. (a) The Administrator shall make grants to or enter into contracts with public and private nonprofit agencies, organizations, and institutions to carry out programs and activities—

"(1) to reduce the participation of juveniles in the illegal activities of gangs;

"(2) to develop regional task forces involving State, local, and community-based organizations to coordinate enforcement, intervention, and treatment efforts for juvenile gang members and to curtail interstate activities of gangs; and

"(3) to facilitate coordination and cooperation among—

"(A) local education, juvenile justice, employment, and social service agencies; and

"(B) community-based programs with a proven record of effectively providing intervention services to juvenile gang members for the purpose of reducing the participation of juveniles in illegal gang activities.

"(b) Programs and activities for which grants and contracts are to be made under subsection (a) may include—

"(1) developing within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses.

"(2) providing treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

"(3) promoting the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

"(4) expanding the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 102 of the Controlled Substances Act (21 U.S.C. 802) by juveniles, provided through State and local health and social services agencies.

"(5) providing services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity; or

"(6) supporting activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

"APPROVAL OF APPLICATIONS

"SEC. 286. (a) Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application submitted under subsection (a) shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 285 and specifically identify each such purpose such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

"(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this title, and under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801–11805);

"(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

"(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

"(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

"(c) In reviewing applications for grants and contracts under section 265(a), the Administrator shall give priority to applications—

"(1) submitted by, or substantially involving, community-based organizations experienced in providing services to juveniles;

"(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(3) for assistance for programs and activities that—

"(A) are broadly supported by public and private nonprofit agencies, organizations, and institutions located in such geographical area; and

"(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

"Subpart III—General Provisions

"DEFINITION

"SEC. 288. For purposes of this part, the term 'juvenile' means an individual who is less than 22 years of age.".

SEC. 118. AUTHORIZATION OF APPROPRIATIONS.

(a) GENERAL AUTHORIZATION.—The first sentence of section 291(a)(1) the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(a)(1)) is amended to read as follows: "There are authorized to be appropriated to carry out this title (other than part D) $150,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996.".

(b) PART D AUTHORIZATION.—Section 291(a)(2)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5671(a)(2)(A)) is amended to read as follows:

"(A)(i) Subject to subparagraph (B), there are authorized to be appropriated $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996 to carry out subpart I of part D.

"(ii) Subject to subparagraph (B), there are authorized to be appropriated $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996 to carry out subpart II of part D.".

TITLE II—AMENDMENTS TO THE RUNAWAY AND HOMELESS YOUTH ACT

SEC. 201. FINDINGS.

Section 302 of the Runaway and Homeless Youth Act (42 U.S.C. 5701) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) juveniles who leave and remain away from home without parental permission, are at risk of developing serious health and other problems because they lack sufficient resources to obtain care and may live on the street for extended periods thereby endangering themselves and creating a substantial law enforcement problem for communities in which they congregate;".

(2) in paragraph (4) by striking "and" at the end,

(3) in paragraph (5) by striking "temporary" and all that follows through the period at the end, and inserting "care (including preventive services, emergency shelter services, and extended residential shelter) outside the welfare system and the law enforcement system;"

(4) by adding at the end the following:

"(6) runaway and homeless youth have a disproportionate share of health, behavioral, and emotional problems compared to the general population of youth, but have less access to health care and other appropriate services;

"(7) early intervention services (such as home-based services) are needed to prevent runaway and homeless youth from becoming involved in the juvenile justice system and other law enforcement systems; and

"(8) street-based services that target runaway and homeless youth where they congregate are needed to reach youth who require assistance but who would not otherwise avail themselves of such assistance or services without street-based outreach.".

SEC. 202. AUTHORITY TO MAKE GRANTS.

(a) AUTHORITY.—Section 311(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5711(a)) is amended by striking "structure and" and inserting "system, the child welfare system, the mental health system, and".

(b) ALLOTMENT OF FUNDS.—Section 311(b) of the Runaway and Homeless Youth Act (42 U.S.C. 5711(b)) is amended—

(1) in paragraph (2)—

(A) by striking "$75,000" and inserting "$100,000", and

(B) by striking "$30,000" and inserting "$45,000", and

(2) in paragraph (3) by striking "1988" each place it appears and inserting "1992".

(c) STREET-BASED SERVICES; HOME-BASED SERVICES.—Section 311 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633) is amended by striking subsection (c) and inserting the following:

"(c)(1) If for a fiscal year the amount appropriated under section 385(a)(1) exceeds $50,000,000, then the Secretary may make grants under this subsection for such fiscal year to entities that receive grants under subsection (a), to establish and operate street-based service projects for runaway and homeless youth on the street.

"(2) For purposes of this part—

"(A) the term 'runaway and homeless youth on the street' means an individual who—

"(i) is less than 22 years of age; and

"(ii) may obtain the means of survival by engaging in unlawful activity in a public place;

"(B) the term 'street-based service project' means a project that—

"(i) provides staff (including volunteers) to frequent public places in which runaway and homeless youth on the street congregate, for purposes of identifying, contacting, and establishing relationships with such youth;

"(ii) assesses the problems and service needs of runaway and homeless youth on the street contacted, and refers such youth to agencies and organizations that provide needed services;

"(iii) provides street-based crisis intervention and counseling to runaway and homeless youth on the street, or refers such youth to providers of needed crisis intervention services; and

"(iv) provides health education and disease prevention services to runaway and homeless youth on the street.

"(d)(1) If for a fiscal year the amount appropriated under section 385(a)(1) exceeds $50,000,000, then the Secretary may make grants for such fiscal year to entities that receive grants under subsection (a), to establish and operate home-based service projects for families that are separated, or at risk of separation, as a result of the physical absence of a runaway youth or youth at risk of family separation.

"(2) For purposes of this part—

"(A) the term 'home-based service project' means a project that provides—

"(i) case management; and

"(ii) in the family residence (to the maximum extent practicable)—

"(I) intensive, time-limited, family and individual counseling;

"(II) training relating to life skills and parenting; and

"(III) other services;

designed to prevent youth from running away from their families or to cause runaway youth or to return to their families;

"(B) the term 'youth at risk of family separation' means an individual—

"(i) who is less than 18 years of age;

"(ii) who has a history of running away from the family of such individual;

"(iii) whose parent, guardian, or custodian is not willing to provide for the basic needs of such individual; and

"(iv) who is at risk of entering the child welfare system or juvenile justice system, as a result of the lack of services available to the family to meet such needs; and

"(C) the term 'time-limited' means for a period not to exceed 6 months.".

SEC. 203. ELIGIBILITY.

(a) APPLICANTS.—Section 312(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5712(a)) is amended by inserting "(including a host family home)" after "facility".

(b) PLAN REQUIREMENTS.—Section 312(b) of the Runaway and Homeless Youth Act (42 U.S.C. 5712(b)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) shall use such assistance to establish, to strengthen, or to fund a runaway and homeless youth center, or a locally controlled facility providing temporary shelter, that has—

"(A) a maximum capacity of not more than 25 youth and

"(B) a ratio of staff to youth that is sufficient to ensure adequate supervision and treatment;",

(2) in paragraph (3)—

(A) by striking "child's parents or relatives and assuring" and inserting "parents or other relatives of the youth and ensuring", and

(B) by striking "child" each place it appears and inserting "youth",

(3) by amending paragraph (4) to read as follows:

"(4) shall develop an adequate plan for ensuring—

"(A) proper relations with law enforcement personnel, social service personnel, health care personnel, school system personnel, and welfare personnel;

"(B) coordination with personnel of the schools to which runaway and homeless youth will return, to assist such youth to stay current with the curricula of such schools; and

"(C) the return of runaway and homeless youth from correctional institutions;",

(4) in paragraph (5)—

(A) by striking "aftercare" and all that follows through "assuring", and inserting "providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring", and

(B) by striking "children" and inserting "youth",

(5) in paragraph (6) by striking "children and family members which it serves" and inserting "youth and family members whom it serves (including youth who are not referred to out-of-home shelter services)",

(6) by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and

(7) by inserting after paragraph (5) the following:

"(6) shall develop an adequate plan for establishing outreach programs designed to attract individuals (including individuals who are members of a cultural minority and and individuals with limited English-speaking ability) who are eligible to receive services for which a grant under subsection (a) may be expended;".

(c) STREET-BASED SERVICES; HOME-BASED SERVICES.—Section 312 of the Runaway and Homeless Youth Act (42 U.S.C. 5712) is amended adding at the end the following:

"(c) To be eligible for assistance under section 311(c), an applicant shall propose to establish, strengthen, or fund a street-based service project for runaway and homeless youth on the street and shall submit to the Secretary a plan in which such applicant agrees, as part of such project —

"(1) to provide qualified supervision of staff, including on-street supervision;

"(2) backup personnel for on-street staff;

"(3) to provide informational and health educational material to runaway and homeless youth on the street in need of services;

"(4) to provide initial and periodic training of staff who provide services under such project;

"(5) to carry out outreach activities for runaway and homeless youth on the street and to collect statistical information on runaway and homeless youth on the street contacted through such activities;

"(6) to develop referral relationships with agencies and organizations that provide services or assistance to runaway and homeless youth on the street, including law enforcement, education, social services, vocational education and training, public welfare, legal assistance, and health care;

"(7) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds received under section 311(c), the achievements of the project under section 311(c) carried out by the applicant, and statistical summaries describing the number and the characteristics of the runaway and homeless youth on the street who participate in such project in the year for which the report is submitted;

"(8) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(9) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under this subsection 311(c);

"(10) to keep adequate statistical records that profile runaway and homeless youth on the street whom it serves and not to disclose the identity such youth in reports or other documents based on such statistical records;

"(11) not to disclose records maintained on individual runaway and homeless youth on the street without the informed consent of the individual youth, to anyone other than an agency compiling statistical records; and

"(12) to provide to the Secretary such other information as the Secretary may reasonably require.

"(d) To be eligible for assistance under section 311(d), an applicant shall propose to establish, strengthen, or fund a home-based service project for runaway youth or youth at risk of family separation and shall submit to the Secretary a plan in which such applicant agrees, as part of such project —

"(1) to provide counseling and information services needed by runaway youth, youth at risk of family separation, and the family (including unrelated individuals in the family household) of such youth, including services relating to basic life skills, interpersonal skill building, educational advancement, job attainment skills, mental and physical health care, parent training, financial planning, and referral to sources of other needed services;

"(2) to provide directly, or through an arrangement made by the applicant, 24-hour service to respond to family crises (including immediate access to temporary shelter for runaway youth and youth at risk of family separation affected by family crises); and

"(3) to establish in partnership with the families of runaway youth and youth at risk of family separation, objectives and measures of success to be achieved as a result of participating in such project;

"(4) to provide informational and health educational material to runaway youth and youth at risk of family separation in need of services;

"(5) to provide initial and periodic training of staff who provide services under such project;

"(6) to carry out outreach activities for runaway youth and youth at risk of family separation, and to collect statistical information on runaway youth and youth at risk of family separation contacted through such activities;

"(7) to ensure that—

"(i) caseloads will remain sufficiently low to allow for intensive (5 to 20 hours per week) involvement with each family participating in such project; and

"(ii) qualified supervision will be provided to staff who provide services under such project;

"(8) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under section 311(d), the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the runaway youth and youth at risk of family separation who participate in such project in the year for which the report is submitted;

"(9) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(10) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under section 311(d);

"(11) to keep adequate statistical records that profile runaway youth and youth at risk of family separation whom it serves and not to disclose the identity of such youth in reports or other documents based on such statistical records;

"(12) not to disclose records maintained on individual runaway youth or youth at risk of family separation without the informed consent of the individual youth, to anyone other than an agency compiling statistical records; and

"(13) to provide to the Secretary such other information as the Secretary may reasonably require.".

SEC. 204. APPROVAL OF SECRETARY.

Section 316 of the Runaway and Homeless Youth Act (42 U.S.C. 5712a) is amended—

(1) in the first sentence—

(A) by striking "section 311(a)" the first place it appears and inserting "subsection (a), (c), or (d) of section 311", and

(B) by striking "section 311(a)" the last place it appears and inserting "such subsection", and

(2) by striking "$150,000" and inserting "$200,000".

SEC. 205. GRANTS TO PRIVATE ENTITIES; STAFFING.

Section 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5714) is amended—

(1) by striking "part" each place it appears and inserting "title",

(2) in the first sentence inserting "and the programs, projects, and activities they carry out under this title" after "center", and

(3) in the last sentence by inserting "under this title" before the period at the end.

SEC. 206. ELIGIBILITY.

Section 322(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5714-2(a)) is amended—

(1) in paragraph (8) by inserting "(including individuals who are members of a cultural minority and individuals who have limited-English speaking ability)" after "individuals", and

(2) in paragraph (13)—

(A) by striking "consent of the individual youth and parent or legal guardian" and inserting "informed consent of the individual youth", and

(B) by striking "or a government agency involved in the disposition of criminal charges against youth".

SEC. 207. REPORTS.

Section 361 of the Runaway and Homeless Youth Act (42 U.S.C. 5715) is amended—

(1) in subsection (a) by striking "runaway" and all that follows through "part A", and inserting "programs, projects, and activities carried out under this title (other than part B)", and

(2) by adding at the end the following:

"(c) The Secretary shall include in each report required by this section a summary of the results of Federal evaluation of the programs, projects, and activities carried out under this title, and a description of the training provided

to the individuals who carry out such evaluation. As part of such evaluation, the Secretary shall require such individuals to visit each grantee on-site not less frequently than at 3-year intervals.".

SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

(a) GENERAL AUTHORIZATION.—Section 366(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5751(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) There are authorized to carry out this title (other than part B and section 344) $75,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996.", and

(2) by adding at the end the following:

"(3) After making the allocation required by paragraph (2), the Secretary shall reserve —

"(A) for fiscal year 1993 not less than $912,500, of which $125,000 shall be available for the acquisition of communications equipment;

"(B) for fiscal year 1994 not less than $826,900;

"(C) for fiscal year 1995 not less than $858,300; and

"(D) for fiscal year 1996 not less than $911,700;

to carry out section 331.".

(b) TRANSITIONAL LIVING GRANT PROGRAM.—Section 366(b)(1) of the Runaway and Homeless Youth Act (42 U.S.C. 5751(b)(1)) is amended to read as follows:

"(1) Subject to paragraph (2), there are authorized to be appropriated to carry out B $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996.".

(c) DEMONSTRATION PROJECTS IN RURAL AREAS.—Section 366 of the Runaway and Homeless Youth Act (42 U.S.C. 5751) 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) There is authorized to be appropriated $1,000,000 for each of the fiscal years 1993, 1994, 1995, and 1996 to carry out section 344.".

SEC. 209. NATIONAL COMMUNICATION SYSTEM; STREET-BASED SERVICES PROGRAM; HOME-BASED SERVICES PROGRAM; COORDINATING ACTIVITIES.

The Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) is amended—

(1) in part D—

(A) by striking "PART D" and inserting "PART F", and

(B) by redesignating sections 361, 362, 363, 364, and 365 as sections 381 through 385, respectively,

(2) in part C—

(A) by striking PART C" and inserting "PART E", and

(B) by redesignating sections 341 and 342 as sections 371 and 372, respectively, and

(3) by inserting after part B the following:

"PART C—NATIONAL COMMUNICATIONS SYSTEM

"AUTHORITY TO MAKE GRANTS

"SEC. 331. With funds reserved under section 385(a)(3), the Secretary shall make grants for a national communication system to assist runaway and homeless youth in communicating with their families and with service providers. The Secretary shall give priority to grant applicants that have experience in providing telephone services to runaway and homeless youth.

"PART D—COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

"COORDINATION

"SEC. 341. With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this title.

"GRANTS FOR TECHNICAL ASSISTANCE AND TRAINING

"SEC. 342. The Secretary may make grants to statewide and regional nonprofit organizations (and combinations of such organizations) to provide technical assistance and training to public and private entities (and combinations of such entities) that are eligible to receive grants under this title, for the purpose of carrying out the programs, projects, or activities for which such grants are made.

"AUTHORITY TO MAKE GRANTS FOR RESEARCH, DEMONSTRATION, AND SERVICE PROJECTS

"SEC. 343. (a) The Secretary may make grants to States, localities, and private entities (and combinations of such entities) to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway youth and homeless youth.

"(b) In selecting among applications for grants under subsection (a), the Secretary shall give special consideration to proposed projects relating to—

"(1) juveniles who repeatedly leave and remain away from their homes without parental permission;

"(2) home-based and street based services for, and outreach to, runaway youth and homeless youth;

"(3) transportation of runaway youth and homeless youth in connection with services authorized to be provided under this title;

"(4) the special needs of runaway youth and homeless youth programs in rural areas;

"(5) the special needs of programs that place runaway youth and homeless youth in host family homes;

"(6) the special needs of programs for runaway and homeless youth who are sexually abused;

"(7) innovative methods of developing resources that enhance the establishment or operation of runaway and homeless youth centers.

"(8) training for runaway youth and homeless youth, and staff training, related to preventing and obtaining treatment for infection by the human immunodeficiency virus (HIV);

"(9) staff training to recognize and respond to emotional and behavioral effects of sexual abuse experienced by youth, and agency-wide strategies for responding to youth who may have been sexually abused;

"(10) increasing access to health care (including mental health care) for runaway youth and homeless youth; and

"(11) increasing access to education for runaway youth and homeless youth.

"(c) In selecting among applicants for grants under subsection (a), the Secretary shall give priority to applicants who have experience working with runaway youth or homeless youth.

"TEMPORARY DEMONSTRATION PROJECTS TO PROVIDE SERVICES TO YOUTH IN RURAL AREAS

"SEC. 344. (a)(1) With funds appropriated under section 385(c), the Secretary may make grants on a competitive basis to States, localities, and private entities (and combinations of such entities) to provide services (including transportation) authorized to be provided under part A, to runaway and homeless youth in rural areas.

"(2)(A) Each grant made under paragraph (1) may not exceed $100,000.

"(B) In each fiscal year for which funds are appropriated to carry out this section, grants shall be made under paragraph (1) to eligible applicants carry out projects in not fewer than 10 States.

"(C) Not more than 2 grants may be made under paragraph (1) in each fiscal year to carry out projects in a particular State.

"(3) Each eligible applicant that receives a grant for a fiscal year to carry out a project under this section shall have priority to receive a grant for the subsequent fiscal year to carry out a project under this section.

"(b) To be eligible to receive a grant under subsection (a), an applicant shall—

"(1) submit to the Secretary an application in such form and containing such information and assurances as the Secretary may require by rule; and

"(2) propose to carry out such project in a geographical area that—

"(A) has a population under 20,000; and

"(B) is located outside a Standard Metropolitan Statistical Area; and

"(C) agree to provide to the Secretary an annual report identifying—

"(i) the number of runaway and homeless youth who receive services under the project carried out by the applicant;

"(ii) the types of services authorized under part A that were needed by, but not provided to, such youth in the geographical area served by the project;

"(iii) the reasons the services identified under clause (ii) were not provided by the project; and

"(iv) such other information as the Secretary may require.".

(b) CONFORMING AMENDMENTS.—(1) Section 313 of the Runaway and Homeless Youth Act (42 U.S.C. 5712a) is repealed.

(2) Section 314 of the Runaway and Homeless Youth Act (42 U.S.C. 5712b) is repealed.

(3) Section 315 of the Runaway and Homeless Youth Act (42 U.S.C. 5712c) is repealed.

(3) Sections 316 and 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5713, 5714) are redesignated as sections 313 and 314, respectively.

(4) Section 365 of the Runaway and Homeless Youth Act (42 U.S.C. 5733) is repealed.

TITLE III—AMENDMENT TO THE MISSING CHILDREN'S ASSISTANCE ACT

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 407 of the Missing Children's Assistance Act (42 U.S.C. 5777) is amended by striking "1989, 1990, 1991, and 1992" and inserting "1993, 1994, 1995, and 1996".

TITLE IV—AMENDMENT TO THE CHILD ABUSE PREVENTION AND TREATMENT ACT

SEC. 401. FINDINGS.

The Congress finds the following:

(1) Circumstances surrounding the recent death of a young boy named Adam Mann in New York City prompted a shocking documentary focusing on the inability of child protection services to protect suffering children, and this documentary showed the serious need for systemic changes in our child welfare protection system.

(2) Thorough, coordinated, and comprehensive investigation will hopefully lead to the prevention of abuse, neglect, or death in future instances.

(3) An undue burden is placed on investigation due to strict Federal and State laws and regulations regarding confidentiality.

(4) While the Congress recognizes the importance of maintaining the confidentiality of records pertaining to child abuse, neglect, and death, often the purpose of these confidentiality laws and regulations are defeated when they end up protecting those responsible.

(5) Comprehensive and coordinated interagency communication needs to be established, with adequate provisions to protect against the public disclosure of any detrimental information need to be established.

(6) Certain States, such as Georgia, North Carolina, California, Missouri, Arizona, Minnesota, Oklahoma, and Oregon have already taken the necessary steps to establish by statute interagency, multidisciplinary fatality review

teams to fully investigate incidents of death believed to have been caused by child abuse or neglect with great success. Such teams should be established in every State and their scope of review should be expanded to include egregious incidents of child abuse and neglect before the child in question dies. These teams will increase the accountability of the child protection service.

SEC. 402. MODIFICATION OF CONFIDENTIALITY PROVISION REGARDING STATE GRANTS UNDER CHILD ABUSE PREVENTION AND TREATMENT ACT.

Section 107(b)(4) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106A(b)(4)) is amended to read as follows:

"(4) provide for—

"(A) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including methods to ensure that disclosure (and redisclosure) of information concerning child abuse or neglect involving specific individuals is made only to persons or entities that the State determines have a need for such information directly related to purposes of this Act; and

"(B) requirements for the prompt disclosure of all relevant information to any Federal, State, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;".

SEC. 403. SENSE OF THE CONGRESS.

It is the sense of the Congress that each State should carry out detailed review and reform of the system in the State for protecting against child abuse and neglect, including implementing formal interagency, multidisciplinary teams—

(1) to review all cases of child death where that child was previously known by the State to have been abused or neglected and those incidents of child abuse before the child dies where there is evidence of negligent handling by the State in order to hold the State accountable; and

(2) to make final recommendations regarding the outcomes of individual cases and systemic changes in the State's procedures for protecting against child abuse and neglect.

TITLE V—GENERAL PROVISIONS

SEC. 501. TECHNICAL AMENDMENTS.

(a) JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974.—The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended—

(1) in sections 202(b), 202(d), and 241(e)(5) by striking "prescribed for GS-18 of the General Schedule by section 5332" and inserting "payable under section 5376", and

(2) in sections 201(b), 202(c), 204(b), and 241(e)(6) by striking "this Act" each place it appears and inserting "this title".

(b) RUNAWAY AND HOMELESS YOUTH ACT.—The Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) is amended—

(1) in section 312(a) by striking "juveniles" each place it appears and inserting "youth", and

(2) in section 363, as so redesignated by section 209(1)(B), by striking "Act" and inserting "title".

SEC. 502. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATES.—(1) Except as provided in paragraph (2) and subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(2) The amendment made by section 108(a)(7) shall take effect on January 1, 1993.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to fiscal years beginning before October 1, 1992.

The SPEAKER pro tempore (Mr. MAZZOLI). Pursuant to the rule, the gentleman from California [Mr. MARTINEZ] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. FAWELL] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MARTINEZ].

GENERAL LEAVE

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the bill, H.R. 5194, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MARTINEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are here today to vote on passage of H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992, the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974, and Runaway and Homeless Youth Act.

Before I begin my remarks, I would like to take the time to thank Chairman FORD and my colleagues from the other side of the aisle, Mr. GOODLING, ranking member of the Education and Labor Committee, and Mr. FAWELL, ranking member of the Human Resources Subcommittee for their tireless efforts in helping to put together this truly bipartisan bill.

A lot has happened this past year since the Human Resources Subcommittee started a series of reauthorization hearings. We visited Boys Town in Omaha, NE, visited gang programs and talked with gang members in Portland, OR, and Los Angeles, CA. We visited runaway shelters in Grand Island, NE, and New York City and talked with runaway and homeless kids.

We weren't too surprised to learn the Bloods and Crips are now a part of the Omaha and Portland scenes nor that there are over 300,000 homeless kids on any given day in America. What we were surprised at was the fact that the weapons that we have in the arsenal in our war to save our kids and to fight delinquency are woefully out of date and resources are totally inadequate.

All in all, the visits we have made and the hearings that we have held have led us to the belief that so as the character and nature of gangs and juvenile delinquency has evolved, so must the Juvenile Justice and Delinquency Prevention Act.

Where much of the initial thrust of the act was on ensuring the separation of juvenile offenders from adult offenders, the act also was a response to growing concerns about the lack of adequate technical expertise and resources available to State, county, and local agencies to effectively provide justice and promote programs that help provide alternatives to delinquent and at-risk juveniles.

Over the past 18 years since the implementation of the act, it has tried to evolve to adjust to the changing needs of both the system and to the youth that we serve. We know provision of services has gotten more sophisticated, but so have our youth.

So in looking at juvenile justice issues, the subcommittee went beyond the beltway to hold hearings from the west coast to the east coast, looking at both urban and rural issues and a variety of programs in an effort to find innovative new ideas that offer other alternatives and hope for our youth, in order to improve the act during its reauthorization.

One thing we have found for sure, is that the act can make a difference in the lives of both rural and urban youth. We have heard testimony from people who made obvious the need for these juvenile justice and delinquency prevention programs; we have also seen a variety of innovative programs that have new ways of providing these much-needed services. We have looked at how these programs are being implemented at the Federal level and what improvements need to be made so we can make the JJDPA as effective as possible.

The original act focused on the need for coordinated juvenile delinquency efforts on the Federal, State, and local levels and to involve the nonprofit sector in these efforts, with three major premises: Juvenile crime must be reduced, the proportion of crimes committed by juveniles should be decreased, and methods of handling juveniles should be improved. The act also created the Office of Juvenile Justice and Delinquency Prevention to provide Federal leadership with the focus in mind.

With that in mind let us now ask: What has happened over the last 18 years? Have we met the original mandates of the act? We have changed the methods of handling our youth in the juvenile justice system and have drastically reduced the number of juveniles in adult jails and have virtually removed all status offenders from locked facilities.

But we cannot say that we have been totally successful in our mission. Juvenile crime has not been reduced and the proportion of crimes committed by juveniles have not decreased.

During the first part of the 1980's, youth arrests in the United States declined while adult arrests increased. But, in the latter part of the 1980's, juvenile arrests increased at a greater pace than adults for violent crimes and a lesser rate than adults for property crimes. It appears that we are reaching a softer segment of our delinquent population while those hardcore more violent youth are increasing in numbers.

Let me repeat this. The latter one-half of the 1980's, a time which coincides with the past and present admin-

istration's total lack of commitment to juvenile justice; a fact evidenced by their action—when year in and year out they virtually zeroed out the Office of Juvenile Justice and Delinquency Prevention budget; and they ignored the fact that juvenile arrests increased at a greater rate than that of adults for violent crimes.

Mr. Chairman, we are at a crossroad in our fight for the productive lives of our youth.

The 1989-90 arrest trends show an increase in the number of juvenile arrests for murder and nonnegligent manslaughter, robbery, and aggravated assault, respectively 26 percent, 17 percent, 16 percent, alarming figures that indicate to me that we need to step up and broaden our efforts toward prevention and intervention.

We know that about 1 million kids run away from home each year and, as I stated earlier, that there are over 300,000 homeless kids on any given day in this country. These young people are probably the most vulnerable members of our society. These teenagers are impressionable—struggling with a word of constantly changing values—and are in the process of making the difficult transition from child to adult.

To me, one thing is very clear—we cannot prevent crime by locking up kids who can be saved. And we are not serving justice by certifying kids as adults in order to satisfy some need to show that we are tough on crime. And we cannot leave our children to the mean streets of America.

I would like to ask the unenlightened: What are we going to do when we fill all of our jails?

The build more jails, lock them up, and throw away the key mentality won't solve our problems.

I further would say to my hang'em from the highest tree colleagues to be careful—in this time of being tough on crime we must be careful not to lose sight of our mission to break the cycle of delinquency. We want our streets, our homes, and our families to be safe. But we cannot keep building more prisons. We must divert children-at-risk before they are irretrievable. We must provide alternatives to violent antisocial behavior. This was the mandate of the original act.

H.R. 5194 addresses all of these issues. It provides incentives for States and local jurisdictions to enter into innovative public-private partnerships. It also provides incentives to local jurisdictions to create community systems of care, involving interagency collaborative efforts; it makes the Office of Juvenile Justice and Delinquency Prevention more autonomous so that it truly serves as the leader in national juvenile justice policy; and strengthens the coordinating council.

H.R. 5194 also creates two new gang intervention programs: One that requires local education agency involvement with other local, public, and private institutions in providing a broad variety of prevention and intervention activities; and the other aimed specifically at the more hardcore gang members providing for the development of regional task forces involving State, local, and community-based organizations to coordinate enforcement, intervention, and treatment efforts and to curtail interstate activities of gangs.

The bill also allows the continuation of vital services to our runaway and homeless youth. The Runaway and Homeless Youth Act is the safety net with which we rescue those young people, who have been cast off into a sea of distrust and exploitation. The act provides basic services through community-based agencies to alleviate the problems of runaways through the provision of temporary shelter, supportive services, and counseling—and whenever possible, reuniting them with their families. The act also provides funding for transitional living programs that provide long-term shelter and life skills training to homeless youth who are attempting to make that transition to adulthood.

Finally, as we have traveled holding these hearings, we have seen that the act has had an impact on America's youth; we have learned that intervention programs do work. But we have fallen short in our mission to address the needs of our Nation's at-risk youth; in providing the dollars and the leadership necessary to fight the tide.

This legislation is committed to addressing today's immediate issues concerning youth and will make the necessary structural changes to the JJDPA in this reauthorization cycle to ensure the future of our youth. But I also ask all of you, my colleagues in this body, to support us in our quest. We need to arm those who are fighting the fight on the front lines; those who see what works and what doesn't. We need to help restore the national leadership and autonomy of the Office of Juvenile Justice and Delinquency Prevention and to maintain the integrity of the original act. We all need to work together as advocates for the future of America's youth to achieve this goal.

We have seen the terrible tragedy in my hometown, Los Angeles, 2 months ago—the tragedy of rioting, brother against brother—an act of frustration with failing judicial and social systems. What happened there is a message to all of America; we need to respond to our communities. We need to provide alternatives for our youth.

Mr. Speaker, this bill represents a bipartisan effort to address the ravages of social disease on our youth and our communities. This effort is reflected by Chairman FORD'S cosponsorship of H.R. 5194 along with that of the ranking minority members of the full committee and the subcommittee, Mr. GOODLING and Mr. FAWELL.

H.R. 5194 is a keystone in the foundation of the future of our children. I ask for your support in passing this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. FAWELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Act of 1992. This bill will authorize three programs which are vital to the well-being of this country's youth: the Juvenile Justice and Delinquency Prevention Act, the Runaway and Homeless Youth Act, and the Missing Children's Act. This bill also includes a small, yet crucial, amendment to the Child Abuse Prevention and Treatment Act that was authored by Congresswoman MOLINARI.

I want to thank Congressman Martinez, the chairman of the Human Resources Subcommittee, for the bipartisan manner in which this reauthorization process has been conducted—from the handling of hearing sites and witnesses through the development of changes in these important laws.

As I mentioned, the legislation we are voting on today supports the provision of important services to at-risk youth, whether they be runaways, homeless youth, or youth involved in the juvenile justice system. By providing assistance to these young men and women today, we are ensuring they will become productive members of society tomorrow instead of part of the adult criminal justice systems.

I would like to mention several of the changes which I believe will strengthen the ability of these laws to help youth and their families.

In both the Juvenile Justice and Delinquency Prevention Act and the Runaway and Homeless Youth Act, we have added language concerning the provision of counseling to youth and their families before the youth returns home. While aftercare is important, I also believe families should receive counseling before the youth returns home to help ensure the same circumstances which led the youth to leave home do not reoccur.

We also have stressed the need for better communication between the facility where the youth is residing, whether it is a juvenile detention center or a runaway or homeless youth shelter, and their local school to ensure the instruction they are receiving is closely aligned with the instruction provided in their home school. This also will ensure that any learning problems identified in the facility are relayed to school personnel. These changes should assist in encouraging youth to stay in school and graduate once they return home.

In response to testimony received in Portland, we have added language regarding the need to work with language and cultural minority families

to ensure they are aware of all the services available to help them and can avail themselves of such services.

I would, at this point, like to mention an innovative program operating in my congressional district. On April 7, Jean Peerson, chief probation officer, Department of Probation and Court Services, DuPage County and Pat McGrath, superintendent of the DuPage County Youth House, testified before the Subcommittee on Human Resources about an innovative home detention program they have developed with allows them to treat youth locally rather than sending them to other jurisdictions when their facility is overcrowded. They have a 79 percent success rate, partially due to their ability to work with the youth and their family at the same time since the youth remains in the home setting. A definition of home-based alternative services has been included in the bill and I would certainly encourage the use of this successful alternative to incarceration.

I also am pleased to announce that my home State of Illinois recently passed a law that will finally bring it into full compliance with the jail-removal mandate of the Juvenile Justice Act. This new law will prohibit the detention of juveniles for status offenses, which is required by the Federal law.

I would like to briefly mention the addition in the Runaway and Homeless Youth Act of street-based and home-based services. These new services will target youth who are most at risk and provide effective interventions, such as family involvement, to prevent these youth from falling into delinquent activity. these new programs will be administered by existing basic grant centers, in order to maximize their effectiveness through coordination of all the different services.

I am glad to support the increased authorization levels for the different programs in this bill. I have talked to many people in my district that work with these programs and I have heard testimony from experts in these areas who have explained the benefits of these programs to me. Based on this information, I strongly believe that these are programs that deserve, on their own merits, increased funding in order to solidify and hopefully expand the progress being made.

Finally, as I mentioned, there also is a child abuse provision in this bill that was added by Congresswoman MOLINARI. This provision would amend the confidentiality requirement of the Federal child abuse laws to mandate that States share records amongst different governmental agencies, and to allow States to share information with other necessary entities in order to ensure coordinated protection against child abuse and neglect. Government agency sharing of child abuse records is currently only permissible under existing Federal law. It is surprising that this measure is necessary, but some States actually prohibit one agency from sharing this information with another agency in the name of strict confidentiality. The purpose of this provision is to liberalize the sharing of records and information in the Government's possession in order to enhance the prevention or intervention of child abuse or neglect, while at the same time protecting against the public disclosure of unsubstantiated information that could stigmatize a family. I applaud my colleague from Staten Island, NY, for her tireless work on behalf of abused and neglected children. I am proud to say that I am an original cosponsor of her bill, H.R. 5205, which is the source of this provision.

Mr. Speaker, I encourage my colleagues to support this reauthorization package.

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Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin [Mr. PETRI].

Mr. PETRI. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I would like to engage in a colloquy with our colleague, the chairman of the subcommittee with jurisdiction over this bill.

In July of 1990, the Office of Juvenile Justice and Delinquency Prevention approved a plan submitted by the State of Wisconsin which allowed Wisconsin additional time to complete statutory and regulatory changes, and specified conditions under which Wisconsin would be deemed in compliance with the act. Approval of this plan—confirmed by letter from Robert Sweet, administrator, to Jerome Lacke, executive director, Wisconsin Office of Justice Assistance, dated July 17, 1990—represented a good-faith agreement with Wisconsin which Wisconsin has been diligently implementing.

It is my understanding that it is not the intent of the committee that this bill abrogate that agreement, and that the committee report contains language on page 30 which protects Wisconsin's participation under the act, including the State-formula block grant portion of the act, as long as Wisconsin meets the requirements of the agreed to jail removal plan.

Is this also the gentleman's understanding?

Mr. MARTINEZ. Mr. Speaker, will the gentleman yield?

Mr. PETRI. I yield to the gentleman from California.

Mr. MARTINEZ. The gentleman is correct. It is not our intent to be in disagreement or out of concert with the agreement that was reached with Wisconsin, with the office of Juvenile Justice and Delinquency Prevention. It is our intent that the agreement should be honored and that Wisconsin should be protected.

Mr. PETRI. Mr. Speaker, I thank my colleague for engaging in this colloquy.

Mr. Owens of New York. Mr. Speaker, I rise to speak in support of substitute language offered to section 402 of the bill, which amends section 107(b)(4) of the Child Abuse Prevention and Treatment Act [CAPTA]. The substitute language will provide greater specificity as to who can receive disclosed records and the standards that must apply to the release of information among Federal, State or local governmental entities.

Since the enactment of CAPTA in 1974, the Federal Government has set the parameters for State laws and regulations in preserving the confidentiality of all child abuse/neglect records in order to protect the rights of the child and the child's parents or guardians.

States have endeavored to meet new needs for wider disclosure of records they have occasionally run into conflict with the regulations. Federal regulations permit States to authorize disclosure to the following persons or agencies:

An agency required to investigate reports of abuse or neglect;

A court;

A grand jury;

An authority investigating a report or providing services to the child or family;

Physicians treating a child suspected of being maltreated;

A person legally authorized to place a child in protective custody;

An agency authorized to diagnose, care for, treat, or supervise a reportedly abused or neglected child;

A person about whom such report is made;

A child named in the report;

State or local officials with oversight authority for child protective service agencies;

Persons or agencies engaged in bona fide research, with several specified restrictions on the release of the information; and

Additional persons or agencies for the purposes of carrying out background and/or employment-related screening of individuals who are engaged in child-related activities or employment.

The administration has informed us that there are at least 10 States currently out of compliance (A listing of those 10 States and a description of the conflict with the Federal requirements is attached.) It would appear that in some instances this noncompliance is a result of a misunderstanding of what the regulations allow; in other instances, States have decided to chart a different course. The substitute language will clarify legislative intent and bring some of the States back into compliance. In order to accomplish national uniformity we would expect that new rules be promulgated as soon as possible to alleviate any lingering confusion and avoid any potential court challenge.

I have worked in a bipartisan manner with Ms. MOLINARI and Mr. MARTINEZ to provide the following interpretative summary to guide the administration in drafting new regulations:

Subsection 4(A) refers to the need to develop methods to preserve the confidentiality of all records "in order to protect the rights of the child's parents or guardians." Clearly, if a family gives their consent a State can authorize the disclosure of such records related to living as well as deceased children. Additionally, the subsection requires States to develop

methods to preserve the confidentiality of all records for those persons or entities that "the State detemines have a need for such information directly related to the purposes of this Act". A State may therefore authorize the disclosure of information concerning the status and disposition of any investigations to the original reporter of the information based on the State's conclusion that the release of such limited information would encourage more reporting of child abuse and neglect. The language would also permit States to develop methods to disclose records to preadoptive parents based on the premise that their need for such information is "directly related to the purposes of the Act"; courts could also be authorized to redisclose information concerning child abuse and neglect to persons who in their discretion "have a need for such information", for example public disclosure of specific cases of child abuse and neglect would be permitted though court order to the media as long as any identifying information is redacted.

The provision in subsection 4(B) requires prompt disclosure of all relevant information to any Federal, State or local governmental entity, for example to members of interagency child fatality review teams or to multiagency review panels that may not be primarily investigative in nature. For the purposes of this provision, "relevant information" means providing access to all pertinent records (law enforcement, probation, child welfare, medical, drug abuse treatment, educational) on a child and his or her family.

CHART 1.—ISSUES IDENTIFIED WITH RESPECT TO STATE COMPLIANCE WITH THE FEDERAL CHILD ABUSE AND NEGLECT CONFIDENTIALITY REQUIREMENTS (45 CFR 1340.14(i))

State	Citation of compliance documentation	Description of conflict with Federal requirements
Alabama	Ala. Admin. Code Sections, 660–5–34—.07(4)(d)8; 660–5–34—.08(4)(3)(e)6.	Alabama's law permits disclosure to "a person whose use of such reports or records would prevent or disclose abuse or neglect of children through information contained therein as determined by the State Department of Human Resources." This does not fall within the categories of individuals or agencies permitted access under Federal regulation.
	Ala. Admin. Code Section, 660–5–34—.07(4)(d)6	The State law permits disclosure to persons engaging in research without, as required by the Federal regulations, requiring authorization by the child or the child's legal representative
	Ala. Admin. Code Section, 660–5–34—.07(4)(d)3	The State law appears to permit disclosure to a district attorney for purposes other than for investigating or prosecuting child abuse and neglect. The Federal regulation does not permit such unlimited disclosure.
	Ala. Admin. Code Sections, 660–5–34—.07(4)(d)8; 660–5–34—.07(4)(e)8; 660–5–34—.07(4)(e)7.	The State law is ambiguous concerning whether a parent who is the subject of the report can receive an unedited version of the report which fails to protect the identity of the reporter.
California	CA. Penal code 11167(d)	Provides open ended discretion of courts to disclose child abuse and neglect reports. The Federal regulation does not permit unrestricted disclosure by a court.
Florida	FL Stat. Ann. Section 119.07	Florida's public records laws allow circumventing Federal confidentiality requirements by obtaining a court order.
	FL Stat. Ann. Section 119.07(6)(2)	The State's public records laws and its statute governing confidentiality of child abuse and neglect records apparently allow public access to information about investigations concerning deceased children, such disclosure is inconsistent with Federal confidentiality requirements.
	FL. Stat. Ann. Section 415.51(2)(D)	The State law allows disclosure of child abuse and neglect records to the alleged perpetrator, but fails to protect sufficiently the identity of individuals who might be endangered by the disclosure.
	FL. Stat. Ann. Section 415.51(4)	State law allows disclosure of child abuse and neglect records to professionals diagnosing and treating the alleged perpetrator. Such disclosure is inconsistent with Federal confidentiality requirements.
Georgia	OCGA 49–5–41(A)	State statute permits release of some information about the status and results of an investigation to "any adult requesting information regarding investigation by the Department in a governmental protective agency regarding a deceased child when such person specifies the identity of the child. . . ." Note: In order to maintain its eligibility for a Child Abuse and Neglect Basic State Grant, Georgia has invoked a "saving clause" contained in OCGA 49–5–43 which authorizes the State agency to prohibit the release of information if such disclosure would result in the loss of Federal funds.
Kentucky	KRS Section 620.050(4) (e) & (f)	Kentucky protects only "informants" of child abuse and neglect from disclosure to the suspected abuser. The Federal regulation requires States to protect the reporter of the abuse and any other person who could be in danger if that person's identity were released to the suspected abuser.
	KRS Section 620.050(4)	The Kentucky statute could be interpreted to allow disclosure of the identity of the informant and any other "at-risk" person to a parent who is the alleged abuser. The Federal regulation does not allow disclosure of the identity of reporters of child abuse and other "at-risk" people to parents who are suspected abusers.
	OAG 91–33	The Kentucky Attorney General has issued an opinion indicating that the State's confidentiality statute is not applicable to the initial written complaint or report which preceded and prompted the State's investigation. The Federal regulation requires the State to provide by statute that all reports of child abuse and neglect be kept confidential.
	KRS Section 620.050(4) (a) & (f)	The State's statute allows child abuse and neglect reports to be released to anyone "authorized by court order" and allows the court to authorize disclosure of the identity of informants to the suspected abuser.
Mississippi	Miss. Code Ann. Section 34–21–261(5)(c)	The Mississippi statute appears to allow State courts to order disclosure to individuals and organizations beyond those permitted by Federal regulations, thereby permitting circumvention of the Federal requirements by obtaining a court order.
	Miss. Code Ann. Section 43–21–261(1)(e)	The State statute allows disclosure of child abuse and neglect records for research purposes, but does not require consent by the child or the child's representative prior to disclosing information identifying individuals named in the records.
	Miss. Code Ann. Section 43–21–261(3)	The State statute allows disclosure of child abuse and neglect records to a parent, guardian, or custodian, even if alleged to be the abuser, but the statute fails to protect the identities of the reporter and other individuals who might be endangered by the disclosure.
	Miss. Code Ann. Section 43–21–261(8)	The State statute allows disclosure of inmates' and potential parolees' youth court records to the Corrections Department and Parole Board Since the statute does not limit the disclosure to exclude abuse and neglect records, it is inconsistent with Federal confidentiality requirements.
North Carolina	N.C. Admin. Code Title 10 r. 411.0313(a)(1) and N.C. Gen. Stat. Section 74–575.	State law allows unlimited disclosure by court order, thereby permitting circumvention of Federal requirements.
	Attorney General's Opinion	Allows disclosure to the news media of certain information about Department of Social Services' investigations of children's deaths. Such disclosure, even though limited in scope, is inconsistent with Federal requirements.
	N.C. Admin. Code Title 10, v. Sec. II.0102(a)(2)	The State administrative code provision that authorizes release of information from the central registry for research purposes fails to protect the identities of individuals named in the registry's child abuse investigation material, or to require that the researcher make the requisite showings of necessity and consent prior to release of the identifying information.
South Carolina	S.C. Ann. Code Section 20–7–690(C)	The State statute allows disclosure of information to any person engaged in a bona fide research purpose, with written permission of and with any limitations imposed by the Commissioner of the State Department of Social Services, but does not provide for approval by the abused child or the child's representative.
	S.C. Ann. Code Section 20–7–690 (C)(2) (D) & (E)	The State protects from disclosure to suspected abusers identifying information only about the "reporters" of child abuse, not other individuals who may be endangered by such disclosure.
South Dakota	SDCL Section 26–7A–28(1). Note: During South Dakota's 1992 legislation session, the identified deficiencies were corrected by amendments which become effective July 1, 1992.	This section of the State law authorizes the court, in its general discretion, to release information on the identity of children taken into temporary custody. Federal law does not authorize the disclosure of child abuse and neglect information by a court, in the exercise of its general discretion. Note: The 1992 amendments provide that any information regarding an alleged, apparent, or adjudicated abused or neglected child may be released by a court only to those persons or entities listed in SDCL sec. 26–8A–13, (which persons and entities fall within the categories permitted by the Federal regulation).
	SDCL Section 26–7A–29	This section permits disclosure of information concerning children "to adult siblings of the child" who may not be the legal guardian of the child, or the child's representative, or the subject of the report of child abuse or neglect. Note: The 1992 amendments remove "adult siblings of a child" from the list of persons authorized to receive confidential information under this statute.
	SDCL Section 26–8A–13(5)	This subsection permits disclosure of child abuse and neglect information to a prospective adoptive parent(s), who is not yet authorized to care for an allegedly abused or neglected child and may not yet be the guardian of the child. Note: The 1992 amendments remove the word "prospective" from subsection (5).
	SDCL Section 26–8A–13(7)	This subsection permits disclosure at the general discretion of the court and beyond those persons or agencies permitted by the Federal regulation. Note: Subsection (7) has been amended to no longer permit disclosure by a court at its discretion.
Tennessee	T.C.A. Sections 37–1–409; 37–1–612; 37–1–604, and published Attorney General Opinions.	According to the State statutes and at least three published opinions of the State's Attorney General, anyone within the Department of Human Services (TDHS) or on a child abuse investigation team has the discretion to disclosure reports or records of reports of child abuse if such person determines that the enunciated purposes of the State statutes were served by such disclosure. The Federal regulation does not permit such broad disclosure.
	T.C.A. Sections 37–1–409(E), 37–612(E)	TDHS may confirm to anyone whether a child abuse investigation has commenced. It is nearly impossible to confirm an investigation has commenced without indirectly divulging information about the alleged abuse. The Federal regulation does not permit such a broad disclosure.
	T.C.A. Sections 37–1–409(D); 37–612(C)(2)	A district attorney may obtain reports or records of reports of child abuse on any case in his judicial district for any or no reason; the district attorney's access is not limited by time, purpose or the district attorney's official function. The Federal regulation does not provide for such an extensive exception from confidentiality.
	T.C.A. Sections 37–1–409(D); 37–612(D)	TDHS may release reports or records of reports to a professional person for the diagnosis and treatment of a person perpetrating sexual abuse. The Federal regulation does not provide for such an exception from confidentiality.
	T.C.A. Sections 37–1–409(D); 37–612(C)(4)	TDHS may release identifying information to a person engaged in bona fide research or auditing when such information is absolutely essential, suitable provision is made to maintain confidentiality, and TDHS has given written permission. The Federal regulation, however, also requires that the child's or the child's representative's written permission be obtained before identifying information is released to persons engaged in bona fide research.

CHART 1.—ISSUES IDENTIFIED WITH RESPECT TO STATE COMPLIANCE WITH THE FEDERAL CHILD ABUSE AND NEGLECT CONFIDENTIALITY REQUIREMENTS (45 CFR 1340.14(i))—Continued

State	Citation of compliance documentation	Description of conflict with Federal requirements
	T.C.A. Sections 37–1–403(E); 37–605(C)	Autopsy reports are not subject to the confidentiality requirements of Tennessee's statutes. The structure of the statutes, however, indicate that such reports may contain the name of the reporter of the child abuse, as well as other information about the investigation.

Mr. GOODLING. Mr. Speaker, I rise in support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992.

This legislation has been developed on a strong bipartisan basis and contains improvements in both the Juvenile Justice and Delinquency Prevention Act and the Runaway and Homeless Youth Act, which will make them more effective in serving this extremely at-risk population of our Nation's youth.

This legislation stresses prevention, intervention and treatment. For example, it calls for greater coordination between a youth's home school and the facility where they are currently residing, whether it is a juvenile detention facility or a runaway or homeless shelter. Due to the strong correlation between poor academic achievement and juvenile delinquency, this provision could prove to be a key prevention tool. Insuring these youth can keep up with their classmates while they are not attending their local school will help guarantee they will stay in school and succeed academically once they return to their homes. If they remain in school and off the streets, the chances of their involvement in delinquent activities or of them running away again will be greatly diminished.

In addition, H.R. 5194 refocuses the youth gang provisions on home, school, and community-based intervention rather than drug and alcohol prevention. While drug and alcohol prevention programs remain an important component of gang prevention and intervention programs, this program has been restructured to address other elements in a child's life which can play an important role in whether or not they become—and stay—involved in gang activities. Strengthening a youth's ties to home, their community, and school can reduce their involvement in gangs. In addition, promoting cooperation among organizations in the community which work with at-risk youth and their families has been shown to enhance the success of any intervention program. I commend Chairman MARTINEZ, Congressman KILDEE, and Congressman FAWELL for making these important changes in this section of the law.

In title II of the bill, that reauthorizes the Runaway and Homeless Youth Act, there is a call for greater home-based and street-based services for youth. These services are designed to target troubled youth and provide the most effective interventions, such as greater family involvement, before these youth become involved in delinquent activities. I applaud Congressman FAWELL, the distinguished ranking minority member of the subcommittee of jurisdiction, for insisting that these new services be included as part of the basic center program. This will facilitate coordination in providing these youth with the new services and all the other services and resources available to them.

Mr. Speaker, I encourage all of my colleagues to support H.R. 5194. This is a good bill which will go a long way in helping our Nation's communities deal with the problems related to juvenile delinquency, and runaway and homeless youth. At the same time, it will provide at risk youth with the assistance they need to get back on the right track and lead long, successful lives.

Ms. MOLINARI. I want to express my strong support for H.R. 5194, the Juvenile Justice and Delinquency Prevention Act Amendments of 1992. Specifically, I would like to call attention to an amendment I offered during committee consideration, which was favorably accepted, regarding confidentiality laws and accountability in child abuse and neglect cases.

I would like to take this opportunity to thank and commend Congressman OWENS, chairman of the Select Education Subcommittee, for his past and future dedication and work on behalf of abused and neglected children in our Nation. In addition, I want to thank both the chairman of the Human Resources Subcommittee, Congressman MARTINEZ and the ranking minority member, Congressman FAWELL, who along with Congressman OWENS, GOODLING, BALLENGER, and PAYNE were original sponsors of my legislation, the Adam Mann Child Abuse and Neglect Protection Act.

I introduced this legislation after a number of tragic cases—child abuse cases—were brought to my attention. In addition, I informally convened a hearing on child abuse in New York City, and attended a second hearing held by the Select Education Subcommittee, chaired by MAJOR OWENS. During both of these hearings I became painfully aware of how the child protection system in our country is failing our children.

Last year, according to the National Committee for the Prevention of Child Abuse, an estimated 1,383 children in this country died from abuse or neglect. Since 1985, reported child fatalities have increased by 57 percent nationwide. The number of overall reports of child abuse and neglect grew to almost 2.7 million in 1991—a 31-percent increase since 1985. These numbers are astounding. Each number represents an innocent child who is defenseless against cruel and harmful treatment.

We have a long way to go to reach the desired level of effectiveness in identifying and preventing cases of child abuse. I firmly believe that it is a problem requiring multidisciplinary and interagency cooperation. In fact, during the hearings, expert witnesses, and families of the children the system was designed to protect repeatedly cited two major problems regarding the child protection system: confidentiality laws and the lack of accountability in the child protection services.

Currently, the Federal Child Abuse Prevention and Treatment Act [CAPTA] requires States to keep child abuse records confidential in order to receive grants under the act. Some States have passed strict confidentiality laws, or strictly interpret existing confidentiality laws in response to the Federal mandate.

My child abuse amendment in the committee substitute before us today is designed to loosen the rigidity of the confidentiality laws, while at the same time insures that harmful, unsubstantiated, family information is not released to the public. My amendment establishes the premise that, unless otherwise provided for, all records are to be kept confidential by insisting that States shall provide for "methods to preserve the confidentiality of all records."

However, my amendment clearly states that it is the intent to require States to freely share information within and among the several different agencies that deal with child abuse in one way or another by having States establish "requirements for the prompt disclosure of all relevant information to any Federal, State, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect."

For example, if the probation office calls the child protective services [CPS] to solicit information regarding whether or not a parent should be released from probation, the CPS should be allowed to relay that there have been recent reports of child abuse. Unfortunately, in some States because of the strict interpretation of the confidentiality laws, this information is not released. Sadly, this actually happened in New York not too long ago. This language also would obviously include a requirement to provide all necessary child abuse information to multidisciplinary review teams or fatality review boards that are established by States to review specific cases of abuse and neglect.

States also are required to establish procedures for "disclosure (and redisclosure) of information concerning child abuse or neglect involving specific individuals * * * to persons or entities that the State determines have a need for such information which is directly related to purposes" of the Federal child abuse laws. This is meant to allow States some flexibility in sharing this information outside the government if there is a need. For example, this language would allow States to share with preadoptive parents, information regarding past abuse involving their prospective adopted child.

This language would allow mandated reporters, such as doctors or teachers, to receive minimal feedback on the progress of a case which they reported. This would eliminate the frustration that reporters feel when they make a report and never see any progress or hear that anything is being done to protect the child. Such feedback will encourage these people to continue to fulfill their mandate to report instances of abuse or neglect.

This language also would allow for the public disclosure, through the media or otherwise, of specific cases of child abuse or neglect as long as all information which could identify the

individuals involved is redacted. Public disclosure of child abuse cases where the government has failed the child is often the best form of accountability. Public accountability of CPS's is unfortunately necessary sometimes to insure that they adequately perform their jobs. However, it is important that identifying information be removed before release so that families are not unnecessarily stigmatized. Also, the identity of the reporter should remain confidential, so as not to discourage people from coming forward with what they know. One method that States may establish to provide for this type of release is to authorize courts to release the appropriate information.

In addition, my bill would express the sense of Congress that States should create autonomous, interagency, multidisciplinary teams to review cases of death thought to have been caused by child abuse, or egregious cases of suspected child abuse—before the child dies—when the child's case is not being handled adequately by the child protection services. These review teams would then make recommendations regarding an individual case or on systemic changes that are necessary. Currently eight States have established, by statute, review teams that examine only child fatalities. This bill expresses the sense of Congress that these review teams should go a step further and also examine serious child abuse cases before the child dies.

I believe that systemic changes are needed to address the growing problem of child abuse. In attempting to change the system, we must ask ourselves: why are child protective services not properly fulfilling their mandate of protecting the child?

Over and over again, we find that there is a dearth of information-sharing between the principle government departments and agencies with a vested interest in the welfare of families and children. Federal and State confidentiality laws are central to the ability of these agencies to share essential information pertaining to a particular child abuse case. The confidentiality laws currently in place can prevent officials in one government agency from passing on vital information to officials in another agency.

Basically, these laws are meritorious. But recently, these provisions have come under increased criticism as being ineffective in protecting children. They are frequently criticized for preventing disclosure of pertinent information, and are frequently cited as causes for the potential loss of Federal funding.

I do not advocate the repeal of confidentiality laws. I respect the compelling need for privacy in family matters. And, I believe the necessity to protect families against unnecessary public disclosure of private information is equally important in the debate surrounding confidentiality laws. However, I strongly believe they unnecessarily and sometimes tragically prevent life saving information from being shared.

I do not think that a change in the confidentiality laws will be the panacea to end child abuse or neglect. However, we need to take seriously our responsibility to protect our children. Unfortunately, the answers to how we make government more responsive are not as concrete as they should be. Upon hearing the statistics for reported child abuse, neglect and deaths, I know all my colleagues agree with me that the numbers are horrific.

Please join me in rejecting the status quo and in challenging the system that is failing our children. Join me in strongly supporting swift passage of the Juvenile Justice and Delinquency Prevention Act.

Mr. FORD of Michigan. Mr. Speaker, I rise today in support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Act Amendments of 1992. I want to congratulate Mr. MARTINEZ, the chairman of the Subcommittee on Human Resources, and Mr. FAWELL, the ranking minority member, for bringing the House a bipartisan bill.

This bill authorizes a wide range of Federal activities regarding juvenile delinquency. The centerpiece of the Act is the State formula grant program which allocates monies to the States in return for which the States agree to make improvements in their policies regarding juveniles. As a result, the number of youth inappropriately jailed has declined and the number receiving treatment or other alternatives has increased.

H.R. 5194 makes several improvements in juvenile justice policies. First, it establishes a direct reporting relationship between the Administrator of the Office of Juvenile Justice and the Attorney General. Second, it requires the Administrator to develop a long-term plan for administration of the Office and the development of a national strategy for delinquency prevention. Third, it requires issuance of model standards for providing health care for incarcerated juveniles. Fourth, it requires collection of data on the education status of juveniles and the inclusion in State plans of education, home-based, and family-based alternative services. State plans must prohibit the use of common staff for adults and juveniles.

The bill also strengthens data collection and dissemination efforts, research and evaluation, and technical assistance and training. H.R. 5194 devotes significant attention to the problem of youth who commit hate crimes. It also reauthorizes gang intervention programs to address the gang problem that affects many of our cities.

In addition, this bill reauthorizes the Runaway and Homeless Youth Act that supports runaway shelters and other support services to troubled youth. It also funds the Missing Children's Assistance Act that provides support for activities dealing with the problem of missing children.

Mr. Speaker, H.R. 5194 is authorized at $150 million in fiscal year 1993 and at such sums thereafter. I regret that we find ourselves in a situation where the bill is funded at no more than half its authorized level.

I urge my colleagues to support this bill overwhelmingly.

Mr. KILDEE. Mr. Speaker, I rise in support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992. This is a good bill which continues the bipartisan tradition which has always attended the Juvenile Justice and Delinquency Prevention Act. H.R. 5194 extends the Juvenile Justice, Runaway and Homeless Youth, and Missing Children titles for 4 additional years.

While I strongly support the entire bill, there are two amendments on which I particularly would like to comment.

The first is the new title II, Gang-free Schools and Communities Program which is identical to H.R. 5175, the Gang-free Schools and Communities Act, which I introduced with other members of the subcommittee. This replaces the existing program which was enacted in 1988 and which, unfortunately, has accomplished little except for research. This new program authorizes $25 million to primarily support local service projects designed to help organize and support gang prevention and intervention projects which substantially involve public schools.

Educational services, when coordinated with social and mental health services available through community-based youth services organizations and other public agencies, can become powerful tools to prevent youth from joining or participating in gang activities. Youth who are, or may become, gang members must have access to these kinds of comprehensive services if we want them to participate in lawful, constructive activities, and to make safe and healthy decisions about their futures.

The second amendment addresses the issue of the so-called valid court order. This provision of the law provides an exception to the requirement that status offenders are to be treated in nonsecure facilities in cases where a youth violates a valid order of the court. I opposed the adoption of this exception 12 years ago and have continued to have concerns about its use. The bill provides for local reviews of these orders to ensure that runaways and other status offenders will not be held in secure detention if nonsecure treatment options are available in the community.

I want to express my appreciation for the hard work of the subcommittee chairman, Mr. MARTINEZ and the ranking Republican, Mr. FAWELL. They have brought us an excellent bill which I am pleased to support.

Mrs. MINK. Mr. Speaker, I rise today in strong support of H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992, which provides essential assistance to States to address the problems of juvenile delinquency, youth gangs, runaways, missing children, and homeless youth.

This legislation speaks to the very heart of our Nation, the future of our children and youth. Millions of children in our Nation continue to suffer from poverty, drug abuse, violence, and family disintegration. They are forced to confront difficult situations which drive them out of their homes and into the streets, many turning to gangs, crime or substance abuse.

H.R. 5194 renews our commitment to improving the plight of children in our Nation by focusing on the prevention, intervention and treatment programs for a variety of juvenile problems. It authorizes $301 million for the Juvenile Justice and Delinquency Prevention Program, the Runaway and Homeless Youth Program, the Transitional Living Program for Homeless Youth and the Missing Children's Assistance Act.

The bill elevates juvenile issues within the Department of Justice by establishing a direct reporting relationship between the Office of Juvenile Justice and the Attorney General. It requires the Administrator to develop a long-term national strategy for delinquency preven-

tion and the issuance of model standards for providing health care for incarcerated juveniles.

H.R. 5194 emphasizes intervention, prevention and family involvement in rehabilitative efforts by providing for the inclusion of home-based treatment, parent self-help and hate crime prevention programs for at risk youth.

The bill also creates two new gang intervention programs involving local education agencies and community organizations in gang prevention and developing interstate task forces to curtail the expansion of hard core gang activity across State lines. And it continues important programs to provide temporary shelter, counseling and assistance to runaways and homeless youth.

Mr. Speaker, I urge my colleagues to help us make an investment in the youth of our Nation by voting for H.R. 5194, the Juvenile Justice and Delinquency Prevention Amendments of 1992.

Mr. FAWELL. Mr. Speaker, I yield back the balance of my time.

Mr. MARTINEZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ABERCROMBIE). The question is on the motion offered by the gentleman from California [Mr. MARTINEZ] that the House suspend the rules and pass the bill, H.R. 5194, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

HEAD START IMPROVEMENT ACT OF 1992

Mr. MARTINEZ. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5630) to amend the Head Start Act to expand services provided by Head Start programs; to expand the authority of the Secretary of Health and Human Services to reduce the amount of matching funds required to be provided by particular Head Start agencies; to authorize the purchase of Head Start facilities; and for other purposes, as amended.

The Clerk read as follows:

H.R. 5630

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 "Head Start Improvement Act of 1992".

SEC. 2. AMENDMENTS.

(a) ALLOTMENT OF QUALITY IMPROVEMENT FUNDS.—Section 640(a)(3)(B) of the Head Start Act (42 U.S.C. 9835(a)(3)(B)) is amended—

(1) in clause (i) and (iii) by striking "and second" and inserting ", second, and third", and

(2) in clause (ii) by striking "second" and inserting "third".

(b) PARENTAL SKILLS.—Section 640(a)(4)(B)(i)(II) of the Head Start Act (42 U.S.C. 9835(a)(4)(B)(i)(II)) is amended by inserting ", literacy," after "skills".

(c) REDUCTION OF REQUIRED AMOUNT OF MATCHING FUNDS.—Section 640(b) of the Head Start Act (42 U.S.C. 9835(b)) is amended—

(1) in the first sentence by striking ", in accordance with regulations establishing objective criteria,", and

(2) by inserting after the first sentence the following:

"For the purpose of making such determination, the Secretary shall take into consideration with respect to the Head Start program involved—

"(1) the lack of resources available in the community that may prevent the Head Start agency from providing all or a portion of the non-Federal contribution that may be required under this subsection;

"(2) the impact of the cost the Head Start agency may incur in initial years it carries out such program;

"(3) the impact of an unanticipated increase in the cost the Head Start agency may incur to carry out such program;

"(4) whether the Head Start agency is located in a community adversely affected by a major disaster; and

"(5) the impact on the community that would result if the Head Start agency ceased to carry out such program.".

(d) ISSUANCE OF TRANSPORTATION SAFETY REGULATIONS.—Section 640 of the Head Start Act (42 U.S.C. 9835) is amended by adding at the end the following:

"(i) The Secretary shall issue regulations establishing requirements for the safety features, and the safe operation, of vehicles used by Head Start agencies to transport children participating in Head Start programs.".

(e) LOSS OF PRIORITY.—(1) Section 641(c)(1) of the Head Start Act (42 U.S.C. 9836(c)(1)) is amended by adding at the end the following: "Notwithstanding any other provision of this paragraph, the Secretary shall not give such priority to any agency with respect to which financial assistance has been terminated, or an application for refunding has been denied, under this subchapter by the Secretary after affording such agency reasonable notice and opportunity for a full and fair hearing in accordance with section 646(a)(3).".

(2) The amendment made by paragraph (1) shall apply only with respect to terminations of financial assistance, and denials of refunding, occurring after July 29, 1992.

(f) REVIEW OF HEAD START AGENCIES.—Section 641(c)(2) of the Head Start Act (42 U.S.C. 9836(c)(2)) is amended—

(1) by inserting "(A)" after "(2)", and

(2) by adding at the end the following:

"(B) The Secretary shall conduct a review of each newly designated Head Start agency immediately after the completion of the first year such agency carries out a Head Start program.

"(C) The Secretary shall conduct followup reviews of Head Start agencies when appropriate.".

(g) DESIGNATION OF HEAD START AGENCIES.—Section 641(d) of the Head Start Act (42 U.S.C. 9836(d)) is amended—

(1) in paragraph (5) by striking "and" at the end,

(2) in paragraph (7) by striking the period at the end and inserting a semicolon, and

(3) by adding at the end the following:

"(8) the plan of such applicant to provide (directly or through referral to educational services available in the community) parents of children who will participate in the proposed Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and

"(9) the plan of such applicant who chooses to assist younger siblings of children who will participate in the proposed Head Start program to obtain health services from other sources.".

(h) INTERIM GRANTEE.—Section 641 of the Head Start Act (42 U.S.C. 9836) is amended—

(1) in subsection (e) by striking "(c) and (d)" and inserting "(c), (d), and (e)",

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and

(3) by inserting after subsection (d) the following:

"(e) If, in a community served by a Head Start program, there is no applicant qualified for designation as a Head Start agency to carry out such program, the Secretary may appoint an interim grantee to carry out such program until a qualified applicant is so designated.".

(i) POWERS AND FUNCTIONS OF HEAD START AGENCIES.—Section 642(b) of the Head Start Act (42 U.S.C. 9836(b)) is amended—

(1) by striking "and (5)" and inserting "(5)", and

(2) by inserting before the period at the end the following:

"; (6) provide (directly or through referral to educational services available in the community) parents of children participating in its Head Start program with child development and literacy skills training in order to aid their children to attain their full potential; and (7) consider providing services to assist younger siblings of children participating in its Head Start program to obtain health services from other sources.".

(j) ADMINISTRATIVE REQUIREMENTS AND STANDARDS.—Section 644 of the Head Start Act (42 U.S.C. 9839) is amended—

(1) in subsection (b) by striking "No" and inserting "Except as provided in subsection (f), no",

(2) in the first sentence of subsection (c) by striking "subsection (a)" and inserting "subsections (a) and (f)", and

(3) by adding at the end the following:

"(f)(1) The Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities to be used to carry out Head Start programs.

"(2) Except as provided in section 640(a)(3)(A)(v), financial assistance provided under this subchapter may not be used by a Head Start agency to purchase a facility (including paying the cost of amortizing the principal, and paying interest on, loans) to be used to carry out a Head Start program unless the Secretary approves a request that is submitted by such agency and contains—

"(A) a description of the site of the facility proposed to be purchased;

"(B) the plans and specifications of such facility;

"(C) information demonstrating that—

"(i) the proposed purchase will result in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out such program; or

"(ii) the lack of alternative facilities will prevent the operation of such program; and

"(D) such other information and assurances as the Secretary may require.".

(k) TECHNICAL AMENDMENTS.—(1) Section 640 of the Head Start Act (42 U.S.C. 9835) is amended—

(A) in subsection (a)—

(i) in paragraph (2)—

(I) in subparagraph (A) by inserting "children" after "handicapped",

(II) in subparagraph (B) by striking "Commonwealth of," and inserting "Commonwealth of", and

(III) in subparagraph (C) by striking "any",

(ii) in paragraph (3)(A)(vi) by striking "section 640(a)(2)(C)" and inserting "paragraph (2)(C)", and

(iii) in paragraph (5)(B)(i) by striking "clause (A)" and inserting "subparagraph (A)", and

(B) in subsection (g) by striking "for all" and inserting "For All".

(2) Section 640A(b) of the Head Start Act (42 U.S.C. 9835a) is amended—

(A) in paragraph (1) by striking "solution" and inserting "solutions", and

(B) in paragraph (7)—

(i) in clause (iii) by striking "the", and

(ii) in clause (iv) by striking "the" the first place it appears.

(3) Section 642(c) of the Head Start Act (42 U.S.C. 9837(c)) is amended by striking "subtitle" and inserting "subchapter".

(4) Section 643 of the Head Start Act (42 U.S.C. 9838) is amended by striking "the such" each place it appears and inserting "such".

(5) Section 651(g) of the Head Start Act (42 U.S.C. 9846(g)) is amended—

(A) by striking "physicial" and inserting "physical", and

(B) by striking "(g)(1)" and inserting "(g)".

(6) Section 651A of the Head Start Act (42 U.S.C. 9846a) is amended—

(A) in subsection (f) by striking "COMPARISION" and inserting "COMPARISON", and

(B) in subsection (g) by inserting "of title I of the Elementary and Secondary Education Act of 1965" after "chapter 1".

SEC. 3. TECHNICAL AMENDMENTS RELATING TO THE CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT OF 1990.

(a) PLACEMENT OF ACT.—Section 5082 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388-236) is amended in the matter preceding paragraph (1) by striking "title IV" and inserting "title VI".

(b) REFERENCES IN DEFINITIONS.—Section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n) is amended—

(1) in paragraph (7)—

(A) by striking "section 4(b)" and inserting "section 4(e)", and

(B) by striking "(25 U.S.C. 450b(b))" and inserting "(25 450b(e))", and

(2) in paragraph (14)—

(A) by striking "section 4(c)" and inserting "section 4(l)", and

(B) by striking "(25 U.S.C. 450b(c))" and inserting "(25 U.S.C. 450b(l))".

SEC. 4. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATES.—(1) Except as provided in paragraph (2) and subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(2) The amendment made by section 2(e)(1) shall take effect on July 30, 1992.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act, other than the amendment made by section 2(e)(1), shall not apply with respect to fiscal years beginning before October 1, 1992.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. MARTINEZ] will be recognized for 20 minutes, and the gentleman from Illinois [Mr. FAWELL] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MARTINEZ].

GENERAL LEAVE

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on H.R. 5630, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MARTINEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, before I begin my opening statement, I'd like to recognize the support of several Members who requested that they be added as cosponsors of this bill after the committee report was filed. These Members are: Mr. MILLER of California, Mr. LEHMAN of California, Mrs. UNSOELD, and Mr. GUNDERSON. Although these Members will not be listed as cosponsors, their vigorous support for this legislation will no doubt be appreciated by the Head Start community and their constituents.

Mr. Speaker, the bill we are now considering is a bill introduced with the cosponsorship of my colleagues. It is to improve one of the Nation's most favored Federal programs, the Head Start Act. The Head Start Act is, as we all know, one of our better programs. It provides low-income preschool-aged children services that provide for their educational, social, health, and nutritional needs. Once these children complete the Head Start Program, they are able to enter school on an equal footing with other children, instead of starting at a disadvantage that is hard to overcome.

Studies show that the Head Start Program has been very successful, and that graduates from programs like Head Start are more likely to do well in school. They stay in school, and are less likely to engage in delinquent behavior. Head Start, therefore, is a program that should be the cornerstone of our social and educational policy—not only does it provide educational and health services to children, but it is a very effective preventive program for our at-risk youth. Without Head Start these children could not receive these valuable services.

There are many Members of Congress who are no doubt among its greatest fans. We are not, however, Head Start's only fan. There are parents, teachers, and alumni with enthusiasm for the program, there is broad support from both sides of the aisle on the House floor, and last but not least the administration has also shown great support.

I appreciate the support of my colleague, Mr. FORD, chairman of the Education and Labor Committee, as well as the support of Mr. GOODLING, the ranking minority member of the committee and Mr. FAWELL, the ranking minority member of the Subcommittee on Human Resources. Mr. KILDEE, former chairman of the subcommittee, Mrs. LOWEY, and Mr. DE LUGO who are also original cosponsors of this bill. The Head Start community thanks them.

The President requested a $600 million increase and the Congress responded in the affirmative. It is important because the Head Start Program is currently serving less than one-third of the eligible population. This infusion of funds would do a lot to increase the numbers of children who could receive the valuable services that Head Start provides. Money, however, is not the only answer to creating an effective Head Start Program.

H.R. 5630, the Head Start Improvement Act of 1992, makes many of the technical changes necessary to ensure that the Head Start Act runs at its most efficient level. Without these technical changes, many of these additional dollars would not be used effectively. Although these changes are small, the Head Start community indicates that these changes are necessary to preserve the quality of Head Start services and to allow existing programs to grow as the appropriations for the program grow.

Although these changes will greatly increase the efficiency and effectiveness of Head Start services, they will have little or no cost impact on current services, and there are no setasides or new authorization levels. We have attempted to make this bill as cost free as possible. The changes, which I will outline in a minute, will create dollars, because they will allow the existing dollars appropriated to the Head Start Program to be used more efficiently, ultimately allowing more children to receive better quality Head Start services.

STATEMENT RE: CBO COST ESTIMATE

Mr. Speaker, I'd like to ask unanimous consent to insert in the RECORD at this time a cost estimate of H.R. 5630 from the Congressional Budget Office [CBO] which was not available at the time of filing the committee report.

According to CBO, enactment of this legislation would have no impact on the budgets of Federal, State, and local governments. In addition, the pay-as-you-go procedures of section 252 of the Budget Enforcement Act, would not apply to the bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 3, 1992.

Hon. WILLIAM D. FORD,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As requested, the Congressional Budget Office has reviewed H.R. 5630, the Head Start Improvement Act of 1992, as ordered reported by the House Committee on Education and Labor on July 30, 1992. Enactment of H.R. 5630 would amend the Head Start Act to specify certain requirements of the Secretary of Education and the Head Start agencies in carrying out the Head Start program, but would not affect the authorization level of the Head Start program. As a result, enactment of

this bill would have no impact on the budgets of federal, state or local governments. Pay-as-you-go procedures, set up by section 252 of the Budget Enforcement Act of 1990, would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them. The staff contact, Joshua Leichter, can be reached at 226-2820.

Sincerely,

ROBERT D. REISCHAUER,
Director.

The Head Start improvement bill makes nine main modifications to the existing Head Start Act which I'd like to briefly outline. The bill amends the act:

First, to allow programs to apply for money to purchase their Head Start facilities;

Second, to reformulate the requirements placed on Head Start agencies that need a waiver of non-Federal matching requirements;

Third, to require that the Department of Health and Human Services issue regulations regarding the safety features, and safe operation, of transportation used by Head Start programs;

Fourth, to allow younger siblings of Head Start students to qualify for health care benefits under the Head Start Program;

Fifth, to maintain local control of quality improvement money for 1 additional year;

Sixth, to strengthen the role of parents in the Head Start Act, and to provide the services necessary to allow them to guide their children;

Seventh, to require the Secretary to review new agencies after the first year of operation and allow for followup reviews of existing programs; and

Eighth, technical amendments to correct errors in the Head Start reauthorization bill passed last Congress and the child care development and block grant.

Ninth, to eliminate the priority given to grantees in operation before 1981 who have had their grant taken away, and to allow the Secretary to appoint an interim grantee in a community if there are no approvable grant applications.

The changes made in the Head Start improvement bill are minor and inexpensive changes. Yet, these changes, combined with the infusion of money that we are seeing with this years increased appropriations level, can radically improve the effectiveness of the program and increase the number of low-income children that receive quality educational, health, and nutrition services. I urge you to support the Head Start Improvement Act, and ask that we move promptly to preserve this program serving our Nation's low-income families and children.

□ 1720

Mr. Speaker, I reserve the balance of my time.

Mr. FAWELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5630, the Head Start Improvement Act of 1992, a bipartisan bill of which I am an original cosponsor.

Let me start by saying that I have made several visits to the LaGrange Area Head Start Program, which is in my district. I must tell you that I had always heard about the success of Head Start, but it wasn't until I visited a Head Start classroom that I really understood the reason behind that success. During that visit I met with the program staff, and realized that it is these special people that make Head Start work as well as the parents. I met people like Chen Chu Wells, who has worked tirelessly for Head Start for more than 20 years to help underprivileged families get ahead.

The movement off the Hill to bring this bill forward was spearheaded by the National Head Start Association, which is made up of thousands of people like Chen Chu Wells. They came to us seeking some programmatic changes needed in order to make Head Start even better. These are the people that live with the program every day, so I am glad that we are able to help them out.

Their priorities, which are embodied in H.R. 5630, are: First, to allow the Secretary to grant requests by Head Start agencies to purchase facilities, if it is more cost-effective than renting; second, to make it easier to apply for a waiver of the matching funds requirement during especially tough economic times; and third, to require that all Head Start vehicles meet minimum safety standards. These changes are sensible.

The purchase of facilities provision of the bill would allow a Head Start agency to petition the administration to use Head Start funds for mortgage payments instead of endlessly paying rent, if it is more cost-effective. The discretion to grant the petition would rest with the administration. There was some concern over the legal question of ownership of the facility, but those questions, I believe, have been answered by reviewing HHS's regulations—the grantee agency would hold legal title to the property, but in the deed the property would be restricted to only Federal uses unless the Government is reimbursed.

The matching funds waiver provision only would make it easier for agencies to apply for the waiver. The discretion to grant any waiver would still remain with the administration. Currently, in order to even be considered for a waiver the agency must show that the average per capita income of its county is below $3,000, or that the county suffered a natural disaster. These objective criteria hurdles make it very difficult, if not impossible, for an agency to get the administration to even listen to the merits of its request for a waiver of the match requirement.

It is especially appropriate that the transportation safety regulations provision is included in the bill that we are marking up today because just 2 weeks ago one of the largest manufacturers of school buses issued a recall on 24,000 school buses, because of potentially disastrous safety defects. It makes sense that Head Start vehicles be as safe as regular school transportation.

I also would like to compliment Congressman GOODLING, the ranking minority member of the Education and Labor Committee, on his parental education provision that is included in this bill. Parental involvement has always been an important component of Head Start, and I think that concept will be strengthened by ensuring that Head Start parents are given the literacy and parenting skills training necessary to allow these parents to help themselves and their children beyond the Head Start classroom.

These are all sensible changes that will make a good program even better. I would like to thank my colleague from California, Mr. MARTINEZ and Congressman GOODLING for their efforts in this area, and I would urge quick passage of this bill.

Mr. GOODLING. Mr. Speaker, I rise today in support of H.R. 5630, the Head Start Improvement Act of 1992. I am glad to be included as an original cosponsor of this bipartisan bill.

I am particularly encouraged because H.R. 5630 includes my parental education provisions. These provisions will require that all Head Start parents be provided with parenting and literacy skills training, either directly from the Head Start agency or through referral to other programs in the community. Similar language already exists in the statute, but my provisions will make it clear that this training for Head Start parents is mandatory. I believe this is vital, and I am glad that I was able to convince my colleagues to see my point of view on this, because the more we help the Head Start parents the more they will be able to help their children, even after the Children graduate from Head Start.

Mr. Speaker, as you know I have devoted a good deal of my life, both professionally and here in Congress, to combating illiteracy. Illiteracy is an intergenerational problem and we need to find a way to break the vicious cycle of children of illiterate parents growing up illiterate themselves. My parental education provisions in this bill will help break this cycle.

Head Start is successful at getting underprivileged children up to speed to start school, but studies have shown that many of these children lose the benefits gained in Head Start within 2 or 3 years. We need to make sure that the Head Start parents are trained in parenting skills and taught how to read so that the parents will be able to continue and maintain the lessons that the children learned while in Head Start. My provisions in this bill will help to do that.

H.R. 5630 also includes several other provisions that will make sensible changes to the

Head Start Program. I am pleased to support these changes in this bipartisan bill and I urge that it be passed.

Mr. FORD of Michigan. Mr. Speaker, I rise in strong support of H.R. 5630, the Head Start Improvement Act of 1992. While this legislation will not serve to increase the Federal financial commitment to this most valuable program, the improvement included in this bill will go far toward ensuring that Head Start services are delivered in the most cost-effective and efficient manner.

I want to commend the chairman of the subcommittee, Mr. MARTINEZ, and the ranking minority member of the subcommittee, Mr. FAWELL, for bringing this important measure forward with deliberate speed. I also want to thank Mr. GOODLING for his contributions to this bill in recognizing the vitally important role which parents play in the educational and social development of their children through the Head Start Program.

I am pleased to join today as part of bipartisan support for H.R. 5630. During a time when politics all too often muddies the water, I find it encouraging that we are able to find overwhelming support for this program of merit. Twenty-seven years after its conception, Head Start has proven itself as one of our most successful education and social service programs.

Head Start programs face three problems due to the law's prohibition on using grant funds for the purchase of facilities: First, the risk of losing space which they have renovated, second, the lack of availability of rental facilities in a community, and third, significant costs incurred by leasing, rather than owning. Allowing for the purchase of Head Start facilities furthers the intent of the act—that individual grantees continue to have the flexibility to provide services according to their local community's needs.

At a time when local communities find it increasingly difficult to allocate scarce resources to competing worthy programs, Head Start programs are jeopardized throughout the country. The reformulation of the waiver of non-Federal matching requirements will help to solve this problem.

H.R. 5630 allows the Head Start Program to serve those Head Start children and their families as efficiently and effectively as possible while continuing to provide quality services. Allowing young siblings of Head Start students to qualify for health care benefits under the program simply makes good sense. Most of these services are donated to Head Start and offering them to the younger siblings can only help with our efforts at early intervention. Establishing regulations for Head Start programs for the purchase and safe operation of vehicles used by Head Start agencies is a major step towards assuring continued quality.

I have long advocated Head Start as our first line of defense against the forces that deny our youth the opportunity to excel. Support for Head Start has been practically universal. This popular program has been responsible for helping hundreds of thousands, if not millions, of American children by giving them a head start at learning, living, and life.

Mrs. MINK. Mr. Speaker, I rise today in strong support of H.R. 5630, the Head Start Improvement Act of 1992, which seeks to make changes to the Head Start Program in order for local Head Start Programs to best utilize increasing funds provided by the Congress.

Since 1964 Head Start has been the most successful early childhood education program in the country, providing education, health, social services for needy children and their families. Studies show that participation in a quality preschool program, such as Head Start improves scholastic achievement, elevates high school graduation rates, increases enrollment in postsecondary programs, and enhances employment prospective; moreover, it decreases youth delinquency rates and use of welfare assistance.

Both the Congress and the administration have recognized the success of Head Start and with strong bipartisan support we have been able to double the size of the program over the last decade. Despite high budget deficits and constraints on domestic spending, funding for the Head Start Program increased from $911.7 million in fiscal year to $2.2 billion in fiscal 1992, almost doubling the number of participants in the program.

Even with these increases, the current program still only serves about 30 percent of the eligible children in our Nation. No one argues that even more funds are necessary for Head Start, and as we continue to move forward in this direction, the Head Start Improvement Act makes important changes to allow local programs to utilize funds to maintain and improve the quality of Head Start Program in a cost-effective and comprehensive manner.

The bill allows Head Start grant money to be used to purchase facilities. Head Start Programs have faced increasing difficulty in obtaining rental space, and have incurred increasing costs because they are not able to purchase facilities and must continue to pay rent for facilities that they have often renovated and repaired with Federal dollars.

H.R. 5630 also provides for the reformulation of the waiver of non-Federal matching requirements. At a time when our State and local budgets are rapidly declining, every Federal dollar available is often necessary to keep Head Start and other social services running. In some communities the 20 percent matching requirement is an unsurmountable barrier to establishing a Head Start Program.

The bill also retains the original intent of the program to encourage local flexibility by extending for 1 year local control over funds for the improvement of quality of Head Start Programs, such as upgrading salaries for Head Start personnel, upgrading transportation for Head Start children and improving staff/child ratios.

Finally, the bill improves parent involvement in the program, and allows for younger siblings to take part in health care services provided by the Head Start Act.

Mr. Speaker, this legislation is necessary to maintain and improve existing Head Start Programs and assure that new programs are able to provide quality education and social services to needy children and families in their communities.

I urge my colleagues to continue their support for the Head Start Program and vote for H.R. 5630.

Mr. FAWELL. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. MARTINEZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. ABERCROMBIE). The question is on the motion offered by the gentleman from California [Mr. MARTINEZ] that the House suspend the rules and pass the bill, H.R. 5630, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

STICK TO THE ISSUES

(Mr. HOAGLAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks and to include extraneous material.)

Mr. HOAGLAND. Mr. Speaker, I must rise this afternoon to voice my objections to recent comments of Mary Matalin, a high official of the administration's reelection campaign. In criticizing the Clinton-Gore ticket, Ms. Matalin has sunk to new levels of political gamesmanship.

Even by today's standards, which admittedly are at the lowest level in decades, her remarks are as base and as tasteless as I can remember hearing, and this, after the administration has promised to stick to the issues and avoid malicious mudslinging.

As Associated Press story appears in this morning's Omaha World Herald which I ask be made part of the record.

An example of her unrestrained, intemperate barrages: "We respectfully request you and your fellow Democrat sniveling hypocrites read our lips: shut up and sit down so we can get back to more highlights of the Clinton record."

I also place in the record a Washington Post article from last Saturday. This woman will apparently say anything, anywhere, especially when we hear bad economic news. Perhaps this rhetoric reflects desperation in the Bush campaign. I don't know.

But Mr. Speaker and colleagues, let everyone dignify the campaign. Let us stick to the problems of health care, jobs, and education, the important issues the American people expect and want to be debated in a Presidential campaign. Let us stay out of the mud.

Mr. Speaker, I include the following news article above referred to:

[From the Omaha World Herald, Aug. 3, 1992]

BUSH CAMPAIGN FIRES SNIDE SHOT

ROSEMONT, ILL. (AP).—The Bush campaign, accused by Arkansas Gov. Bill Clinton of mudslinging, responded Sunday by unleashing a vitriolic compendium of nasty things that Clinton and other Democrats have said about Bush.

The campaign styled its broadside in the form of a who-said-what quiz for Clinton and other "sniveling hypocritical Democrats."

Among its questions:

"Which campaign had to spend thousands of taxpayer dollars on private investigators to fend off "bimbo eruptions?"

"Which candidate * * * admitted there was a deliberate 'pattern of omission' in his answers on marijuana use?"

"Who called George Bush a tax evader * * * 'That fellow who claims Texas so he doesn't have to pay taxes in Maine'?"

The answer to these, the Bush campaign said, was Clinton and his aides.

But others include shots at Bush fired by Sen. Tom Harkin, D-Iowa, Rep. Maxine Waters, D-Calif., Democratic Party Chairman Ron Brown and others.

"If they want to stick to the issues, then fine, knock off the cheap shots," Mary Matalin, the Bush campaign's political director, said Sunday of the Clinton camp. "We haven't done anything but contrast our record with his. Back off boys."

As to the tone of the release, Matalin said, "It's Sunday. I was having a little fun."

The release said, "We respectfully request you and your fellow Democrat sniveling hypocrites read our lips: shut up and sit down so we can get back to more highlights of the Clinton record."

The tone of the "quiz" was unusually snide even by the standards of attack politics.

One GOP quiz question quotes Harkin, who challenged Clinton in the primary, as saying that Bush "better be ready to protect the family jewels."

It quotes Rep. Waters as calling Bush a racist.

[From the Washington Post, Aug. 1, 1992]

CLINTON CAMPAIGN RETURNS THE RHETORIC—BUSH CAMP ATTACKED FOR GOING NEGATIVE

(By Ruth Marcus)

Capping a week of charges and countercharges, the Clinton campaign yesterday seized on some new anti-Clinton rhetoric from a high official of President Bush's campaign in the hope that it would backfire against Bush.

Its ammunition was a remark by Bush-Quayle campaign political director Mary Matalin in which she raised many of the so-called character issues that have dogged Arkansas Gov. Bill Clinton even while saying the issues will not be raised in the campaign.

In a story in yesterday's New York Times, Matalin was asked if the GOP campaign was subtly employing the "character" issue to remind voters about Clinton's marital troubles, use of marijuana and draft record.

"The larger issue is that he's evasive and he's slick," Matalin told the Times. "We've never said to the press that he's a philandering, pot-smoking draft dodger."

"The way you just did?" Matalin was asked, according to the Times.

"The way I just did," she said. "But that's the first time I've done that. There's nothing nefarious or subliminal going on."

The Clinton campaign said there was nothing subliminal about what it viewed as an attempt to rehash old charges against Clinton at a time when Bush is lagging in the polls. The campaign swiftly issued a page of quotations from Bush vowing to eschew negative campaigning, along with statements from Democratic vice presidential candidate Albert Gore Jr. and party chairman Ronald H. Brown assailing Matalin's remarks.

"It is clear that this is part of a pattern," Brown said. "The same Bush-Quayle campaign that questioned Ross Perot's sanity and commitment to the Constitution and impugned Al Gore's patriotism is now trafficking in tabloid trash about the Clinton family."

Gore called on Bush to live up to "his promise to keep this campaign on the issues and out of the mud."

Matalin expressed no regrets yesterday about her comments.

"They are sniveling hypocrites on this," she said, noting that Clinton and other Democrats have repeatedly bashed Bush. "These guys have been on the road 169 days and they have yet to miss a day they didn't bash Bush."

Charles Black, senior political advisor to the campaign, said there was nothing wrong with Matalin's remarks.

"She was responding to a reporter's question," he said. "She didn't bring it up, and her answer is, 'No, we're not going to make personal attacks.' And we're not. She's not, nobody is." The campaign, he said, "would never bring that up. The reporter brought it up."

Black added: "It appears to me they're kind of sensitive about some subjects. I would have ignored it if it was me."

In choosing to publicize the Matalin quotation, the Clinton camp was making the political calculation that it had more to gain from accusing Bush of mudslinging than it had to lose from reminding voters about Clinton's admitted past marital difficulties and other potential deficits.

The quick response echoed the aggressive reaction of the campaign earlier this week to accusations from White House spokesman Marlin Fitzwater that the Democratic team was unqualified to handle foreign policy and that Clinton's comments on Yugoslavia were "reckless."

"What they're counting on is that they can continue to let this seep out, seep out, seep out," said Clinton communications director George Stephanopoulos. But, he said, "If President Bush is going to play this kind of same old dirty politics, he ought to be called onto the carpet for it."

Meanwhile, the Bush campaign, which had promised a daily fax attaching some aspect of Clinton's record, fell behind schedule on Day Three yesterday, since Matalin was traveling in California with Bush.

Staff writer Ann Devroy in California contributed to this report.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MARTINEZ) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. BONIOR, for 60 minutes each day, on September 9, 15, 16, 22, 23, 29, and 30.

Mr. LIPINSKI, for 5 minutes each day, on August 4 and 11.

Mr. GONZALEZ, for 60 minutes each day, on September 9, 10, 11, 14, 17, 18, 21, 24, 25, and 28.

Mr. HAYES of Illinois, for 60 minutes, on August 4.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. FAWELL) and to include extraneous matter:)

Mr. FIELDS.

Mr. MYERS of Indiana.

Mr. WELDON.

Mr. MICHEL.

Mr. COX of California.

(The following Members (at the request of Mr. MARTINEZ) and to include extraneous matter:)

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN in 10 instances.

Mr. ANNUNZIO in six instances.

Mrs. LLOYD in five instances.

Mr. HAMILTON in 10 instances.

Mr. DE LA GARZA in 10 instances.

Mr. ROE.

Mr. FALEOMAVAEGA.

Mr. MONTGOMERY.

Mr. ASPIN.

Mr. OLVER.

Mr. DE LUGO.

Mr. LANTOS.

Mr. MAZZOLI.

Mr. EDWARDS of California.

Mrs. LOWEY of New York.

ADJOURNMENT

Mr. MARTINEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 28 minutes p.m.) the House adjourned until tomorrow, Tuesday, August 4, 1992, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4052. A letter from the Chairman, District of Columbia Retirement Board, transmitting the Board's comments on the enrolled actuary's report on the disability retirement rate for police officers and firemen for 1991, pursuant to D.C. Code Annotated, section 1-725(b); to the Committee on the District of Columbia.

4053. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9-282, "Real Property Tax Exemption Act of 1992," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4054. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 9-283, "Real Property Tax Rates for Tax Year 1993 and Real Property Tax Revision and Re-classification Amendment Act of 1992," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on the District of Columbia.

4055. A letter from the Comptroller General, General Accounting Office, transmitting the list of all reports issued or released in June 1992, pursuant to 31 U.S.C. 719(h); to the Committee on Government Operations.

4056. A letter from the Director, Administrative Office of the U.S. Courts, transmitting the actuarial reports on the Judicial Retirement System, the Judicial Officers' Retirement Fund, the Judicial Survivors' Annuities System, and the Claims Court Judges' Retirement System for the calendar year 1991, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4057. A letter from the Farm Credit Bank of Texas, transmitting the 1991 annual report

and audited financial statement of the Farm Credit Banks of Texas Pension Plan, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4058. A letter from the Librarian of Congress, transmitting the report of the activities of the Library of Congress, including the Copyright Office, for the fiscal year ending September 30, 1991; accompanied by a copy of the annual report of the Library of Congress Trust Fund Board, pursuant to 2 U.S.C. 139; to the Committee on House Administration.

4059. A letter from the Acting Comptroller, Department of Defense, transmitting the quarterly report on program activities for facilitation of weapons destruction and nonproliferation in the former Soviet Union, pursuant to Public Law 102-229, section 108; jointly, to the Committees on Appropriations and Foreign Affairs.

4060. A letter from the Chief, Forest Service, Department of Agriculture, transmitting a report entitled "Potential Impacts of Aircraft Overflights of National Forest System Wildernesses," pursuant to 16 U.S.C. 1a-1 note; jointly, to the Committees on Interior and Insular Affairs and Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 3837. A bill to make certain changes to improve the administration of the Medicare Program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans; with an amendment (Rept. 102-486 Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROWN: Committee on Science, Space, and Technology. H.R. 3843. A bill to encourage the growth and development of commercial space activities in the United States, and for other purposes; with an amendment (Rept. 102-769, Pt. 1). Ordered to be printed.

Mr. BROOKS: Committee on the Judiciary. H.R. 5399. A bill to amend the U.S. Commission on Civil Rights Act of 1983 to provide an authorization of appropriations (Rept. 102-770). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 1241. A bill to impose a criminal penalty for flight to avoid payment of arrearages in child support; with amendments (Rept. 102-771). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 3795. A bill to amend title 28, United States Code, to establish three divisions in the Central Judicial District of California, Rept. 102-772). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 4209. A bill to amend the act entitled "An Act conferring jurisdiction on certain courts of the United States to hear and render judgment in connnection with certain claims of the Cherokee Nation of Oklahoma," approved December 23, 1982; with an amendment (Rept. 102-773, Pt. 1). Ordered to be printed.

Mr. MILLER of California: Committee on Interior and Insular Affairs. H.R. 5686. A bill to make technical amendments to certain Federal Indian statutes, (Rept. 102-774). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 5475. A bill providing policies with respect to approval of bills providing for patent term extensions, and to extend certain patents; with an amendment (Rept. 102-775). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 2731. A bill to amend section 2680(c) of title 28, United States Code, to allow Federal tort claims arising from certain acts of customs or other law enforcement officers, and to amend section 3724 of title 31, United States Code, to extend to the Secretary of the Treasury the authority to settle claims for damages resulting from law enforcement activities of the Customs Service; with amendments (Rept. 102-776). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on the Judiciary. H.R. 1206. A bill to confer jurisdiction on the United States Claims Court with respect to land claims of Pueblo of Isleta Indian Tribe; with an amendment (Rept. 102-777). Referred to the Committee of the Whole House on the State of the Union.

Mr. MONTGOMERY: Committee on Veterans Affairs. H.R. 5619. A bill to reorganize technically chapter 36 of title 38, United States Code, and for other purposes; with amendments (Rept. 102-778). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FASCELL (for himself, Mr. BROOMFIELD, Mr. GEPHARDT, Mr. MICHEL, Mr. GINGRICH, Mr. DE LA GARZA, Mr. COLEMAN of Missouri, Mr. ASPIN, Mr. BROWN, Mr. WYLIE, Mr. HAMILTON, Mr. GILMAN, and Mr. LEACH):

H.R. 5750. A bill to support freedom and open markets in the independent states of the former Soviet Union, and for other purposes; jointly, to the Committees on Foreign Affairs, Banking, Finance and Urban Affairs, Agriculture, Armed Services, and Science, Space, and Technology.

By Mr. FASCELL (for himself and Mr. BROOMFIELD):

H.R. 5751. A bill to provide for the distribution within the United States of certain materials prepared by the U.S. Information Agency; to the Committee on Foreign Affairs.

By Mr. MILLER of California (for himself and Mr. WAXMAN):

H.R. 5752. A bill to amend the Indian Health Care Improvement Act to authorize appropriations for Indian health programs, and for other purposes; jointly, to the Committees on Interior and Insular Affairs and Energy and Commerce.

By Mr. MINETA (for himself, Mr. ROE, Mr. HAMMERSCHMIDT, and Mr. SHUSTER):

H.R. 5753. A bill to make technical corrections to title 23, United States Code, the Federal Transit Act, and the Intermodal Surface Transportation Efficiency Act of 1991, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. NOWAK (for himself, Mr. ROE, Mr. HAMMERSCHMIDT, and Mr. PETRI):

H.R. 5754. A bill to provide for the conservation and development of water and related resources, to authorize the U.S. Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. ROE (for himself and Mr. HAMMERSCHMIDT):

H.R. 5755. A bill to amend the John F. Kennedy Center Act to authorize appropriations for administration of the John F. Kennedy Center for the Performing Arts, and for other purposes; to the Committee on Public Works and Transportation.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 755: Mr. EVANS.
H.R. 1241: Mr. BACCHUS and Mr. LANCASTER.
H.R. 1427: Mr. SOLOMON.
H.R. 2125: Mr. RANGEL, Mr. TOWNS, Mr. WALSH, and Mr. HUGHES.
H.R. 3204: Mr. BEILENSON.
H.R. 3545: Mr. TORRICELLI.
H.R. 3748: Mr. MAVROULES.
H.R. 5214: Mr. EARLY.
H.R. 5274: Mr. KLECZKA, Mr. MARLENEE, Mr. COSTELLO, Mr. HOCHBRUECKNER, Mr. PARKER, Mr. DURBIN, Mr. CONDIT, Mr. ENGLISH, Mr. JOHNSON of South Dakota, Mr. CONYERS, Mr. BENNETT, Mr. BROWN, and Ms. KAPTUR.
H.R. 5317: Mr. PASTOR.
H.R. 5360: Mr. TOWNS and Mr. MARKEY.
H.R. 5434: Mrs. LOWEY of New York and Mr. KENNEDY.
H.R. 5477: Mr. SHAW.
H.R. 5478: Mr. SARPALIUS, Mr. ANTHONY, Mr. LEWIS of Florida, Mr. TOWNS, Mr. BROWN, Mr. HERTEL, Mr. ANDERSON, Mr. MCCOLLUM, and Mr. PRICE.
H.R. 5531: Mr. WILSON, Mr. SARPALIUS, Mr. HALL of Texas, Mr. GREEN of Texas, Mr. COLEMAN of Texas, Mr. CHAPMAN, Mr. EDWARDS of Texas, Mr. LAUGHLIN, Mr. FROST, Mr. BRYANT, Mr. DOOLEY, Mr. MCDERMOTT, Mr. HORTON, Mr. GUARINI, Mr. HAYES of Illinois, Mr. OWENS of New York, Mr. FASCELL, Mrs. BOXER, Mr. DIXON, and Mr. KOPETSKI.
H.R. 5591: Mr. MCCANDLESS, Mr. BOEHLERT, and Mr. ZELIFF.
H.R. 5619: Mr. HAMMERSCHMIDT, Mr. JENKINS, Mr. HEFNER, Mr. RICHARDSON, Mr. STENHOLM, Mr. PAYNE of Virginia, Mr. PARKER, and Mr. HARRIS.
H.J. Res. 393: Mr. SCHEUER, Mr. TOWNS, Mr. PANETTA, Mr. SHUSTER, Ms. KAPTUR, Mr. ENGEL, Mr. SHARP, Mr. STOKES, Ms. WATERS, Mr. HAMILTON, Mr. ATKINS, Mrs. MORELLA, Mr. SPENCE, Mr. YOUNG of Florida, Mr. HUGHES, and Ms. MOLINARI.
H.J. Res. 398: Mr. CHANDLER, Mr. MOORHEAD, Mr. MILLER of California, Mr. DE LA GARZA, Mr. MFUME, and Mr. WASHINGTON.
H.J. Res. 399: Mr. WOLPE and Mr. YOUNG of Florida.
H.J. Res. 478: Mr. ENGEL.
H.J. Res. 489: Mr. LEVINE of California, Mr. LENT, Mr. BILIRAKIS, Mr. LEWIS of Florida, Mr. GILLMOR, Mr. MOORHEAD, Mr. HUNTER, and Mr. HAMMERSCHMIDT.
H.J. Res. 495: Mr. EWING, Mr. MFUME, Mr. ROGERS, Mr. CLAY, Mr. ANDERSON, Mr. ANNUNZIO, Mr. AUCOIN, Mr. BORSKI, Mrs. BOXER, Mr. CAMP, and Mr. YOUNG of Florida.
H.J. Res. 505: Mr. MCCLOSKEY, Mr. VALENTINE, Mr. KOSTMAYER, and Mr. DUNCAN.

H. Res. 359: Mr. ENGEL.

H. Res. 502: Mr. SCHIFF.

H. Res. 515: Mr. PAYNE of New Jersey, Mr. ATKINS, Mr. LANTOS, Mr. MCNULTY, Mrs. SCHROEDER, and Mrs. UNSOELD.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1790: Mr. DANNEMEYER.

PETITIONS, ETC.

Under clause 1 of rule XXII,

172. The SPEAKER presented a petition of the Council of the County of Kauai, Hawaii, relative to the Federal trust relationship and obligation to native Hawaiians; which was referred to the Committee on Interior and Insular Affairs.

SENATE—*Monday, August 3, 1992*

(Legislative day of Thursday, July 23, 1992)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable RICHARD H. BRYAN, a Senator from the State of Nevada.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

* * * *Blessed be the name of God for ever and ever: for wisdom and might are his: And he changeth the times and the seasons: removeth kings, and setteth up kings* * * *. Daniel 2:20, 21.

Eternal God, Lord of history, Ruler of nations, the United Nations is confronted with a stubborn crisis which threatens global peace. Apparently, Saddam Hussein sees himself as the modern counterpart of Nebuchadnezzar who ruled Babylon, a world empire, until it was conquered by the Medes and Persians, modern Iran. The prophet Daniel records the pride of "Nebuchadnezzar the king, unto all people, nations, and languages, that dwell in all the earth * * * ."—Daniel 4:1. We pray, mighty God, as you overruled in the life of Nebuchadnezzar, so you will in the life of the present ruler of Iraq.

In the words of Daniel, the King boasted, "* * * Is not this great Babylon, that I have built * * * by the might of my power, and for the honour of my majesty?"—Daniel 4:30. After God's discipline, the arrogant King called his counselors and lords together and, in a repentant spirit, said, "Now I Nebuchadnezzar praise and extol and honour the King of heaven, all whose works are truth, and his ways judgment: and those that walk in pride he is able to abase."—Daniel 4:37.

King of heaven, as You transformed the heart of Nebuchadnezzar in ancient Babylon, we pray You will rule in the life of Saddam Hussein, that peace may prevail and the suffering in Iraq and uncertainty abroad may end.

In the name of the Prince of Peace. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 3, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD H. BRYAN, a Senator from the State of Nevada, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BRYAN thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 5373, which the clerk will now report.

The assistant legislative clerk read as follows:

A bill (H.R. 5373) making appropriations for energy and water development for the fiscal year ending 1993, and for other purposes.

The Senate resumed consideration of the bill.

The ACTING PRESIDENT pro tempore. The Senator from Arkansas [Mr. BUMPERS] is recognized.

Mr. BUMPERS. Mr. President, could the Chair restate the order for the benefit of the Senate on the time agreement on this amendment.

The ACTING PRESIDENT pro tempore. The Senator is to be recognized for purposes of offering an amendment at this point, and the time for the debate on this amendment lasting until 1:30 will be divided equally, one half of the time under the control of the Senator for Arkansas, and the other half under the control of the chairman of the committee, the senior Senator from Louisiana.

Mr. BUMPERS. Mr. President, then there is, as I understand it, an additional 30 minutes of debate to be equally divided beginning at 6 p.m. this evening, am I correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. BUMPERS. After which there will be a vote on an amendment by the Senator from Oregon [Mr. HATFIELD] followed by a vote on this amendment?

The ACTING PRESIDENT pro tempore. The Senator is correct.

AMENDMENT NO. 2832

(Purpose: To limit the funds that may be used for the superconducting super collider)

Mr. BUMPERS. Mr. President, I call up an amendment at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 2832.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 55, strike line 7, and insert in lieu thereof the following: "$1,460,784,000, to remain available until expended: *Provided*, That of this amount, from funds appropriated for the superconducting super collider, $516,000,000 shall be applied to deficit reduction.".

Mr. BUMPERS. Mr. President, we had originally scheduled 5 hours for this debate on the super collider. It has now been cut to 4 hours. I have no quarrel with that. I was on a plane headed for Arkansas when this agreement was worked out, and I simply hope that all Senators on both sides will have an opportunity to speak. I am going to try to reserve time for everybody on my side who has asked for time to speak.

I would note that after reading Helen Dewar's article in the Post this morning about so-called gridlock, in which she discusses at length policy debates and legislation being passed and vetoed, legislation being filibustered, and the use of the term gridlock growing daily, as does the anger of the American people, I also note that tomorrow the second part of the series of her articles will deal with the deficit.

Now, that is the principal objection I have to the superconducting super collider. In a perfect world, I would be more than happy to vote for this. But it is not a perfect world. On the contrary, it is a very imperfect world and growing worse as far as the United States is concerned because of the deficit.

Many of you know that I was a trial lawyer before I came to the Senate, and I have a tendency to make those impassioned jury arguments in arguing amendments. But today I am going to do my very best to make a case both on the fact that intellectually we should not do this; that the costs are already out of control; that spending money on

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

the superconducting super collider squeezes out a lot of needs in this country and, indeed, even a lot of science that could be more productively spent, to say nothing of the fact that the job part of this is the worst of all arguments.

Even among the physicists of this country, this project will cost $10 million per physicist employed on the job. The jobs created will be $80,000 per job, and I submit if you took it out and put it on highway construction you could create probably four times as many jobs.

That is probably the last argument I will make right now on the jobs issue, but that is not a legitimate argument.

I will close the debate tonight with an impassioned appeal to this body. We are now debating what I consider to be one of the 10 or 15 most important debates we will have all year on one of the 6 or 7 most important issues, and I see 2 Senators on the floor and 1 sitting in the Chair. So this all plays right into the hands of our critics, and justly so.

Despite the argument—I hesitate to say intellectual argument, but besides the pure arguments about jobs, about cost, about the science, about the crowding out, and about the deficit, I know that the deal is done; the die has been cast: I will vote for your super collider if you will vote for my space station, or I will vote for SDI if you will vote for the super collider.

I do not say that to denigrate a single soul in this body. I must confess in the interest of candor, Mr. President, if my State was going to get $2 to $5 billion of this money, I would be seated where the distinguished senior Senator from Louisiana, my very good friend, sits probably making the same arguments he is going to make. If I were from the State of Texas where it was going to be built and where maybe as many as 6,000 jobs will be created, I would be taking the same position the Senator from Texas will be taking. However, I am not so burdened, and I can look at this with a quite different view.

I want my colleagues to know we are talking about $20 billion minimum. We are not talking about $8 billion to build this system. We are talking about building and operating it for 25 years at an annual cost of $500 million. And the argument that we have to be on the cutting edge of science makes a lot of sense if it is the kind of science that will cut the $52 billion trade deficit we have with Japan this year, but it is not that kind of science.

There are going to be a lot of arguments here made about all the spinoff benefits that we are going to receive. Well, the House did not buy it, Mr. President. Bear in mind that the House killed this project outright—killed it dead by a 50-vote majority. Do you know why they killed it? Because it had been only 3 or 4 days from the time they voted on this that they had voted not to put a constitutional amendment to balance the budget in our Constitution.

Those who had voted not to put an amendment in the Constitution were looking for cover. I do not blame them. I would have been, too. Our ability to cut spending around here is in direct relationship to the length of time it has been since we have debated a constitutional amendment to balance the budget. And the House, because they had been chided about not putting a constitutional amendment in the budget and about not ever being able to cut any projects, killed this sucker dead.

One of the reasons I will not win today, Mr. President, is because the scientists of this country, and the Department of Energy, especially have learned what the Pentagon has known for 50 years and what NASA is beginning to perfect, and that is, if you want money, contract it in 50 States. You do not have to give any State very much, and if you are from a small State like Arkansas, just put $10 or $15 million in there and have the people going to get that, go to their Senators and say: you are going to kill the jobs in my State if you vote against the superconducting super collider.

Do you know how may States have contracts on the SSC? Forty-eight. Only two lonely States are not getting a piece of the action. Do you think that is by accident? Do you think the people who put this project together picked out 48 States for a piece of the action just because those States were the only States where a particular contract could be formed? Those States were chosen for political reasons, and it works. I have never seen it fail to work in this body. I must say, there are three or four courageous Senators who have come to me in the last 2 weeks and said: Senator, I am going to help you with that, and it is going to hurt me back home, because we have several contracts on the super collider. They have my undying admiration and gratitude.

Oh, yes, we need to be on the cutting edge of science, but, Mr. President, this Nation is on the cutting edge of bankruptcy, and nobody can ever seem to find a place to bring this thing under control.

Mr. President, I have placed, or will shortly place, on every Senator's desk a separate thing to counter the contracts in 48 States. What I will place on everybody's desk is what it is going to cost the taxpayers of your State to pay for this thing. Arkansas, whom George Bush now says is probably the worst State in the Nation, which has been ill-governed, and there is no State in the history of the world that has ever been so ill-governed, and he wants to extract $83 million from that terrible State of Arkansas, from the people of Arkansas, to build a piece of science from which they will probably never derive one single ounce of benefit.

So, Senators, look on your desks and see what the percentage cost of this collider is for the people of your State. And then be prepared to go back home and tell them that you voted to extract that money from them, but then also tell them what the benefits are that they are going to get out of it. I dare you to do that.

One of the real tragedies of this debate is, in all probability, that this project is going to be killed—not this year, but maybe next year; if not next year, the following year.

I think about the antiballistic missile system out in North Dakota back in the late 1960's and early 1970's. There were people who stood on the floor of the Senate day after day saying: It will not work, why are we putting $6 billion in it? That would be comparable to about $30 billion today.

But the argument year after year was: We have gone too far. We cannot turn back. That is what I call a nose-under-the-tent theory. So you will hear the arguments on the other side today. Do you realize, Senator, we have already put $1 billion into this project? We cannot turn back now.

Just this last year you head these arguments: What will Japan and all of the other countries who are going to help us think? Why, we will never be a reliable scientific partner again.

I remember that the initial project called for $1.7 billion in foreign assistance—$1 billion of which was to come from Japan.

I will come back to that argument in just a moment, but do you remember that trip the President took to the Far East, and wound up in Japan, and got sick at the dinner, and everybody thought the Japanese will probably at least feel sorry for him, and despite all of their reticence about any trade concessions, they will probably give him his $1 billion for the superconducting super collider. Do you know what they told the President? It has been nice having you here. Do not call us, we will call you.

Who is on the cutting edge of science in this world? The Japanese. I will tell you something that is really ironic. When the Japanese were toying with the idea of participating in this, they set aside some money, and they put it in their foreign aid budget. The Japanese put $1 billion in their foreign aid budget to help the United States build this thing. Now, of course, they are not going to give us anything.

Mr. President, there are other people here who would be much better to argue certainly the technical aspects of this. I never even had high school chemistry. I do not have a scientific mind. My father used to say, if I had had a scientific or mathematical mind, he would have been questioning my mother more intently.

I do not know anything about the science of particle physics, and I do not know anything about linear accelerators. I simply know what some of the leading scientists of this country have said—even Dr. Lederman, on whose opinion the proponents of this heavily rely for building it—Dr. Leon Lederman, the leadoff witness in the hearing that was set up by the distinguished chairman of the Energy Committee, Senator JOHNSTON. I do not know anything about any of those things, but I know that we only fund Head Start at 50 percent of what we ought to be funding it at. I know that the Women, Infants, and Children's Program is funded at about 55 percent of where it ought to be and, therefore, poor women in this country get no prenatal or neonatal care, and their children do not get a decent diet the first 3 years of their life, which drops their IQ by 15 points.

I know there are 35 million people in this country with no health insurance. I know that we have 10 million people walking the streets looking for jobs. I know that there are unmet needs in the National Institutes of Health, where they are trying to deal with AIDS, cancer, leukemia, arthritis, heart disease, you name it, and can only fund 25 percent of the good applications for medical grants they get for medical research.

Mr. President, a short 20 years ago, NIH was funding 70 percent of all the good claims and applications for medical research grants that they received. Today, they fund about 25 to 26 percent, and we are putting $20 billion in determining the origin of matter. If I were a physicist, I would be curious about the origin of matter. But even if I were a physicist, I would also know one thing: This research can be done today, next year, 100 years from now. That is the reason I said in a perfect world of fiscal surpluses I would be for it. It is not going anywhere.

We are going to build a 54-mile underground racetrack at Waxahachie, TX, and with the use of magnets, we are going to have these particles collide at something like 20 million volts. And from that we will be unraveling the mysteries of how the Earth was formed, how matter was formed.

Mr. President, I mentioned Leon Lederman a moment ago. Here is what the Nobel laureate particle physicist, Leon Lederman, who strongly favors this project, said on June 30, 1992. This is their physicist, not mine.

Spinoffs would be a crazy reason for building the super collider. We do not build it for the spinoffs. We build it because we are curious. The SSC is so long-term and uncertain in its payoff.

Some people have said the magnetic resonance imaging invention came as a result of this kind of research, and the man who was most deeply involved in it said, "That is the biggest piece of nonsense I ever heard in my life."

It is reputed to be a cure for cancer, the common cold, sties, corns, athletes foot, you name it. I think I have seen at some point how if we go forward with this project we will have a cure to every ailment ever known to man.

Listen to Dr. Krumhansl. Dr. Krumhansl was the president of the 40,000-member American Physical Society in 1989. Here is what he said to the American Physical Society on June 18, 1992, the same meeting at which Dr. Lederman spoke. Listen to this:

It's about time to dispel the illusions in Congress and the public in general about technological and educational spinoff from particle physics. Not only is this largely a fiction, but in some instances at least claims by the SSC proponents were actually work *done by others.*

Dr. Nicholaas Bloembergen who was president of the American Physical Society, professor at Harvard University, May 21, 1991, as an expert in magnetic resonance:

I can state categorically that MRI is not a spinoff from SSC related activities.

Dr. Griffin Resor, president of MRC Technology, Inc., July 18, 1991:

If the United States following its present competitiveness model funds the super collider, in the future the United States may become the world's leading supplier of super colliders. But this market is very small. If in the same time interval Japan focuses on superconductors for small motors and power distribution and is equally successful, Japan will dominate all applications where power efficiency is important. Japan's wealth will continue to increase dramatically. Except for a small team working in Texas, the U.S.A.'s wealth will diminish.

Mr. President, here is what the U.S. Council on Competitiveness said. This consists of people like Bob Inman, George Fisher, who favors the SSC, John Akers, of IBM and Don Peterson, chairman of Ford.

In an era of limited resources for Science and Technology, the United States must choose its priorities carefully. The United States is spending a lot of resources on national prestige technology—projects that make little contribution to U.S. economic growth and competitiveness. Constant spending on generic industrial technology would not only have a major impact on America's international prestige, but also on our standard of living, national security, and international influence.

I save the best until last, Mr. President. Another quote from Dr. James Krumhansl of the American Physical Society, 1989. Listen carefully.

The issue is not simply big science versus small science but that in the view of many members of the American Physical Society the extravagant representation to the public of the potential fruits from the SSC are fictitious ethically irresponsible.

These are not people who just fell off the turnip truck. We are talking about Harvard professors, Nobel laureates. We are talking about the top physicists in the country.

Mr. President, in a poll of the American Physical Society members that the DOE—I believe the DOE conducted this study. What do you think is the most important thing for physicists and the future of this country insofar as research is concerned? The SSC ranks 10th in a field of 11 choices.

So in conclusion, Mr. President, if you are going to vote on this because you think it puts us on the cutting edge, I invite you to walk to my desk and let me show you these quotes that I just gave to you.

Let us talk about what does it do to other science? If you are a poor scientist out there trying to get some kind of a grant and you are a very proud, intelligent, physicist, what do you do for money? Completely aside from Head Start, crime, and education, the WIC Program, all the other unmet needs of the country—I am just talking about people who are engaged in this procession—there are numerous physicists that would tell you this money could be better spent to make us a healthier, happier, and certainly a busier America.

Mr. President, I do not want to quote Mr. Lederman too often but he is so good, because, Herman Talmadge, who used to be our distinguished colleague here, when he discussed this, "throws the corn where the hawks can get to it."

Here is what he said:

If we don't drastically reduce [the SSC's then-estimated $4 billion] costs, SSC will die or, worse, drag out to become an unfruitful drain on the rest of the [high energy physics] program.

Mr. President, I want to call two things to your attention. No. 1, he said that in 1985. Second, he said that when the cost of this project was being represented to the Nation at $4 billion.

And what did he say? He said:

If we do not drastically reduce this cost, you are going to squeeze out other high-energy research.

What did Prof. Philip Anderson, Nobel Laureate in Princeton, say in 1991?

Are there worthwhile research institutions and projects which are being neglected and starved for money while the SSC is relatively liberally funded? The answer is yes, there are very many. * * * Is the SSC so urgent that we have to go ahead with it at any cost? Obviously not.

Dr. Bloembergen, president of the Physical Society:

* * * the SSC must not be built at the expense of broadly based scientific research * * * even the leaders of the high energy physics community have stated that without new money, the SSC should not be built.

Dr. Krumhansl:

Large areas of small science physics, far more important in the larger scheme of things than particle physics, are starving and have been for the past several years, * * * the SSC burden will cause significant additional damage to small science funding * * * [If the SSC is stopped,] American technology or competitiveness will not suffer at all.

And finally, Mr. President, the Chronicle of Higher Education, April 22, 1992:

The recommendation, which would force hundreds of scientists to be laid off at the Stanford University center, came as a surprise to researchers who had been seeking approval to build a new electron collider there. It was one of several proposals by the High Energy Physics Advisory Panel to meet what many physicists fear will be a series of lean budgets for their field *as the department continues its construction of the Superconducting Supercollider.*

So will it crowd out other science that has a faster paycheck?

The proof is in the pudding. There it is.

Incidentally, before I go on Mr. President, I want to tell the Senators from New York and California that they can almost rest assured that the Stanford linear particle accelerator, where hundreds of physicists work, will probably be closed if we continue funding this.

To the Senators from New York, I promise them, Brookhaven is going to have a very difficult time surviving if we fund this.

Dr. Peoples, director of Fermi National Accelerator Laboratory, April 22, 1992. Bear in mind that is only 3 months ago:

By the end of the decade * * * the diversion of funds to the supercollider will not only reduce the diversity of programs in the field, but lead to "utter disaster" for the *national laboratories.*

And finally, Dr. Rustum Roy, who appeared on MacNeil/Lehrer the other night with Senator JOHNSTON and me:

How can one possibly support $10 billion for an ultimate luxury item in a budget crisis? * * * how does one possibly justify putting money into a totally esoteric corner of the most "use-less" part of science instead of * * * materials, engineering, bioscience, agricultural science, on which jobs and trade depend?

Dr. Roy said on that show the other night—I quote him, and not me—he said:

This is a tremendous welfare program for the State of Texas.

The Senator from Louisiana said:

Well, Dr. Roy, you are not even a particle physicist. You are a materials physicist.

See, I do not know the difference between the two.

Now, Mr. President, let us move on to the cost of the project. Here is the chronology of the cost that will give you some idea of where we are headed, because we have already tripled—tripled—Mr. President, that wonderful $4 billion figure back in 1984 and 1985.

Now, nobody here is naive enough to believe that if the Department of Energy's internal studies now show this project is going to cost $11.8 billion, when I think we have only let the first excavation contract, there is not anybody in this body naive enough to believe you are probably headed for two to three times that cost.

Then, of course, you know I want to make one other point. I mentioned the ballistic missile program, which we could not stop, and then started dismantling the day it was completed, in 1975 or 1976. We started dismantling it after we put $6 billion in it. And a few Senators in this body were squealing like a pig under the gates every step of way, and saying: This is a terrible mistake.

You think about the SST, it lost by one vote here. And the British and French went ahead and built the SST, to their eternal chagrin, dismay, and regret. I guess that was the last time the Senate really did something responsible. They killed that supersonic transport, and the British-built the Concorde. It was a very wise decision. And the B-2 bomber, when it became apparent that we not only would not get what we thought we were going to get out of the B-2, but even that the Soviet Union was dissolved—does not exist—people still insisted on going forward with the B-2 bomber because we have already "gone too far to turn back."

Mr. President, I digressed, but I come back to where I started on the chronology of the cost of this project. In 1985, here is what Dr. Lederman, again one of the strong proponents of this project, said:

The estimated $4 billion everybody talks about, nobody out there believes, if we do not drastically reduce costs, SSC will die, or worse drag out to become an unfruitful drain on the rest of the program.

I read that quote to you before, but it is even more appropriate on where we were in 1985, talking about $4 billion.

In 1987, I guess it is Dr. Trivelpiece, here is what he said:

We believe that the $4.4 billion is not only accurate.

Listen, let me go back, because I now want you to know who Dr. Trivelpiece is. Dr. Trivelpiece was, on April 7, 1987, when this quote was made, Director of the Office of Energy Research, in the Department of Energy. These are the people who have been giving us the figures on what this thing is going to cost. So Dr. Trivelpiece, who is obviously saying what Ronald Reagan told him to say, because they have been saying what George Bush told them to say ever since, here is what he said:

We believe that 4.4 billion is not only accurate to within 10 percent, it is conservative. The SSC is probably the best analyzed project ever brought forward by the administration to the Congress in terms of knowing what it takes to do it, what the feasibility is, how long it is going to take, and what it is going to cost.

Here is our guru in the Department of Energy, at a time when the projected cost was to be $4.4 billion, and he is saying never in the history of the world has anybody known what the cost was going to be as precisely as we do.

And then, in 1989, Secretary Watkins comes over to testify before the Energy Committee. By this time, George Bush is President, and my good friend and distinguished colleague, Senator JOHNSTON, is chairman of that committee.

And Secretary Watkins then says that the cost is now $5.9 billion, sorry about the earlier projection of cost; a minor $2 billion mistake, after Dr. Trivelpiece said: Never in the annals of the world have we known about what something was going to cost.

Two years later, his boss, the Secretary, comes over and says, well, the cost is up $2 billion, but actually Texas is going to put in about a billion so it is really only a billion.

But listen to this. Actual words of Secretary Watkins: "If the collider costs a dime more than $5 billion, we should not build it." Who is the leading cheerleader at $11.8 billion? Secretary Watkins. What people say around here means nothing anymore. We all hold nobody accountable.

And in Physics Today, in March 1991, here is another quote. This is the American Physical Society's magazine, I believe, called Physics Today:

Administration sources say that the White House Office of Management and Budget, which sat on DOE's cost report for more than three months, argues that the figure of $8.25 billion may turn out to be much too low.

Now, Mr. President, we have gone from $4 billion, to $8.25 billion in this chronology and the Physics Today magazine says the figure may turn out to be much too low.

And then, in August, that same magazine said: "[Japanese] scientists and diplomats alike do not trust the U.S. Government, and the Department of Energy in particular"—and I might just digress to say I agree—"to come up with reliable [SSC] cost estimates. The official $8 billion figure is now laughed at, and the numbers keep going higher." That is the Japanese version of it.

And what else did they say? Tokyo's newspaper—and I cannot pronounce the name of it—on April 11 of this year, 1992, said, "It is highly likely that the $8.25 billion figure may increase at some point during construction." Now if I have ever heard an understatement made, "increase during construction," that is it.

Finally, Mr. President, we went from the original $4 billion to $5.9 billion to $8.25 billion and here, 2 years ago, a figure that nobody knew about or was told about, an independent cost estimating staff inside the Department of Energy, said: "The total cost of the SSC is $11.8 billion, and this should not be interpreted as a worst-case scenario."

That is said by the proponents of the collider.

Mr. President, fool me once, shame on you. Fool me twice, I will lose my seat.

And now, let us talk about how well the project is being managed so far.

This is not really nearly as determinative as all the other things, crowding out other sciences, cost escalation, but on mismanagement, here is what Henson Moore said in January of this year. Henson Moore is the guy just under Secretary Watkins. He is the Deputy Secretary of Energy.

Today I have learned that the overrun problems are continuing and may be even getting worse. * * * the actions taken thus far appear to me to be woefully inadequate. * * * this shows to me a lack of management ability on the part of URA [the superconducting contractor].

The General Accounting Office, in April of this year:

Although DOE maintains that the SSC project is on schedule and within budget, it does not have in place an integrated system for monitoring cost and schedule performance that would allow it to objectively determine its progress.

In other words, GAO has said they do not know what they are doing. How can they tell you what the cost is going to be when they do not have any method for determining it.

And the inspector general of the Department of Energy said, "Unless checked, [SSC] cost overruns also appear likely for future construction that is in progress or planned."

And in the hearing conducted by Senator JOHNSTON and the Energy Committee, they testified, principally Mr. Cipriano, who is in charge of this project at the Department of Energy, "Well, GAO said that, but we have corrected that now. That is no longer valid by the GAO."

So I wrote GAO and said, "Is this true." And they wrote back and said, "The Department of Energy has not yet fully implemented the cost and schedule system for managing this project."

Mr. President, this was 10 days ago. This is not back in January or April. Ten days ago they say the Department of Energy has not yet fully implemented the cost and schedule system for managing this project. And without a cost and schedule system, DOE cannot accurately assess on a timely basis whether this project has encountered problems affecting the cost and schedule.

[DOE has] not yet fully implemented the cost and schedule system for managing the SSC project. * * * *Without a cost and schedule system, DOE cannot accurately assess on a timely basis whether the SSC project has encountered problems affecting the cost and schedule.*

[The SSC contractor] made a preliminary integrated project schedule in May 1992. That preliminary schedule disclosed that *the SSC project's cost exceeded planned funding* * * * [by] about $200 million more than planned [for FY95] * * * Major program elements were missing from the integrated project schedule * * * the first meaningful trend analysis * * * showing *the estimated cost and schedule for completing the project may not be available until June 1993*—nearly 4½ years after DOE awarded URA [the contractor] the prime contract that required the Cost and Schedule Control System to be implemented.

Mr. President, I have alluded to foreign assistance already, but I will just come back to it for just a moment to say that I never will forget those debates last year of how we were not going to be a reliable scientific partner if we did not go ahead with this because the Japanese were relying heavily on it; Albania is going to furnish copper; India has committed $10 million. And so far that is it, so far as foreign participation is concerned.

Secretary Watkins in 1989 said, "I am confident that we can count on the Japanese to contribute significantly to this undertaking, we would hope in the order of $500 million to $1 billion.

From a 1990 Department of Energy decision document.

We believe that we are unlikely to meet the Administration's goal for non-federal participation (one-third of the total project cost) in the foreseeable future.

That is one-third. The Department of Energy said we have been planning on one-third participation by foreigners. They now say they may not reach that. In Physics World, another physical magazine, in August 1991, it says:

Japanese scientists and diplomats alike do not trust this Government, and the Department of Energy in particular, to come up with reliable [SSC] cost estimates. The official $8 billion figure is now laughed at, and the numbers keep going higher.

Mr. President, a prominent Japanese particle physicist, in August 1991, said, "It is a great intellectual gimmick and the science is interesting, but is it worth this kind of money?

Finally, Mr. President, April 1992, just a short 3 months ago, the Japanese, with whom we have been pleading with to give us money:

It is highly likely that the $8.25 billion figure * * * may increase at some point during construction.

Mr. President, I do not want to get in the technical part of this, as I said earlier, but I do want to say that the Japanese have done their own estimates of what the cost of the magnets are going to be. And when you look at the $11.8 billion that the Department of Energy *internal studies say it is going to cost*, when you look at that, they are anticipating that the magnets—the magnets, there are two different kinds—are going to cost $2 billion beyond. And the Japanese internal studies on that say the magnets are going to cost $5 billion. Now if the Japanese turn out to be right, add another $3 billion just for the magnets.

Mr. President, when I think at how hard I have to scrounge in the Labor-HHS Appropriation Subcommittee to get money to immunize the children of this country, when I think about how we have to scrounge to try to get a little money for education, Pell grants and personal loans when I go to the John L. McClellan VA hospital in Little Rock and see 100 closed beds because of lack of money and a list as long as across the floor of this Chamber of veterans pleading for admission to that hospital: when I realize there are 3 million people on the streets with no housing, and when I think about the United States becoming the crime capital of the world, which we are now—we have more people in prison today, as a percentage of our population, than any nation on Earth, including China and South Africa.

There was a woman came up to me in Ashdown, Little River County, AR, Saturday afternoon: everybody there rhapsodic because Ashdown was celebrating its 100th birthday, Little River County on the same day celebrating its 125th birthday. This panicky mother, I would say of 65, said, "Senator, I need to talk to you."

Every Senator knows what this is like. When you walk into a crowd you walk out with five cases to take back to your staff, that is how troubled people in this country are.

"My daughter had a heart transplant, and she has been doing very well, and the doctors say she is doing well. But she can no longer afford the medication. And Medicaid will not buy her drugs for her."

There were tears streaming down her cheeks. "My daughter is going to die if she does not get help."

I wanted to say I would like to help but we have to fund this big $20 billion super collider.

Finally, Mr. President, there is the question of the deficit. And when I say finally, this overrides everything else. I want my colleagues when they come in tonight to vote to ask themselves this simple question: What do you think is the greatest threat to the future of this Nation?

Perhaps different people have different ideas. But I have been expecting it all to cave in every day for years now. I do not know what props it up—$400 billion this year. A $4 trillion national debt; $3 trillion of it accumulated in the last 12 years. And we say why are people so upset?

They may not understand it, but I can tell you at the belt-buckle level, they understand it precisely. You will hear arguments, and I have read—I have a briefing book that thick, and I read every word of it this weekend. Many of the arguments in the House by those who favor this—this is such a small percentage of the budget. And therein lies the rationale that has brought us to this unhappy point. It is always such a small amount. And this crowd wants this little bit, and this crowd wants this little bit—maybe just a fraction of a percentage of the budget, or certainly a little larger fraction of the deficit. Helen Dewar of the Washington Post says the place is in gridlock, and she could not be more right.

My math may be wrong. But the full funding, the full funding only amounts to 1.25 percent of the budget. But if you take the $500-plus million that the Senator from Louisiana added after the House struck everything out; if you take the $550 million for next year's budget, that is only 12-hundredths of 1 percent of next year's budget. As a percentage of this year's deficit of $400 billion, this $500-plus million is only one-eighth of 1 percent. They are just small fractions. Why are we making such a big to-do about such a small part of the budget.

Those are what I call big numbers; big "nose-under-the-tent" numbers. And bear in mind that the first cost of this project which is now projected to be $11.8 billion and will certainly go much higher by almost everybody's understanding—add to that $500 million a year.

Mr. President, I used to get tearyeyed every time I saw the shuttle take off. Do you know what dried my tears? When I found out it costs $300 to $500 million every time it takes off.

Do you know the real tragedy? The real tragedy is every dime of this $20 billion is going to be borrowed—every single penny of it. It will be borrowed and will add to the deficit. So you look at the real costs. If $10 billion is the cost of construction I can tell you that 30 years from now, you compound the interest—just the cost of the project itself will be $30 billion. You want to project 30 years past the day it is built, the compounded interest on it, on $20 billion? It is $60 billion. You are not voting for $11.8 billion today. You are voting to add that to the deficit and pay interest and compounded interest on it forever.

These beautiful staff pages down here will not live to see any portion of this paid off. But it is such a small part of the budget deficit and it does create some jobs. Not many compared to the cost, but some.

Mr. President, it has been about 3 weeks to a month now since we had the amendment to put a constitutional provision in to balance the budget. I do not know how it would work. I think it would be very cumbersome. The thing I worry about more than anything else is it will not be enforced and it will make a mockery of the Constitution which everybody knows is so sacred to me, as it is to them. When you go tinkering with the Constitution you get my attention in a hurry.

But we are reaching that point. There is a fellow who used to work for me. I used to have a furniture and hardware and appliance store I owned when I was practicing law. He had a good expression. Sometimes when I was in a quandary he would say, "Let's do something, even if it's wrong." Maybe the time for a balanced budget amendment has come. We will try it and see what happens.

The people who argued against it here said why do we not cut some of these boondoggles like the super conducting super collider, and the space station, and strategic defense initiative, and the Trident missile? Now we are down to the point where you get to vote on those things, and neither those who favor the constitutional amendment nor those who opposed it can find it in their hearts to kill any of those projects.

If you cannot kill this one I am not going to say you ought to hang it up, because I think it will be killed next year after we put in another $500 million, or the year after that after we put another $500 million in it.

But this project is a cacophony of broken promises. Broken promises on the original cost; broken promises on cost controls; broken promises on what the spinoffs are, which do not exist; broken promises on foreign participation. And now the Senate is prepared to say: Just never you mind about all of that. This is going to turn out just great. It is going to turn out just great, like the SST did, and like the ABM system did, and like the B–2, bomber did.

Our President says he is a great fiscal conservative, and I think he is, as long as you do not have to cut spending. I can hear it now out of the White House when people talk about the deficit, and George Bush will say: Those mean old Democrats made me do it. I have been trying to get spending under control but I do want that space station; I do want SDI; I want the super collider because it is in my home State of Texas and it is just wonderful science; I want more Trident II missiles. I want more spare parts. I want more of everything, but I am a wonderful fiscal conservative, and I am really concerned about this deficit, and if it were not for those mean old Democrats, I would do something about it.

Mr. President, does the deficit threaten this Nation as nothing else? Absolutely. Not one person in this body disagrees with that. Does this project add to that deficit with very marginal, if any, payback? Absolutely, yes.

I yield the floor, Mr. President.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Louisiana [Mr. JOHNSTON] is recognized.

Mr. JOHNSTON. Mr. President, the distinguished Senator from Arkansas said two things with which I strongly agree.

First, he began his talk about the merits of this project. And he said this project ought to be built, he added, "in a perfect world." And he said the science will always be there; we can discover it 50 years from now or 100 years from now. I guess you can always make those kinds of comments about science. But I certainly agree with him on that score.

Second, I agree with him when he said his math may be wrong, but it surely and demonstrably is wrong, totally wrong.

Mr. President, it is easy in this year of 1992 where Americans are unhappy everywhere and discontent pervades the land to forget how well off we are and why we are well off.

Indeed, Mr. President, ordinary Americans today live in more comfort, with better health, with better quality of life than kings and emperors of old because of what? Because of science. And we are here today to determine, Mr. President, whether we ought to go forward as a country on the most important scientific project in America.

My friend from Arkansas has attacked this project on three scores and he is dead wrong on all three scores. Let me deal with those three types of arguments.

First, he says about the costs. I think he has the cost of this project at over $50 billion at last estimate and growing, and it will never be paid for, he says.

Second, he says that all these scientists do not support it.

And, third, he says that the science is relatively worthless.

Mr. President, let me reveal the truth about the project costs. This project is on time and on budget. The budget is $8.25 billion. Where have all these other costs come from? They are comparing apples and oranges. When the Senator from Arkansas uses the estimate—he has used $11 billion, he used $20 billion, he has used $50 billion—he adds in things which are not part of this project, including operating costs, including costs from other estimators who are not correct.

But, Mr. President, the total expense, the total cost of this project, according to the Department of Energy is $8.25 billion in as-spent dollars. That is not 1990 dollars. That is in as-spent dollars.

But if you look at that which has already been spent, sunk costs through September 30, 1992, are $1.25 billion. The outstanding Texas contribution is $700 million. Termination costs are $200 million, and outyear inflation is $700 million.

So that, in effect, Mr. President, the cost of continuing the project as opposed to the cost of terminating the project is $5.4 billion.

This is a long way from $50 billion or $20 billion or all these other incredible costs that the Senator from Arkansas talks about.

The actual construction cost experience is better than the plan. The plan is the $8.25 billion. We have here surface facilities which were projected at $36.1 million. The actual contracts are coming in at $34.3 million.

Mr. President, one of these buildings came in a little over cost, but the others are under cost so that the buildings themselves are coming in at under

cost. The tunneling, and this is a 54-mile tunnel, costs are coming in substantially below what the estimates were. They were estimated at $137.5 million and are coming in at $97.6 million.

There is a $900 million contingency cost of this project which was designed to be large enough to include cost overruns if they occurred. But these cost overruns have not occurred and we have not had to use the $900 million so that in effect the $8.25 billion is probably going to be substantially under that cost.

Mr. President, this chart shows the stability of the cost estimates. We all recognize that there was a tremendous design upgrade cost earlier in this project. This was caused by the fact that the earlier design of the magnets was thought to be adequate and a cost estimate was made on the design of the magnets.

The scientists looked at it and decided that the magnets had to be redesigned and that resulted in a cost escalation back in 1988 of $1.9 billion or, this is in as-spent dollars, it was $2.35 billion.

The reason we have these different amounts in as-spent or actual dollars is to compare apples to apples. We need to be clear when we talk about the cost of this project as to when the estimates were made and what dollars we are talking about.

So here is the story of cost escalations of the project. It was on the redesign of the magnets. So the conceptual design back in January of 1989 was $5.9 billion and we had the design upgrades of $2.35 billion and that actually is what has accounted for the escalation in cost.

The actual design, the cost estimate of January 1991 was $8.25 billion. Mr. President, that has remained solid for the 18 months since it—actually it is about 20 months since it has been estimated. We are still exactly on target. The fact that there were cost escalations back in 1988 when we redesigned the magnets in no way means that those cost escalations will continue. The contrary, Mr. President, the biggest unknown in this project was the design and the manufacture of the magnets. They have been redesigned. They have now been manufactured, at least a set of magnets, 100 yards long, has been designed, manufactured, and tested and the performance is excellent, in every way meeting the design standards.

So that what we have now, Mr. President, is full confidence that the cost estimates will be met. We have that confidence because we have actually manufactured the magnets. We have actual experience in constructing the buildings, and we have actual experience in digging the tunnels. We have in place actual experience in digging through that chalk formation, so we know what we are going to find.

We are told that this project will eat up all the scientific money from every project from—the Senator from Arkansas talked about Fermi lab. The fact of the matter is in this year's budget we have upgrades for Fermi lab.

He says it will take away money from Brookhaven National Laboratory in New York. We are building the relativistic heavy iron accelerator as we speak in Brookhaven, NY, and it is not taking the money from that.

Mr. President, the fact is, if you look at Federal research and development spending, the National Institutes of Health take 19.4 percent of the budget on Federal R&D spending, SDI takes 6.2 percent, the space station 2.9 percent, NASA basic research takes 2.6, the National Science Foundation takes 2.6, energy basic research takes 2.3 percent, defense basic research is 1.3 percent, and the superconducting super collider takes 0.6 percent of the R&D funding budget.

Now, Mr. President, the argument that this 0.6 percent of the Federal R&D budget is going to stop cancer research, is going to keep us from building the relativistic heavy iron accelerator at Brookhaven Lab, it is going to cut off funding from Fermi Lab, it is going to stop progress in this country is about as absurd as the Senator's joke that we claim this is going to stop everything from corns to halitosis. Mr. President, the fact is this 0.6 percent of the Federal R&D budget is not going to stop basic research.

The fact is, Mr. President, that the superconducting super collider is on budget, on time. It represents 43/100ths of 1 percent of the budget. If you cancel this project and 22 others like it, you would save 1 percent of the budget. Let me repeat that. If you canceled the superconducting super collider and 22 other projects, you save 1 percent of the budget.

Now, Mr. President, this is not the problem. As the old saying goes, "You can fool the fans, but you can't fool the players," and the players in this body, the people who know about budgets, knows that the problem of our budget is in entitlements, which take up collectively 59 percent of the budget, and not with the superconducting super collider, which takes up 43/1000ths of 1 percent of the budget.

Now, of course, you can say it all adds up. The President, scientific research has not been increasing pell-mell. It is not what is hurting our budget today. It is entitlements, and particularly the medical part of entitlements which are going up at 15 percent a year.

Mr. President, we are told that a whole raft of scientists do not approve of this project. The fact is, Mr. President, the science community strongly supports this project.

Mr. President, I have in hand a letter signed by 40 eminent scientists, including 20 Nobel Prize winners, who say, "We are deeply alarmed by its immediate destructive effect on the entire U.S. scientific enterprise and even more concerned about the serious long-term damaging consequences of this action"—"this action" being the cancellation of the superconducting super collider.

Mr. President, I ask unanimous consent that this letter, signed by these 22 Nobel Prize winners and other distinguished scientists, be printed in the RECORD.

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

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,
New York, NY, July 13, 1992.

Hon. J. BENNETT JOHNSTON,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: We the undersigned members of the scientific community are shocked and dismayed by the House rejection of funding for the Superconducting Super Collider. We are deeply alarmed by its immediate destructive effect on the entire U.S. scientific enterprise and even more concerned about the serious long-term damaging consequences of this action.

The approval of the SSC project in 1990 was widely acclaimed as our nation's firm commitment to be a leader in this scientific age. It has galvanized many foreign countries to follow us and collaborate on this unique common effort. It has also inspired our younger generation to be optimistic about their future in science and technology.

The construction of the SSC is at the cutting edge of advanced technology and industrial capability. It will generate a large number of jobs and will greatly enrich the nation's technological strength through training, research and manufacture.

At present, the scientific goals of the SSC are even more relevant and compelling than a few years ago. Furthermore, the SSC project has already made important scientific and technological progress in the design and development of the accelerator and detectors. At many international conferences, the initial achievements of the SSC project have been recognized as the symbol of our great strides forward in science and technology. This sudden rejection stuns and confuses. To kill an undertaking that is so splendidly fulfilling its expectations and its mission raises fundamental questions about our national commitment and our ability to carry out long-term scientific projects. Such an action is clearly damaging to future international collaboration on our scientific ventures.

We are painfully aware of the need to bring the budget deficit under control. However, in this world of very rapid change where confidence in any country can be quickly eroded, it is essential for our Nation to steadfastly preserve and expand its scientific and technological strength.

The SSC is an investment for the future in science, technology and people. We, therefore, respectfully urge you to restore its funding.

Sincerely,

(The signatures of the following are on file.)

Sidney Altman, Yale University (Nobel Prize in Chemistry, 1989).

Hans A. Bethe, Cornell University (Nobel Prize in Physics, 1967).

Paul Chu, University of Houston (National Medal of Science, 1988).

Leon N. Cooper, Brown University (Nobel Prize in Physics, 1972).

Alan M. Cormack, Tufts University (Nobel Prize in Medicine, 1979).

James W. Cronin, University of Chicago (Nobel Prize in Physics, 1980).

Hans G. Dehmelt, University of Washington (Nobel Prize in Physics, 1989).

Sidney D. Drell, Stanford Linear Accelerator Center (Deputy Director, SLAC).

Herman Feshbach, Massachusetts Institute of Technology (National Medal of Science, 1986).

Val L. Fitch, Princeton University (Nobel Prize in Physics, 1980).

Herbert Friedman, Naval Research Laboratory (National Medal of Science, 1967; Wolf Prize, 1987).

Jerome I. Friedman, Massachusetts Institute of Technology (Nobel Prize in Physics, 1990).

Murray Gell-Mann, California Institute of Technology (Nobel Prize in Physics, 1969).

Donald A. Glaser, University of California, Berkeley (Nobel Prize in Physics, 1960).

Sheldon L. Glashow, Harvard University (Nobel Prize in Physics, 1979).

Marvin L. Goldberger, University of California, Los Angeles (President Emeritus, California Institute of Technology).

Maurice Goldhaber, Brookhaven National Laboratory (Director Emeritus, BNL; Wolf Prize, 1991).

Ernest M. Henley, University of Washington (President, American Physical Society).

Dudley R. Herschbach, Harvard University (Nobel Prize in Chemistry, 1986).

Henry W. Kendall, Massachusetts Institute of Technology (Nobel Prize in Physics, 1990).

T.D. Lee, Columbia University (Nobel Prize in Physics, 1957).

Leon M. Lederman, University of Chicago (Nobel Prize in Physics, 1988).

Boyce D. McDaniel, Cornell University (Director Emeritus, Laboratory of Nuclear Studies).

Joseph E. Murray, Harvard University (Nobel Prize in Medicine, 1990).

George E. Pake, Institute for Research on Learning, Palo Alto (National Medal of Science, 1987).

W.K.H. Panofsky, Stanford Linear Accelerator Center (Director Emeritus, SLAC; National Medal of Science, 1969).

John Peoples, Fermi National Accelerator Laboratory (Director, Fermilab).

Norman F. Ramsey, Harvard University (Nobel Prize in Physics, 1989).

Burton Richter, Stanford Linear Accelerator Center (Director, SLAC; Nobel Prize in Physics, 1976).

Abdus Salam, International Centre for Theoretical Physics, Trieste (Nobel Prize in Physics, 1979).

Nicholas P. Samios, Brookhaven National Laboratory (Director, BNL).

Frederick Seitz, Rockefeller University (President Emeritus, Rockfeller University; National Medal of Science, 1973).

Joseph H. Taylor, Princeton University (Wolf Prize, 1992).

Samuel C.C. Ting, Massachusetts Institute of Technology (Nobel Prize in Physics, 1976).

Alvin Trivelpiece, Oak Ridge National Laboratory (Director, ORNL).

James A. Van Allen, University of Iowa (National Medal of Science, 1987).

Simon Van der Meer, CERN Laboratory, Geneva (Nobel Prize in Physics, 1984).

Steven Weinberg, University of Texas, Austin (Nobel Prize in Physics, 1979).

Victor Weisskopf, Massachusetts Institute of Technology (Director Emeritus, CERN; National Medal of Science, 1979; Wolf Prize, 1981).

Robert R. Wilson, Cornell University (Director Emeritus, FNAL; National Medal of Science, 1973).

(This is the same letter sent on June 25th, but with more signatures.)

Mr. JOHNSTON. Mr. President, I have also signatories to that letter. There are 2,032 scientists who had signed similar letters. They are from all over the country and some from all over the world.

Mr. President, it is very clear that the scientific community is for this project. I have here a letter from Ernest M. Henly, who is president of the American Physical Society, who encloses the statement of the executive board of the American Physical Society of 26 June 1992, in which they say:

Taken at this late point, the cancellation of such a highly visible project would send a message to the world that the United States is relinquishing its long-term commitment to fundamental scientific research. Such a perception could not fail to have serious consequences for the long-term interests of this Nation.

They say they are dismayed by the recent vote of the U.S. House of Representatives.

Mr. President, I ask unanimous consent that statement be printed in the RECORD.

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

THE AMERICAN PHYSICAL SOCIETY,
Washington, DC, June 29, 1992.

Hon. J. BENNETT JOHNSTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: The Executive Board of the American Physical Society issued the enclosed statement on the Superconducting Supercollider at its meeting on Friday, 26 June 1992. We hope this statement can be included in the record of the Energy and Water Development Committee hearing on the SSC scheduled for 30 June 1992.

Sincerely,

ERNEST M. HENLEY,
President.

STATEMENT OF THE EXECUTIVE BOARD OF THE AMERICAN PHYSICAL SOCIETY ON THE SUPERCONDUCTING SUPERCOLLIDER, JUNE 26, 1992

The Executive Board of the American Physical Society is dismayed by the recent vote of the US House of Representatives to terminate funding for the Superconducting Supercollider. While we strongly reaffirm the position of the APS Council that funding for the SSC not come at the expense of the broad base of American science termination of the SSC would seriously disrupt progress in elementary particle physics. Moreover, taken at this late point, cancellation of such a highly visible project would send a message to the world that the United States is relinquishing its long-standing commitment to fundamental scientific research. Such a perception could not fail to have serious consequences for the long-term interests of the Nation.

Mr. JOHNSTON. Mr. President, we are told that other scientists whom Senator BUMPERS quotes give the impression they are against this project. For example, Dr. Jerome Friedman, a Nobel Prize winner, was quoted in the Senator's materials. Dr. Friedman says:

It has come to my attention that a document has been circulated which contains a quote attributed to me taken from a December 1991 issue of Physics Today. This quote, *which was taken out of context, implies I am* not a supporter of the superconducting super collider. I want it to be known that I am a strong supporter of the SSC.

And the letter goes on.

Here is another statement from Dr. Alvin Trivelpiece, who was also quoted:

Nothing has happened during the period since I left the Department of Energy which has caused me to change my opinion on the value of doing this project which will enable us to understand the fundamental properties of matter and to enhance the scientific progress of the U.S.

I could go on and on, Mr. President. The point is the American scientific community is a very strong and cohesive supporter of the superconducting super collider, and statements taken out of context to the contrary are simply not so. The American scientific community knows that this six-tenths of 1 percent of the Federal R&D budget is not going to sink science in this country. To the contrary, if you stop projects of this size this far in, it would be harmful to all science.

Now, Mr. President, why do we do this project? I have read more and more about World War II and the war in the Pacific. The war in the Pacific was not going well for the United States until one great event took place; it was the watershed event of the war in the Pacific which really set the scene for our victory over Japan. Up until the Battle of Midway, we had been outgunned. The Japanese Navy was far superior to ours. But at the Battle of Midway, which is called the "Incredible Victory"—in fact, there was a book written with that title—we were able to sink or seriously damage four Japanese carriers. Why were we able to do that? Because we broke the code, because we found out through our crytographers what the Japanese code was. We were able to decimate their Navy at the Battle of Midway and later at the battle of the Coral Sea, and we were able to shoot down Admiral Yamamoto later, all because we broke the code.

Mr. President, what we are talking about with the superconducting super collider is breaking the ultimate code of the universe, determining what the ultimate particles and the ultimate forces of this universe are. In breaking that code, we believe scientists believe there will be incredibly useful information which will come forth to the American public.

Scientific knowledge, Mr. President, is like peeling an onion, there are layers of it. We began with the Greeks, I guess. Dr. Lederman says that scientific knowledge began in the town of

Miletus in ancient Greece in 650 B.C. Clearly the ancient Greeks were those who began peeling back the layers of knowledge in Greece with Pythagoras, Euclid, Ptolemy, probes the secrets of astronomy.

We came along with a whole succession of scientists. Galileo determined the laws of the solar system and geometry; Prince Henry the Navigator, began the great science even before Columbus, of navigation. He did not know that the world floated on a sea of magma. He did not know anything about plate tectonics, but he founded a whole system of navigation which has revolutionized the world. Sir Isaac Newton came along with the laws of physical physics. Those laws are valid today; Mendel with genetics. Then we came along with electricity and magnetism. We discovered the atom; Madam Curie, Dr. Geiger, Professor Einstein discovered molecules, atoms, protons, neutrons, electrons.

And finally, Mr. President, we have come to what we believe are the ultimate particles and the ultimate forces, quarks and electrons and what we are trying to do with the superconducting super collider is to reconcile the whole pattern, the whole code if you will, of the universe.

What are all of these quarks and leptons, and how do the force between them relate?

It is in a sense, Mr. President, the ultimate scientific truth.

We have heard Dr. Leon Lederman, the distinguished Nobel Laureate, quoted a great deal. I would like to read just a couple of paragraphs from his testimony because I think it puts in context the superconducting super collider better than my words could do it.

Here is what he says:

Now we have reached what many, a consensus, believe is the bottom line. The quarks and electrons and their friends are, we believe, points of mass and energy in space.

The quark picture is very concise and correctly accounts for all the data we have collected over the centuries. However, the underlying simplicity still alludes us. Our current world view has 12 basic point-like particles which interact and combine with each other via four forces of nature.

We know and are continuing to learn in our labs a great deal about the point-like building blocks of matter, and of the nature of the forces, and like the motorist on a winding forest road, we are beginning to glimpse, however fleetingly, the towering peaks of a grand unity. But the mathematics is incomplete when we try to predict what happens at higher energy, at the energy of the super collider. And this is a sure sign that something important is missing.

Until we can complete the unification process and make the picture mathematically whole, the question of how the world works will not be answered, but the obstacles realized in the 1970's focuses on a bizarre, revolutionary new idea which was immortalized by the mayor of a place called Waxahachie, Texas, who in public some years ago said, "We have got to find the Higgs Boson."

If the mayor of Waxahachie can say that, something is happening in this Nation. The idea for the past decade or so is no longer what is inside, although we hope to continue to look. The Higgs idea which was so articulated by the mayor, is that we are looking at nature through a new and as yet hypothetical force field that in a sense makes a simple, overarching symmetric world look complicated. The Higgs idea also enables us to have a mathematically consistent and unified view of the world.

As a metaphor, think of a child's kaleidoscope which exhibits patterns of beauty and complexity as you rotate the tube, but inside, if you take it apart, one sees a few bits of colored glass and an ingenious array of mirrors. Higgs is like the mirrors. The pattern of colored glass is the simple formula that would tell us how the universe works.

Another metaphor, however limited, is think of a group of extraterrestrials watching a soccer game, but somehow that are incapable of seeing the ball, and they see a lot of people running around seemingly at random in a chaotic disorganized activity, but if someone postulates the existence of a soccer ball, the whole thing becomes clear and simple and elegant.

Mr. President, what that distinguished Nobel Laureate was saying is that we are trying to determine the code of the universe. What makes it work, what we are made of, what the cosmos is made of, what the smallest things and the largest things are made of.

Dr. George Smoot, who testified before our committee, the distinguished astrophysicist and cosmologist who most people have seen on the television lately, the one who discovered the ripples in space, in his testimony before our committee, I must say, Mr. President, gave one of the most fascinating dialogs, monologs on the cosmos that I have ever heard.

Interesting little tidbits that he said, among other things, were that the world, our solar system, is part of the Milky Way. Maybe ordinary people know that. I did not know that. But we are part of the Milky Way and the Milky Way in turn is made up of billions of solar systems, just the size of the Earth or bigger, with suns, moons, and all the rest.

But the thing that really was confounding to me was when he said that there are billions of other galaxies like the Milky Way, billions. And our understanding of that is only beginning to come into view. But Dr. George Smoot said that the information that will come from the superconducting super collider on particles and forces and the code of the universe is essential to the understanding of astrophysics and the cosmos and the universe; that the 80 percent of the matter out there in space which the scientists call dark matter, cannot be understood, cannot be described, either mathematically or in any other way, without an understanding of the elementary forces and particles that make up nature. It is the key, in effect, which unlocks the cosmos. So says Dr. George Smoot, the distinguished astrophysicist from UC Berkeley.

It is also essential to understand the smallest parts, the quarks, the leptons, the strong force that binds the nucleus of the atom together. What they are looking for, these scientists, Mr. President, is a mathematically consistent formula which will tell us how the world works together so that you can translate gravity into electromagnetism, into the strong force or into the weak force, which are the four fundamental forces of nature, and be able to understand those and the particles that make us up. Is this important? Mr. President, what Dr. Lederman was saying in the quoted piece from Senator BUMPERS when he said we should not do this because of the spinoffs, he did not mean at all that there would not be incredible spinoffs. To the contrary. He pointed out in his own testimony that magnetic resonance imaging was really a spinoff from the work at Fermi Lab, not because of high energy physics, but because of superconducting magnets used in high energy physics. So it is with so many other spinoffs here.

But the point Dr. Lederman was making is that this is the most fundamental mystery of the cosmos, what we are made of, and how these parts and forces fit together; and that that fundamental knowledge has to be worth six-tenths of 1 percent of the R&D budget. It has to be worth 43 one-thousandths of this year's budget.

Mr. President, these are important amounts, yes, but for the kind of science, for the kind of mysteries that we are trying to unravel with the superconducting super collider, they are trivial. Mr. President, we do not know what we are going to discover with the superconducting super collider. Einstein, when he came up with the theory of relativity—$E=mc^2$, energy equals mass times the speed of light squared—no one knew what that was going to reveal. It was the unknown. It opened up broad new vistas of science and progress for this country.

Mr. President, there are Senators in this body who when they came to this body 30 years ago, the gross national product—half of the gross national product has been added because of science discovered since they came here in the last 30 years. Thirty years, Mr. President. We do not know how we are going to use the basic code of the universe. Maybe it will only be to satisfy our curiosity about the cosmos, what it is made of, how it fits together, what is happening to it. Maybe it will be only to tell us what we are made of, and what are the elementary forces and particles of nature. Maybe that is all.

If that is all, Mr. President, surely it is worth it. Why did we go to the Moon

at much greater cost? Well, I guess to find out essentially whether it was made of green cheese; but almost nobody says that it was not worth it, going to the Moon at a cost of many times more than this project. It was because of the inherent curiosity of man.

We are talking about probes to Mars and other parts of the solar system. Most of that is because of the curiosity of man and woman. What could be more basic and fundamental than the code which regulates this entire scheme of things? That great philosopher, Paul Freund, says that the thing that unites mankind, unites civilization, is our profound ignorance of the three fundamental questions of the universe: Whither, whence, and why.

Maybe in a religious sense, this will not answer those questions, but it will surely answer in a scientific sense the question of whence. Where did we come from scientifically? What are we made of? And indeed, what is the future of the universe? It is answered by the questions to be unraveled by the superconducting super collider.

Mr. President, we have heard questions raised about why do you need a superconducting super collider? You have other projects. You have the project at CERN. You have the projects at Fermi Lab and elsewhere. Well, the answer is that scientists believe that you can break apart these small parts and examine them with the scientific certainty that you need only with the kinds of energies to be generated at the superconducting super collider. It will be a collision which will take place at 40 trillion electron volts—three times that which is even dreamed of at CERN.

I mentioned earlier four fundamental forces of nature. One of those is the strong force that binds the nucleus of the atom together. In effect, we need a strong hammer to crack that nut. We need 40 trillion electron volts to be able to take apart that nucleus of the atom and to take apart these fundamental parts of matter. It cannot be done with less energy and with a smaller track. Fifty-four miles around was designed not because we wanted to build a bigger race track, but because we need 54 miles around in order to generate 40 trillion electron volts, in order to get to those basic secrets of the universe.

Mr. President, I could go on and on about that which will be discovered by the superconducting super collider, but the fact of the matter is, if we knew exactly what it was we were going to discover, it probably would have been already discovered. I can tell you that the spinoffs from high energy physics with lesser machines have been incredible. There are 20 million medical procedures done, such as cancer—I can tell you what it does, when it shoots the beam of ions inside of a person and can extract the cancer and destroy the cancer without destroying any of the other tissue around it. There are 20 million of those kinds of medical procedures which are a direct outgrowth of high energy physics, and which were discovered on account of not super colliders, but at least colliders.

Mr. President, indeed, there will be what we call a "beam line," constructed at the superconducting super collider, which will have one of those medical applications. Twenty million of those applications are a direct outgrowth. Magnetic levitated trains, we hope, will be a direct result of superconducting magnets. Superconducting magnetic energy storage, high-speed boats, using superconducting magnets, and on and on the list goes of that which we can expect from this.

Mr. President, the fact of the matter is that the fundamental science, breaking the fundamental code of the universe, is surely worth the forty-three one-thousandths of 1 percent of the budget which this represents, and I trust the Senate will continue to fund it.

Mr. President, I ask unanimous consent to have printed in the RECORD the lead editorial in the New York Times of this morning, supporting this project.

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

[From the New York Times, Aug. 3, 1992.]

LET'S CONTAIN THE SUPERCOLLIDER

The superconducting supercollider, an enormous and costly instrument for probing the structure of matter, poses a stark issue for the Senate today:

Should the nation, faced with recession and budget deficits, continue to build an $8-billion machine to explore scientific questions that are of great intellectual interest but may have little practical payoff? Or should it write off the $1 billion spent so far and terminate the project?

The House voted in June to cancel the project as unaffordable. But President Bush traveled to the construction site in voter-rich Texas last week to declare support for "one of the greatest scientific projects in the entire world." The Senate is expected to approve further funding today, setting the scene for a showdown with the House over whose view will prevail.

On the merits, the mammoth machine is worth building—provided it can be financed without robbing a host of other vital scientific projects.

The supercollider will be a huge underground instrument, 54 miles in circumference. It will accelerate two beams of protons in opposite directions around a giant ring lined with magnets. When the protons smash together, they will release showers of debris from which scientists hope to divine a deeper understanding of the fundamental forces and particles that shapes the universe.

Unlike the controversial space station, which is primarily an engineering feat, the supercollider is at the cutting edge of research in two important fields. It is a key to further advance in high-energy physics, which seeks to find the most elementary particles and forces from which everything else is made. And its findings will shed light on events at the very creation of the universe, the domain of cosmology.

Even critics don't quibble that the supercollider will perform good science. But its relative importance remains in dispute. Some critics note that a large accelerator now being built in Europe may answer some of the same questions. Others contend that less costly small-scale physics is even more important because it involves more scientists and students, and it studies phenomena that are relevant to the every-day world.

Proponents have greatly exaggerated their case. They suggest, plausibly, that the machine might revolutionize our understanding of force and matter. But they neglect to mention that it may prove a dud, finding little of interest. And they predict spinoff benefits for industry and medicine without acknowledging that $8 billion invested more broadly in science might yield even greater benefits.

Proponents have repeatedly low-balled their cost estimates, only to revise them upward. And they insist that foreign nations will foot part of the bill, with little to show for their optimism.

In the past, this page has opposed the collider for fear its escalating costs would divert funds from more fruitful research. But with care and determination, it now looks possible to do both. Project managers seem finally to have stabilized their costs and surmounted the most worrisome technological hurdle—the huge superconducting magnets.

The collider should be completed because it will perform pioneering research in a field long dominated by the U.S. but where Europe is taking the lead. It would be a shame for a great nation to shrink from this intellectual adventure.

The project should be canceled only if it threatens to damage other fields of science, thus doing more harm than good.

Congress could assure that happier outcome by continuing the collider while setting firm limits to the total budget for high energy physics in future years. That way the new machine could be financed largely by shrinking or closing its obsolescent predecessors. Resources would not need to be drained from other vital research.

The PRESIDING OFFICER. The Senator from Nevada.

Who yields time?

Mr. REID. Mr. President, will the Senator from Louisiana, the manager of one aspect of this debate, yield to the Senator from Nevada 12 minutes?

Mr. JOHNSTON. Mr. President, I yield 15 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada [Mr. REID] is recognized.

Mr. REID. Mr. President, Nevada was an original competitor for the superconducting super collider. Nevada's efforts were supported by the entire congressional delegation and all of Nevada's State officers. Nevada would have benefited significantly both from an economic standpoint and also from the standpoint of prestige. But, Mr. President, Nevada will still benefit but not from the project bringing new jobs to Nevada. Nevada will benefit because the country will benefit. The superconducting super collider is good for America.

Our Nation's future, Mr. President, rests on keeping and/or regaining our scientific and technological edge. Report after report tells a sad story of American children who are falling farther and farther behind in science and math competency. An illustration of that problem as well as the solution can be found in a recent book written by Lester Thurow, a Novel Prize laureate. The book is entitled "Head to Head."

In this book, Lester Thurow documents why we are not winning the economic competition between ourselves and other industrialized democracies. Lester Thurow says—and I quote:

America did not become rich because it worked harder or saved more than its neighbors. A small population lived in a very large, resource-rich environment. Natural resources were combined with the first compulsory public K through 12 education system and the first system of mass higher education in the world. Together, they gave America an economic edge. While Americans may not worked harder, they were better skilled and worked smarter.

He goes on to say the, "the skills of the labor force are going to be key competitive weapon in the 21st century."

Throughout this book, Mr. President, Thurow talks about the importance of science, technology, and education in this country.

You see he has to be concerned, Mr. President, because in America today, we have fewer physics teachers than we have school districts, not schools, but school districts.

Education and skills are the keys to the future of this country, the future of the world. The world comes to American for postgraduate education. We need to fill our graduate schools with our kids, kids that have mastered the academic difficult subject of science and mathematics. We do not need a majority of our graduate engineering schools to be foreign born as they are today. The superconducting super collider and all it represents in future technology and research helps point the way in our future economic competition with other industrialized nations.

It is important in keeping our scientific edge. When it is completed, the superconducting super collider will be the world's largest. It will be capable of exploring the makeup of matter at the highest energy levels ever conceived. Opponents of this project cannot dispute nor have they disputed that the superconducting super collider will generate good science.

On it, Mr. President, America will train a generation of physicists not only from our country but from the world over. There is, however, a dark cloud on the horizon. The Europeans are in hot pursuit of their own next generation atom smasher. At the present time, the Europeans plan to expand their largest atom smasher called CERN on the Swiss-French border. Should we abandon or delay the superconducting super collider, the Europeans will build the world's largest smasher and they will reap the harvest and spinoffs that will be an outgrowth of this project. They will train a generation of physicists in Europe, not in America. They will be the technology leaders, not America. Do we want that? No, we do not want that.

Mr. President, I support scientific research. The space program and SDI are two examples of the multitude of federally funded programs that have technological spinoffs. Whether you support either of those programs really does not matter for purposes of this debate, because we will have to acknowledge that those two programs have developed significant spinoffs. These ranged from breakthroughs in new materials, breakthroughs in laser technology, and advances in satellite remote sensing, and even new ideas, Mr. President, in high-temperature lightweight ceramics.

I think it is probative, Mr. President, to read a part of a letter I received on July 31 from Senator JOHNSTON, chairman of this subcommittee, and chairman of the Energy and Natural Resources Committee; and LLOYD BENTSEN, the chairman of the Finance Committee; and from DANIEL PATRICK MOYNIHAN, senior Senator from New York, who is the academic of the Senate.

In part, this letter from these three Senators said some things worth repeating, and I quote from the fourth paragraph of this letter:

This project is regarded around the world from the cutting edge of fundamental science there is. The superconducting super collider, once completed in 1999, will be the world's largest scientific research facility, a 54 mile underground accelerator that will explore the inner workings of the atom and may be the one instrument that will tell us what makes up 90 percent of the universe. The superconducting super collider will not only serve as an instrument for basic scientific research, but will also be a catalyst for economic growth in education and energy. Spinoff technologies from particle accelerator research already are improving cancer treatment, medical diagnostics, cryogenics supercomputing and transportation.

Success in this magnificent quest is the all more satisfying because it is America that is leading the way. Everywhere in the world, the most brilliant scientists and engineers want to come to America to study and to work. America is absolutely number one in the science in the world and the superconducting super collider is essential to keep it that way.

At this time, Mr. President, we do not know what advances the superconducting super collider will bring, but I do know this project will keep our Nation at the cutting edge of scientific research and technology. We must be prepared to respond to the Europeans and the Japanese and take the competitive edge of this situation.

Mr. President, I do not think anyone here today should base their vote, their choice, their decision upon the underlying amendment in the bill. You should not base your decision on who authored the amendment or who is the chairman of this subcommittee. The decision is more complex and more important than that.

I think, Mr. President, each of my colleagues should base his or her vote on an America that is still curious like Lewis and Clark was curious. An America still dreaming like its Albert Einstein, still stretching through new horizons, horizons based on science and technology. Mr. President, in choosing the superconducting super collider you will see an America concerned not just with platitudes about education, and we talk a lot about platitudes, but real education, real science.

Let us move, Mr. President, from a society of adulation and ease to one seeking the boundaries of knowledge, a country having room for Albert Einstein and his theory of relativity, a world having room for a Philo Farnsworth and theory about the thing called television.

You see, Mr. President, in 1844, there is an example of how we have been and should be in the future involved in technology. In 1844, the Congress and the President approved the expenditure of $40,000 to build a telegraph line between Baltimore and Washington, DC, to see if this new technology would work. For the expenditure of this money, the world was revolutionized, the communications industry was revolutionized. The Government stepped out and the private sector stepped in and the future was certainly better, because of the expenditures of these moneys.

Mr. President, let us vote for education, today. Let us vote for America's future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I will yield to the other Senator from Nevada in just a moment.

While I am waiting for him to come in, I will just make a couple of points that I failed to make this morning. For example, one point I think worth stating is that when I said that Brookhaven Laboratories in New York and the Stanford linear accelerator at Stanford would likely have to be closed because this would crowd out that kind of research, I forget that my friend from Louisiana, the chairman of the committee, decides how much Brookhaven and Stanford is going to get.

So I would say, very candidly, I think those two projects are safe until after this project is put to bed. I think you can rest assured that the Senator from Louisiana is not going to risk the loss of votes in California and New York over a few hundred million dollars at Stanford and Brookhaven. I am not

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criticizing him for that, I am just making a point on the way things work around here.

The other thing I want to point out is the Senator put the New York Times editorial of this morning in the RECORD. And I want to encourage all my colleagues to read that very, very tepid endorsement of the super collider. The Times editorial points out, No. 1, that it should not be built if it is going to crowd out other science: and No. 2, do not be misled by some of the outlandish representations that have been made on what we are going to get back from this project.

For example, they very candidly point out something I neglected to say in my opening statement this morning, and that is you may get nothing. You may get nothing out of this. Not one single physicist is going to tell you that they are going to reach the ultimate goal that they seek with the expenditure of this $11.8 billion, $12 billion.

So, as the Times said, to use their word, the whole project may be a bust.

But I very carefully documented the very question the Times asked: Does it crowd out other science?

Well, you can answer that two ways. It does not crowd out other science if you are willing to continue to watch the deficit go forward, and fund everything else as well as the super collider. But if you are going to try to keep scientific budgets and R&D under some reasonable control, then the obvious answer is, yes, it does crowd out other science. And I tried to document that case this morning.

Finally, there is another case to be made, Mr. President, and it is that if you delay this project, you may find that you will be glad you did not build it because there is a lot of other science coming along that indicates a much smaller—a much smaller—version of this may be applicable by the turn of the century, and you will have this project on your hands which is already obsolete.

That is exactly what the British are doing, and in a sense, that is what they are doing in the CERN project in Geneva. I will tell you what would really be interesting is if the CERN project in Switzerland came up with the answers to what we are looking for at about the time we got through spending this $12 billion. I say $12 billion; you all know it is going to be half or twice that much.

Finally, Mr. President, I will not read now—I will do that later—what the Congressional Research Service says on why the British are very apprehensive about this. It is the same reason the Japanese are so apprehensive: They are not putting any money in. We look at the Japanese to be on the cutting edge of all of these things, and they have not yet chosen to put one thin dime in this.

Finally, Mr. President, I ask unanimous consent that the editorial from the London Economist of June 27-July 3, 1992, be printed in the RECORD.

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

[From the London Economist, June 27-July 3, 1992]

PAYING FOR BIG SCIENCE

Listen to a young particle-physicist, overheard in the bar at a conference: "Maybe half a billion, but no more—a realistic number". He was not talking about the electrons in his accelerator, or the years it takes a proton to decay. (Those numbers are a lot bigger.) He was talking about the stack of taxpayers' dollars needed to pay for a forthcoming experiment. Physicists, inured to immensity, think of such sums without awe or respect. When it comes to public money, congressmen, as a rule, are also rather underawed. So it was a surprise last week when the House of Representatives decided to save $8 billion or more by taking the grandest of the physicists' dreams, the Superconducting Super Collider (SSC), out of the budget.

Big science is stirring; particle physics is fruitful. But the decision to chop the SSC was right. If knowledge is the goal, there are better ways to spend that vast sum.

A UNIFIED FIELD OF PHYSICISTS

The SSC is designed to accelerate beams of protons closer to the speed of light than ever before. As they are accelerated the protons become heavier, and it becomes harder and harder to convince them to move in circles rather than straight lines. That is why the SSC is so large; it is designed to deal with protons so massive that thousands of powerful superconducting magnets are needed to entice the beams to bend, even when they need negotiate only the gentle curves of a ring 86km (54 miles) around. The energy release when such protons are smashed together would produce flurries of hitherto-unseen particles. They may be particles of which theory already speaks. They could be novelties to strike the theorists dumb.

From the 1930s, when the world's most powerful accelerator could be held in your hand, the history of fundamental physics has been one of arranging ever more energetic collisions between particles. Higher energies allow the workings of the universe to be examined on smaller scales. They have allowed physicists to dissect the atomic nucleus, then to divide its constituents into smaller pieces still and describe the forces that bind them together. They now feel themselves on the brink of pulling all their theories—save that of gravity, which still stands apart—into a single account of the forces of nature, and of the constituents of the world that those forces predate and underlie. In the underground chambers of the SSC, they hope at last to sketch out that grand unified theory.

Probing nature's secrets has been the scientist's delight for centuries. It has proved profitable, yielding chemistry, electronics and the other commonplace miracles of modern technology. If the SSC were the only tool that could take this investigation further, it might be worth saving. But there are other, less dramatic schemes—less inspiring to physicists but still intriguing enough to be done and done well. It is possible to study the mundane in detail for clues about what lies beyond, rather than exploring uncharted energies to confront the unknown head-on. Insights may come from trapping particles drifting through the cosmos. New technologies could allow collisions like the SSC's in smaller, cheaper machines. Research towards these ends is likely to be starved of money by the ravenous appetite of the SSC.

For those who feel they must blaze trails, there is a 27km circular tunnel outside Geneva, where Europe's particle physicists hope to build an accelerator that might reach 40% of the SSC's energy. It is a costly project, though much cheaper than the SSC. But if Europe, America and Japan co-operated, uniting the world's physicists while they seek to unite the world's physics, the accelerator would be affordable. Unfortunately, physicists fear that politicians do not think that way. Some believe the death of the SSC could persuade Europe's governments to abandon their own accelerator. Advocates of the SSC argue that if it is cancelled, smaller projects will die with it in a general retreat from particle physics.

This need not be so. Particle physics matters not because particle physicists say it does, or because it brings jobs to certain congressional districts, or because it lets one country be top nation. It matters because the search for new and profound knowledge is an endeavour that reflects well on any who undertake it, and because it stands a good chance of improving man's ability to use nature. This does not make it worth doing at any cost. In big science, where costs are frightening, governments should reflect that collaboration can sometimes be as effective as competition.

Mr. BUMPERS. In that editorial they say:

But the decision to chop the SSC was right. If knowledge is the goal, there are better ways to spend that vast sum.

Mr. President, I yield to the distinguished Senator from Nevada 10 minutes, and if he chooses to yield some of it back, that will be fine.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, I thank the distinguished senior Senator from Arkansas.

Mr. President, I rise today in support of the Bumpers amendment to cut funding for the superconducting super collider [SSC]. Let me start out by stating what this debate is not about. It is not about whether the Federal Government ought to generously support science.

We should. And I do. Most Members would agree that Federal support of science research helps foster many of the technological advances that improve our competitiveness as a nation and improves our standard of living as individual citizens in this great country of ours.

This debate is not about whether particle physics is an important element of our science effort. It is. Particle physics has the potential to tell us about the basic structure of matter. I am not against Government funding of science or particle physics specifically.

In fact, I have in years past supported construction of the SSC. But we are not debating the merits of basic science or particle physics. What we are debating is whether we as a Nation have the funds to support all the science projects we would like to invest in.

Mr. President, I think the answer to that is obvious. Our resources are finite and we must make priority judgments.

Particle physics is an exciting field, but so is exploration of space, genetics, robotics, artificial intelligence, and dozens and dozens of other worthwhile projects.

Given our current financial situation, we do not have the luxury of funding all the exciting science initiatives presented us and instead will have to make many hard sacrifices if we are going to get our financial house in order.

Therefore, I believe that it is appropriate in determining how we expend our money for science projects and how we arrange those priorities that we subject those expenditures to a three-way task:

The first is, how much money do we have to spend on worthwhile science projects? How much should be allocated in the Federal budget each year for science projects?

And, as I have indicated, Mr. President, I am supportive of the very generous allocation of those resources.

Next, Mr. President, I suggest we must examine how does each of those scientific programs help our Nation in terms of our ability to compete internationally to introduce new products that will be made in this country by American factories and by American businesses. And what is its effect on our standard of living? Will it improve it or is it unnecessary in order to achieve that type of basic competitiveness in the global marketplace of the future.

Finally, Mr. President, I suggest that we ought to examine how well the individual program is run. Tested by that standard, the SSC fails to meet the test.

What has changed since my earlier support is an alarming deterioration of our financial situation and in the SSC program itself.

Since then, the SSC's costs have more than tripled to over $10 billion at the same time our national debt has quadrupled to $4 trillion. That, Mr. President, in a nutshell says it all.

Our Nation has a $4 trillion national debt and we are spending $800 million each and every day just on interest on that national debt.

This year, we are looking at adding close to another $400 billion to the national debt, which means the interest payments will increase by an additional $20 billion. That money does not feed anyone or clothe anyone or educate anyone or take care of anyone's health care or make us more competitive.

It just services the national debt by making the minimum credit card payment on the enormous principal of some $4 trillion.

Everyone of us knows that continuing to run annual deficits and accumulated debt drain our precious resources that will compromise our future standard of living.

Yet we continue to ignore the hard choices that have to be made. Setting aside for a moment whether this $10 billion could be better spent on education or infrastructure, let us consider how the SSC compares with other science programs in terms of helping our competitiveness and improving our standard of living.

In an attempt to prioritize research projects, the Department of Energy undertook in its Office of Policy and Internal Analysis to evaluate all of the science programs that were being funded by the Department on the basis of the merits of these programs.

The director of the policy office specifically directed that the analysis should not consider political sensitivities. Based strictly on the merits of each program, the SSC came in 10th out of the 11 programs.

That is how the nonpolitical experts at the Department of Energy rated the SSC.

Mr. President, how about experts in the private sector? What is their view of the SSC Program?

The Industrial Research Institute, a nonprofit research organization funded by Fortune 500 industrial companies, took a survey of the research and development corporate vice presidents across America and asked them to rate the five big science projects currently being considered in terms of their promise to return something meaningful to the competitiveness of the United States.

Here is how they ranked them:

First, the human genome project;

Second, the national aerospace plane;

Third, the space station;

Fourth, the strategic defense initiative [SDI];

Fifth, the superconducting super collider.

In other words, America's corporate scientists rated the SSC dead last in terms of its benefits for our national competitiveness.

What are the policy implications of funding a project rated so low by DOE's own nonpolitical policy department and by corporate R&D managers?

The SSC commands over one-fourth of DOE's entire science budget in the President's fiscal 1993 budget request and is allocated almost 80 percent of the entire high-energy physics budget.

SSC funding will concentrate research dollars in an area that accounts for less than 1 percent of all science research.

Supporters of the SSC have circulated material showing all the great spinoffs from the project.

As Congressman SHERWOOD BOEHLERT recently pointed out in the argument that occurred in the other chamber:

Contrary to all the hype, the SSC will not cure cancer, will not provide a solution to the problem of male pattern baldness, and will not guarantee a World Series victory for the Chicago Cubs.

According to the Congressional Budget Office, technological spinoffs are more likely when we fund a broad base of research programs rather than a few large projects.

Never before have we had more scientists submitting worthy applications for funding to the National Institutes of Health and the National Science Foundation only to be told there is not enough money to fund their projects.

The SSC, if it is not stopped now, will eat up dollars for scientific research projects and leave few, if any, dollars left for less costly, but more effective science projects that take place in our laboratories and in our universities throughout the country.

Finally, I believe we must look at how well run has the SSC project been.

The record is dismal.

The SSC Program has been plagued by cost overruns and poor management from the very beginning.

In 1983, we were told that the total cost would be about $3.9 billion.

In 1986, that figure jumped to $4.2 billion; by 1988, to $5.3 billion; and then later, in 1989, to $5.9 billion.

Now an independent cost estimate has soured to $11.25 billion.

On top of that, we will spend $500 million a year maintaining and operating this program.

Over the next 20 years, another $10 billion.

The SSC stands as yet another example of the management problems rampant at DOE.

Let me quote from the then-Deputy Secretary of Energy, W. Henson Moore, in a letter to the project manager sent in January of this year:

I have learned of that the overrun problems are continuing and may even be getting worse * * * the actions taken thus far appear to me to be woefully inadequate

Those were observations made by the No. 2 man in the Department of Energy earlier this year, indicating that the management problems with respect to the SSC have not been solved and, indeed, are getting worse. That is hardly the kind of project that ought to commend itself to a priority in terms of our funding.

Just a very few weeks ago the Senate debated a constitutional amendment to balance the budget. I supported that amendment. That was not the prevailing judgment of this body. But those who opposed the amendment argued that we cannot wait for the 3 to 5 years for the amendment to be ratified. We should start taking steps now so we do not pass this terrible burden of an expanding deficit on to our children and our children's children.

As my able colleague, the distinguished senior Senator from Arkansas has pointed out, it is clear that this project will get a sufficient number of

votes from my colleagues in this Chamber. But I think the message we send is a dreadful one, that we are unable to manage the finances of government, that we were unable to make the difficult choices, and that we are unable as an institution to establish priorities. I fear that the conclusion the American public will reach is that we are long on rhetoric but short on performance.

I yield the floor and yield the remainder of my time.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the Senator from Texas.

Mr. BENTSEN. Mr. President, with the consent of the manager in opposition to the amendment, I yield myself 15 minutes.

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

Mr. BENTSEN. Mr. President, I recognize the concerns of my friend from Nevada and, in turn, my good friend, the senior Senator from Arkansas. I join him on a number of issues insofar as cutting back on this deficit and trying to change the order of priorities. They are not easy choices, but I do not defer to anyone when it comes to trying to see that we get this deficit down.

I have supported a balanced budget amendment since the day I came to the U.S. Senate in 1971, long before it was politically fashionable to do so. There is no question but what the long-term economic health of this Republic is being increasingly jeopardized by a decade's worth of 12-digit annual Federal budget deficits.

But there is also no question that our economic future is being harmed by a declining international competitiveness, due in part to insufficient investment in basic scientific research. A technologically and economically more competitive America will generate more revenue for the Federal Treasury, and will help raise the standard of living of our people.

The superconducting super collider is not just one more line item in the Federal budget, nor would its cancellation make a perceptible dent in the deficit reduction. Even as a federally funded research and development enterprise, the SSC is a fiscally modest undertaking. If you put it in perspective, looking at the proposed fiscal year funding for the SSC, it represents only 3.5 percent of the Federal budget expenditure for general science, for space technology, and the program will never consume more than 3 percent of the projected annual total Federal expenditures for research and development. The SSC's average annual cost from inception to its completion in the year 1999 comes to less than $1 billion, or about one-half the cost of a B–2 bomber or about one-fifth of the cost of a new aircraft carrier.

Compare those average costs to other research and development programs, such as the $14 billion for the National Institutes of Health, the $3 to $5 billion for the strategic defense initiative. Consider, also, the fact that the State of Texas, even though plagued by the worst recession it experienced since the Great Depression, has committed itself to $1 billion worth of those costs; 12 percent of the total cost. Tell me any other State in the Nation that has made that kind of a financial commitment on a Federal project? Almost $300 million of that has already been expended.

One of the interesting things in its development is that in trying to keep it on schedule, at times the money coming from the Federal Government has been irregular to the point that it caused a hitch in construction. So the State of Texas funds, in spite of all of the State's budget deficits and problems and concerns, has been like a surge tank, bringing in the extra money at the critical times to keep a continuity in the process.

If you compare the SSC to labs in other States, the question arises of how much did the State of California contribute to the construction of the Lawrence Livermore lab? How much did the State of Illinois contribute to the construction of the Enrico Fermi lab?

Mr. President, I have heard a lot of talk in recent days about the SSC being nothing more than a big slab of Texas political pork. Nothing could be farther from the truth. Some of those making that kind of comment are from States that have long hosted national energy physics laboratories. Was construction of the Lawrence Livermore lab out in California nothing but a piece of California political pork? Was the construction of the Enrico Fermi lab in Illinois just a piece of political pork for Illinois? Of course not.

Waxahachie, TX, was selected as the SSC site for sound scientific reason. A Federal commission looked at some 20 sites, reduced the number down to 7, and then finally chose that site. They made a contract with the Government of Texas and the taxpayers will participate to make a substantial contribution to the cost.

One of the reasons that area was chosen is because of the stability of the chalky, geological formation which provides stability to the SSC's 54 miles of tunnels and the experiments to be conducted within them. It was not decided by who had the most votes in any particular committee. It was not a political decision but a scientific decision and a contract made with a State government.

How are we ever going to get State contracts in the future where that State shares part of the cost if you do not live up to the contract after they have made the commitment, after they have begun to condemn lands, and move people off farms?

There is a very good reason why Livermore, SSC, Fermi and other laboratories are called national laboratories—national—because they are, indeed, national scientific enterprises aimed at benefiting all Americans, advancing American science. There is no Texas or California or Illinois science.

There has been a lot of recent talk, Mr. President, bemoaning the absence of a significant foreign investment, participation in, and financial support for the SSC. I ask, so what? Sure, it would be nice to have others pick up part of the cost, but I hope we have not reached a point in this country where our readiness to proceed with any major scientific enterprise is to be made contingent on foreign attitudes rather than based on our best judgment of what is right for our country. Perhaps the Japanese, South Korean and other foreign reluctance to participate in the SSC stems from the conclusion that the Americans lack the political will to carry through on a program—and that kind of a conclusion was certainly reinforced by the House vote against the SSC. We want to have Nobel prize winners in energy physics gathering together in the United States to research these ideas, to exchange viewpoints, to advance that kind of a science—rather than having them meet in Japan or in France.

Mr. President, the issue before us far transcends money and jobs. If it was only about money and jobs, I think it would be a pretty weak case. What is the superconducting super collider? It is many things. The superconducting super collider is the latest chapter in a 60-year long American odyssey and high-energy-physics basic research, which at each juncture has yielded commercially advantageous applications, and technological spinoffs that have helped improve the standard of living of our people and our economic competitiveness abroad.

The superconducting super collider is a means of preserving and enhancing America's global lead in such wave-of-the-future technologies: A superconducting wire, super computing, cryogenics, superconducting magnets and noninvasive medical diagnosis and treatment.

The superconducting super collider is a vehicle from adjusting in a world in which a nation's security and standing derived first and foremost from its relative military power to a world in which the inseparable twins of technology prowess and economic competitiveness are already displacing military might as the premier yardstick of world leadership. In this postcold war era, we do not want to end up like France in the postworld war era after World War I, where their economy and international competitiveness was destroyed, and the only thing they had left as a symbol of their strength was their military power.

The superconducting super collider is also a means of facilitating the transition of much of our defense industrial talent to nondefense endeavors. The SSC demands engineering, manufacturing, fabrication, and management skills that have been the foundation of our now shrinking aerospace and defense industries.

The cold war's demise has confronted us with a daunting task of converting many of our swords and plowshares over the coming decades, and the SSC provides a model of civilian scientific enterprise that can effectively absorb human talent that has been heretofore devoted to the science of war.

Finally, the superconducting super collider provides a basic research training route for future generations of American scientists.

Would you really rather have our young scientists travel to France or Japan because that was the fertile breeding ground of scientific thought and research and exchange of viewpoints? Even today, 7 years ahead of the SSC's completion, thousands of students and professors at over 100 universities and colleges across the country, from Boston to Honolulu, are already engaged in SSC-related projects. Mr. President, the superconducting super collider is an investment in America's future. It is not, as some critics claim, just a toy for the amusement of American physicists. To say that is to ignore the profound effect that 60 years of basic research and high energy physics has had on the health and well-being of Americans.

I know there are those who expect immediately that we are going to get commercial spinoffs from the SSC. Those who think that do not understand basic scientific research. Nothing could be more basic or potentially revolutionary in its consequences than probing the mysteries of matter, the stuff of which our universe is made. Even so, there is already evidence of the likelihood that the SSC will produce major advances in such areas as medical diagnosis and treatment.

I was down there about a month ago, Mr. President, meeting with physicians and scientists talking about setting up the experiment right there where they would use that proton beam in cancer research, in working on operations where they could make the penetration of cancerous organs and stop it with exquisite limitations.

They can go after cancer into the brain, into the back of the eye, destroying cancerous tissue. It was amazing to talk to those people and hear how excited they were about the possibilities of what they were going to be able to accomplish. What really impressed me was they were already underway to turn that SSC into a powerful instrument of cancer treatment, using it to destroy cancerous tumors. Only two such treatment centers exist in the United States today, but this SSC proton beam will be much more effective and far stronger in destroying those cells while minimizing damage to the adjacent healthy tissue.

Let me cite another example, the one at the University of Florida and what they have been able to do in creating a transparent plastic that can be sterilized for medical purposes by exposing it to accelerated electrons instead of environmentally dangerous gases, this could lead to saving millions of dollars in expensive medical wastes.

Mr. President, to cancel the superconducting super collider means sending pink slips now to 6,000 people. To cancel the superconducting super collider now would deprive over 100 universities of millions of dollars in research grants. To cancel the superconducting super collider now will discourage State governments from ever again entering into scientific enterprise partnerships with the Federal Government. To cancel the superconducting super collider now would devastate high-energy physics research in the United States, leaving the field to our foreign competitors. To cancel the superconducting super collider now would forfeit the benefits of its inevitable commercial available spinoffs. To cancel the superconducting super collider now would deny American industry the opportunity to develop an infrastructure for super conductivity. To cancel the superconducting super collider now would damage our standing in the international scientific community and reinforce suspicions that we lack both vision and political will.

As today's New Times editorialized: "The collider should be completed because it will perform pioneering research in a filed long dominated by the United States but where Europe is taking the lead. It would be a shame for our great Nation to shrink from this intellectual adventure."

Mr. President, a vote for the superconducting super collider is a vote for America's future, not turning inward, not turning back, but retaining leadership in science. I do not think it is any coincidence that both of the Presidential candidates this contentious political year, support the SSC.

Let it not someday be said of us here today, "How shortsighted they were; in their obsession with the SSC's dollar costs, they failed to appreciate its real value."

Mr. President, I return the remainder of my time to the manager of the legislation.

The PRESIDING OFFICER. Who yields time?

The Senator from Arkansas, Mr. Bumpers.

Mr. BUMPERS. Mr. President, I yield 15 minutes to the distinguished Senator from Tennessee.

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

Mr. SASSER. Mr. President, I thank my friend from Arkansas.

Mr. President, I rise to express my support for the amendment offered by the distinguished Senator from Arkansas [Mr. BUMPERS].

Recently, we have debated at length on this floor the necessity to reduce the budget deficit. We went on for days on the floor of the Senate discussing the need, or as some saw the need, to actually amend the Constitution of the United States to require a balanced budget. On the other side of the aisle particularly, there were a number of impassioned speeches made about the necessity of doing something about the budget deficit. Indeed, it had become so imperative that we had to amend the over 200-year-old basic document, the basic contract between the people of the United States and its Government. Of course, that effort to mandate a balanced budget by way of a constitutional amendment would not have taken effect for at least 5 or 6 years, according to its proponents.

Today, we have an opportunity to stand up and make a significant statement that we are concerned about the budget deficit and wish to do something about it or we simply want to posture about it and position ourselves to make self-serving speeches to the local Rotary Club.

That is what this debate is all about today. I think most of us in this Chamber would say, if our fiscal house was in order, if our economy was moving ahead at a fast clip, if we had a substantial rate of growth in the gross national product of the United States, if we were not running gargantuan budget deficits, then, yes, the super collider would be a very interesting scientific project to pursue.

But that is not the case. Today, we are confronted with a national debt that will approach and exceed $4 trillion in the not too distant future. We have budget deficits stretching as far as the eye can see—$250, $360, $400 billion.

So the question comes, do we want to increase the national debt, do we want to increase the deficit, do we want to borrow more money to build this enormous and enormously expensive scientific project, a project on which we really cannot even get an accurate handle on its costs?

I have a great concern about the history of the escalating cost of this project. Currently, the Department of Energy claims the total cost for the super collider will be about $8.2 billion. They say some of the cost is going to be borne by foreign contributors. I want to congratulate the Department of Energy for going an entire year this time without changing the cost estimate for the super collider. But if history is any judge, the latest estimate will not last long. Since 1986, the cost estimates for the super collider have

been rising at an alarming rate. The official Department of Energy cost estimates have ranged from $5 billion in 1986 to $8.6 billion in 1990, nearly a 70-percent cost overrun in the space of 4 years.

But even in 1990, the Department of Energy's independent cost estimating staff expressed its view that the $8.4 billion estimate is both unrealistic and unachievable. The independent cost estimate set its project cost estimate at $11.8 billion.

Since last year, the Department of Energy has held to its newest estimate of $8.2 billion, as I said earlier, but that estimate is not accurate, in my judgment. But it is immaterial really whether this project cost $8.2 billion, or $11 billion, or $12 billion, or $15 billion. From a cost effectiveness standpoint, we simply cannot afford it at this time in our history.

When we began this project, when the talks started, there was a lot of conversation about foreign contributions. This was such an essential scientific project that we needed to rely on substantial foreign contributions, it would be on American soil, and the American Government would exercise a substantial or the lion's share of the proposal of the project and its studies. The Department of Energy pledged to deliver $1.7 billion in foreign contributions. Given the super collider's escalating cost, foreign participation is crucial to the fiscal viability of this project. But it is sad to learn that the only foreign commitment so far is a mere pittance of $50 million from India and some surplus copper from Albania.

During Senate debate last year, supporters of the super collider argued that part of its multibillion-dollar cost would be picked up by other countries, particularly Japan. In fact, the administration was expected to secure a pledge of $1 billion from Japan last year. Yet when the President went to Japan, not only was the trip disastrous from other angles, but the Japanese decided not to offer any funding. Japan's Science and Technology Agency stated "Such a big outlay would constrain other projects in Japan."

We ought to think about that statement a moment because Japan spends more on basic research relative to its gross national product that we do here in the United States. Yet the Japanese chose not to make a contribution to the super collider.

In my mind, that raises concerns about the damage that further development of the super collider does to basic science programs, other basic science programs. This comes at a time when expenditures for basic scientific research—and the science dollar—are generally stretched to their absolute limit.

I am concerned that if we go forward with this massive and highly expensive project that we will indeed be surrendering a leadership role in science, in research, to Japan and Europe because we will be allowing the super collider to suck up billions of research dollars that otherwise might have gone to countless smaller scale projects, and at universities and scientific research installations all across the country.

That may be the greatest threat of all to our leadership role in basic scientific research. We all know there is a lot of debate within these scientific community whether bigger science projects yield better research payoffs than smaller scale efforts. The facts are that no one, not even the most avid supporters of the super collider, can guarantee that the large-scale use of superconducting magnets will yield any further basic scientific discoveries or technological innovations any more than a whole assortment of existing smaller scale research projects whose funding is seriously threatened by the enormous cost of this project.

I do not dispute the assertion that the super collider will yield some fascinating discoveries regarding the origin of matter. The attempt to re-create some of the conditions and reactions believed to have formed the universe is an impressive undertaking. It is an endeavor that I would, in all probability, support if our budget were not constrained by more immediate challenges.

It is the combination of these extraordinarily high budget deficits and the slowest rate of growth since the Great Depression that means we must focus our limited Federal resources on revitalizing our economy.

If this project, the superconducting super collider, is allowed to continue, the Department of Energy in 1993 will spend more than four times as much on this single project than on all of their technology transfer activities to the private sector. And that is what we desperately need now in this economy, and in this worldwide, highly competitive economic environment. We need more effective technology transferred to the private sector so that they can utilize this to produce marketable products.

The President's 1993 budget request for the Environmental Protection Agency's entire research and development budget is only one-half of the amount requested for the super collider. Under a healthier budget and economic conditions going forthwith, the super collider would not hurt us a bit. But in our present condition, the tradeoffs involved with continuing to finance the super collider, I say, are simply too much.

Mr. President, there have been eloquent arguments made here on behalf of the super collider today; eloquent arguments made on the scientific advancement that might result if this project is financed through to conclusion.

But what my colleagues overlook, I think, is that this is simply a project that we simply cannot afford at this particular time in our history. Even if we accepted the current $8.2 billion cost estimate made by the Department of Energy, which I do not believe is credible, even if the administration were successful in its promise to obtain $1.7 billion in foreign contributions, which it has not and cannot deliver on, even if the superconductor was not draining away funds from other important scientific research, which I believe it is, even if the superconducting super collider has the potential to yield significant economic and technological benefits in the future, which I think is doubtful, and even if the Congress was not faced with the task of making some tough decisions on budget priorities for this Nation, which I suggest it must, we simply cannot continue to fund the superconducting super collider.

I want to say to my colleagues here this afternoon on the Senate floor that we can continue to take this floor and rail against the deficit, we can continue to advance dubious measures such as a constitutional amendment to balance the budget, which will not take effect for 5, or 6, or 7 years, and may not be effective even at that time.

We can continue to go home and make speeches to the Rotary Club about what is to be done about the deficit; or we can start making some decisions here this afternoon, and this, I submit, ought to be the first priority. We ought not to finance this highly expensive project, because we cannot afford it. We ought to reduce funding for a whole host of other projects, so that we follow it. We ought to give serious consideration to terminating the space station. There is already a space station available we can rent from the Soviet Union. That country went broke financing these highly expensive projects of dubious value.

And then, of course, we will have the Armed Services authorization bill up here soon, and we can make some further reductions there.

If we are really serious about doing something about the deficit, I say to my colleagues, this is the place to start. We can continue to make those reductions as the other appropriations and authorizations bills come to this floor.

And if we cannot vote to make reductions on something that is really just an added luxury, such as the superconducting super collider, then I think we forfeit our right to go home and talk about the deficit; we forfeit our right to mount this floor and talk about reducing the deficit; we forfeit the right to say that we are concerned about the deficit or the national debt.

We ought to admit that we are simply hypocrites and we want to continue funding all of this, and we want to con-

tinue to pass on the promissory note to future generations, because that is precisely what happened.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I wonder if the Senator from Tennessee will yield for a question or two on my time.

Mr. SASSER. I am pleased to yield.

Mr. JOHNSTON. Mr. President, I earlier used the figure that entitlements and mandatories constitute 59 percent of the budget.

Does the Senator from Tennessee, the chairman of the Budget Committee, agree with that?

Mr. SASSER. Well, Mr. President, I do not dispute that. But, at the same time, entitlements also constitute well over 40 percent of the revenues that come into the budget. And to try to make the argument that simply reducing entitlements is the way to deal with the deficit—that might be one way to do it.

Mr. JOHNSTON. Mr. President, I did not make the argument; I asked a question.

Mr. SASSER. Let us start with this project today.

Mr. JOHNSTON. I was going to ask the Senator a series of questions. It was a very simple question: Does he agree?

I think the answer was yes; and then he went on to argue what I might have argued, but I did not.

Does the Senator agree with me that, as a percentage of R&D funding, the superconducting super collider constitutes six-tenths of 1 percent of the total R&D funding?

Mr. SASSER. I do not agree or disagree with my friend from Louisiana, Mr. President. But the point that I am making here today is that if we are serious about reducing the deficit, we have to start somewhere.

Mr. President, we can make a plausible argument for every project to come to the floor.

Mr. JOHNSTON. Will the Senator agree that the superconducting super collider this year is forty-three one-thousandths of 1 percent of the budget?

Mr. SASSER. I would neither disagree nor agree. I cannot respond to that.

Mr. JOHNSTON. Mr. President, I can tell the Senator that those figures are correct.

The point is simply this: The budget deficit is caused by entitlements. We all know that. The Senator from Tennessee knows that better than most Members on this floor.

Regarding the 15 percent escalation in medical costs, I do not have all of the solutions to that, but I know that is the problem. And forty-three one-thousandths of 1 percent for the superconducting super collider, or six-tenths of 1 percent of all R&D funding, is not what is hurting this deficit. It is entitlements.

Until the Senator from Tennessee—joined by me and others on the Budget Committee, and Senators on this floor—can face up to that, we are not going to solve the budget deficit.

The superconducting super collider is the most important scientific project in America today. At least, the American Physical Society and other leading Nobel Laureates tell us that. And by taking away forty-three one-thousandths of 1 percent of the budget, you are neither going to sink the ship of state fiscally, or solve the other problems. You have to deal with entitlements. That is the plain truth. We need to face up to it.

Let me tell you, if we start making this argument about, well, this project is not much, but it all adds up, I mean, we can do that with the labs in the Senator's home State of Tennessee. Do you know they want to build an advanced neutron source at Oak Ridge for $6 billion? I think it is a good idea. But that is going to cost more than $5.4 billion, the incremental cost of finishing this project. What are we going to do when we make that argument about that project, or about all of the other scientific projects?

We cannot do that as a great Nation, Mr. President. It is because America is in trouble economically and competitively in this world that we do not need to stop scientific research. We need to increase it, if anything, because that is the progress of tomorrow.

Mr. President, half of the gross national product of today's America is made up of discoveries of the last 30 years. Half of it. We can say, as Senator BUMPERS says, these secrets of science will be there 50 years or 100 years from now.

Well, frankly, they will not. They will have been discovered by somebody else. And the technology will be developed by somebody else, if we do not do it. Are we going to let this country sink slowly, like the Sun in the West at eventide, and say we cannot compete anymore?

Are we going to say that we have no more scientific curiosity, scientific competitiveness, and that we are going to let this budget deficit, fueled by entitlements, overwhelm us, take our spirit and competitiveness, and take the feeling of excellence that has developed this country and has brought us to the pinnacle of all nations of the world?

Are we going to get mired down in that kind of spirit? I do not think so.

Mr. DOMENICI. Will the Senator yield on his time?

Mr. JOHNSTON. Mr. President, I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me say to my friend, the chairman of the Budget Committee, in response to the entitlement issue, it was said that there are trust funds backing up this entitlement program.

Let me set the record straight. There is a trust fund backing up Social Security. But for all of the rest of the mandatories, which amount to $450 billion, which are made up of the two medical programs that are growing at over 2½ times the rate of inflation, the trust funds backing that batch of $450 billion is only 50 percent. So the other 50 percent, you are looking to be solved in the very same way that you pay for other programs. You have to tax people and borrow money, and it is growing at an astronomical rate.

So entrusted for them is not an argument, other than if you want to isolate Social Security, it is paid for. If you take Medicare, Medicaid, all the pension programs, they are only half funded.

Having said that, let me suggest to anyone who thinks when it is right to do science research, and when the best talent in America is telling you to do it, that you can wait around and it will be discovered in 50 years—it will still be there—let me suggest two things: It may not be there, because others may find it. And more important, Mr. President, if you do not find the secrets of science when you know how, you give the American people a legacy of less, rather than a legacy of what they are entitled to and what humankind is entitled to; because you do not go after these secrets to write textbooks. You go after these secrets because they yield things for human beings like the laser which is now on every counter when you go through the supermarket. That is the result of basic physics that came out of things like the big physics machine at Los Alamos. Those basic concepts are now in every store. What do they add? They did productivity. They make that clerk able to deliver five times more per day. What does that mean? That means America may be able to get out of this problem of not having enough productivity a year to keep the standard of living going up and inflation down. That is at the heart of the future day-by-day living standard of Americans, and it melds right in with the great science of the past.

Frankly, the early scientists really had a selling job. They were on the frontiers when nobody even knew anything about it. They were saying with their great minds, "Do it." We wasted some money, but we made the great breakthroughs.

Here we are today with that superclass of scientists which we helped educate and get onto the humankind scene of activities where they are saying, "This is the next big secret: How material and matter is hooked together." We have already found some of the secrets, and it yielded material wealth in abundance. Now let us go after the next one or let us acknowl-

edge that we are not capable of carrying forward with the great science legacy handed to us by the greatest scientists in the world, which just happened to be Americans, which is no accident.

I thank the Senator for yielding. Does he want me to complete my 15 minutes? I have 15 minutes. I ask how much I have used. And I will use 5 or 6. How much time did I use?

The PRESIDING OFFICER. The Senator from New Mexico has used approximately 5 minutes.

Mr. DOMENICI. I have 15 minutes reserved, so I yield myself 10 additional minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DOMENICI. Let me again here on the floor pay a compliment to Senator JOHNSTON. To my knowledge, Senator JOHNSTON has no national laboratories like Sandia, Los Alamos, and Livermore in his State. He does not have any of these great science facilities like the one we have at Argonne, like we have at Brookhaven, clearly like Senator SASSER has in his State, Oak Ridge. Yet, I think it is fair to say that when it comes to basic science endeavors of the United States, the Senator has seen fit to take a lead.

So my first couple minutes I want to use in saying, "Congratulations." He is on the cutting edge of what will keep America the leader of the world, what will keep America's standard of living moving up, what has a real chance of giving us a sustained economic growth without inflation, because basic science discoveries are the thing that adds to America's capability to remain a leader in the world, not only militarily, but a leader in the world economically and will push our standard of living ever higher. So I commend the Senator.

This issue of the superconducting super collider is really an American issue; it is not just a Senate issue. It has some of the spirit of America in it, some of the past success, and a great deal of the future.

If the United States of America has to acknowledge that we cannot do this job, that for some reason we cannot fund the next greatest science ever developed in the world, then we are acknowledging defeat. We have enough gloom going around America. We have enough people predicting how bad off we are. The truth of the matter is that we are a giant, giant ship, big, with the highest standard of living in the world. The totality of our gross national product is, by anyone's calculations, far ahead of any country in the world. When we look at the material wealth that we have, the cars we have, the houses we have, the things in our houses, the things in our daily life that make life worth living, we are still ahead of everyone. This is no accident. This is because the American spirit of "can do" was alive and well, and this is an issue right today of whether we can do or whether we want to acknowledge defeat.

There are some who would say, "Spend this money elsewhere." In this huge American availability of resources, there is no way that we can find a better project than the project that the best scientific brains in our country, those who truly look at where the breakthroughs are going to come, recommend.

The testimony before the Energy Committee by our leading physicists—it was something to behold and to see in that room an accumulation of Nobel laureates from all over America, who made the great science breakthroughs, there standing shoulder to shoulder saying, "Do this project." And then to see along with them one of America's captains of industry. We had there the former chief executive officer of Motorola, a company that is known for its progressiveness, its application of science and research so it is ahead of the power curve. That man sat there and said, "You ought to do this, because to stop it is an acknowledgment of defeat, and it is acknowledging that America does not want to be on the cutting edge of that which will keep us and our material wealth and our industry and our jobs competing in the world and, yes, even ahead of the world.

So I come today to suggest that there is plenty of history showing how basic science has yielded basic things for Americans, how basic science breakthroughs have produced things that Americans are using today that those who made the breakthroughs had no knowledge at all would be in our daily lives.

I am here to suggest that science breakthroughs in the past yielded spinoffs that were not even contemplated by the science that is making our daily lives much better. If that is the case, how could we be so irresponsible as to suggest that this one will not do that even though we are told by the very best it will do all of those things and more? How can we believe that we cannot afford a project like this when we have a budget of $1.5 trillion a year. How much is this going to cost, I ask my friend, in its totality? How much?

Mr. JOHNSTON. As the percentage of this year's budget, it is 43/1000ths of 1 percent of this budget.

Mr. DOMENICI. Give me the dollar figure again?

Mr. JOHNSTON. It is $8.25 billion overall if you add the increment cost; that is, the cost of finishing as opposed to terminating. The cost in fiscal year 1992 dollars is $5.4 billion. Those are reliable costs now because the magnets have been redesigned, have been manufactured and tested, and the manufacturer has proven up and the testing as proven up, and they have done test borings on the drills. So those costs are very reliable. You have an incremental cost of $5.4 billion.

Mr. DOMENICI. Let us use the $8.3 billion. Let me repeat, the budget of the United States, I say to my friend from Louisiana, is very close to $1.5 trillion. Are we suggesting here, spread out over a number of years, because this $1.5 trillion is every year, each of the years we are going to spend $1.5 trillion, and it is going up, are we suggesting we cannot afford a portion of this, $8.3 billion each year out of a $1.5 trillion? That cannot be the reason. That cannot be the reason.

So the argument has to be here on the floor one of two things: The project is not worthwhile. I do not believe that is so. I think if we just had a vote here on the Senate floor, let us listen to the great physicists and scientists. Is the project worthwhile for human kind? It has to be a 90-to-10 vote. I do not know where the 10 comes from. They may be the ones to say no more big projects like, say, no more genome mapping, you are not going to map the genetic systems of the human body, because it is big, when it is now almost assured that we will hand over the gene for every single major disease that mankind has within 10 years to the great scientists to find cures for things that have been part of mankind's terrible past, and we will begin to cure them in innumerable numbers. The greatest wellness project in the world is that one.

Mr. JOHNSTON. Mr. President, as the Senator knows, I am a very strong supporter of that project. But if you required the scientist from the human genome project to tell you what they are going to discover and what diseases they are going to be able to cure because of the human genome project, they could not tell you. Einstein could not have told you what the theory of relatively was going to produce.

Mr. DOMENICI. Exactly right.

Mr. JOHNSTON. You cannot tell that in advance, but we know it will happen.

Mr. DOMENICI. Mr. President, I want to close here today urging that as to that one reason, that it is not worthwhile, I do not think that anybody could really say that.

The second would be that we cannot afford it. I do not believe anyone can really look at the American budget and say you cannot afford it.

And the third would be that it probably will not work. And I cannot believe that when you are talking about the greatest breakthroughs in science history, with scientists telling you it will work, it has just as much chance as all the other major research where we gambled in the past, I cannot believe there is really much to stand on here today for those who say we should not proceed.

I hope that we give a strong signal to America's future and, to the bright

side of America, some hope, which I think we desperately need in this country. This would be a sign of hope to our people that we contend to be at the cutting edge of these kinds of things, because they are good for our people and for the world.

PRIVILEGES OF THE FLOOR

Mr. DOMENICI. Mr. President, I ask unanimous consent that Tina Kaarsberg of my staff be granted floor privileges.

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

Mr. DOMENICI. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I was proceeding on the assumption that I had 2 hours, rather than an hour and 45 minutes. I just visited with the majority leader, who said that he would ask for an additional 15 minutes for me, because I had promised the Senator from Iowa 20 minutes and I only have 12 minutes remaining for the proponents of the amendment. The opponents of the amendment have, I believe, 30 minutes. Is that correct, Mr. President?

The PRESIDING OFFICER. The Senator is correct.

Mr. BUMPERS. So prior to the time the majority leader comes back and makes such a request, would the Senator from Louisiana like to enter into a request right now?

Mr. JOHNSTON. How much time remains on each side?

The PRESIDING OFFICER (Mr. KOHL). The Senator from Louisiana has 30 minutes and Senator BUMPERS has 12 minutes.

Mr. BUMPERS. I wanted to make enough time for 20 minutes for the Senator from Iowa and 5 minutes for the Senator from Minnesota [Mr. WELLSTONE]. And I would be happy for the Senator from Louisiana to have additional time, too.

Mr. JOHNSTON. At this time, let us see how much time the Senator may need.

Mr. BUMPERS. Could we proceed on the assumption that we could do this, and let us assume that the Senator from Iowa will have 20 minutes. That is where I am really pressed. I committed 20 minutes to him and I would like to honor that.

Mr. JOHNSTON. Mr. President, the problem is that we are going to have to push back the vote. And then the Senator from Arkansas has a lot of other amendments, I am afraid. Does the Senator from Arkansas plan to push his other amendments?

Mr. BUMPERS. I probably will. But we are talking about 10-, 15-minute amendments, that is all. I only have one or two more and they should not take more than 10 minutes each.

Mr. JOHNSTON. I think it is going to be a late night.

And the Senator has an additional 15 minutes before 6 o'clock.

Mr. BUMPERS. The Senator has 15 minutes before the vote tonight.

Mr. JOHNSTON. That is correct.

Mr. BUMPERS. But I would like to reserve that.

Mr. President, I withdraw my request. We will just let the Senator from Iowa begin. The majority leader can come in and make the request.

I yield the remainder of the time I have remaining to the Senator from Iowa [Mr. HARKIN].

Mr. HARKIN. I thank my colleague for yielding me this time. I hope we can work out something because I know that I cannot make all of my comments within the 12-minute allotted period of time. I think this is a very important debate for the Senate and for the country, and I hope we can work out some extension of time.

Mr. President, at the outset, let me join with my colleague from New Mexico in paying compliments to the distinguished chairman of this committee, Senator JOHNSTON, for his long support for research and for building the infrastructure of this country, two items in which I have long had a great interest and support, both in basic and applied research and also in what I call the physical and human infrastructure of this country.

Those long-term investments in this country cannot find a better champion than in Senator JOHNSTON from Louisiana.

I have for the last 18 years been a strong supporter of basic research. I served 10 years in the other body. I served on the Science and Technology Committee for 10 years, and chaired subcommittees. The record would show that my votes have been fairly consistent in support of basic research. I felt strongly about it because basic research opens the doors to knowledge.

There are no real spinoffs. People always talk about spinoffs coming from this SSC. That is not really so. I do not want anyone to talk to me about spinoffs. That is not the reason for doing basic research. More often than not, there are not any immediate spinoffs for basic research.

Basic research increases the basic knowledge in different areas and from that basic knowledge you build different things. Finally, down the road sometime, other bits and pieces of knowledge may lead to some spinoff. And certainly if that is true in all science, it is especially true in high-energy physics. Certainly any spinoffs from high energy physics are surely in the long-term.

I rise with mixed emotions. On one hand, I have been a strong supporter of basic research. All other things being equal, I would support the SSC, the superconducting super collider. But all things are not equal right now. We are in a terrible economic bind in this country. Economically we are going down hill in terms of competitiveness with other nations. We are not taking our basic research and applying it, which translates into jobs and economic growth activity.

I would say right now, from my 18 years of experience here and, as I said, 10 years on the Science and Technology Committee in the House, that we ought to be putting our research into material sciences, into solid-state physics. These are more pertinent to our everyday lives than long-term projects dealing in high-energy physics.

So for me it is not a matter of going after the SSC and stopping it. It is a matter of priorities and where we are going to spend our money.

I have had to wrestle with this for some time, because I did not come to the conclusion that I was going to vote for the Bumpers amendment or vote for some amendment to defund SSC until very recently. I have talked with my staff. I happen to have a very distinguished scientist on my staff. We have looked into all aspects of the SSC. So I decided not to ask the politicians whether we should go ahead with this or to even ask myself—I am not a scientist—but to try to look and see what the scientific community is saying about it.

When you look at the American Physical Society, you look at high-energy physicists, they all say of course build it. That is their bailiwick. That is their operating sector. But I want to know more about how the broad spectrum of scientists in this country feel about the SSC.

First of all, Mr. President, an internal review made by the Department of Energy in the spring of 1991 rated the SSC 10 out of 11. This is an internal Department of Energy document. Let me read the opening paragraph. This is from Linda Stuntz, Deputy Under Secretary for Policy Planning and Analysis, Department of Energy.

> You need to know first what seems to be right on the merits, determined in accordance with criteria carefully selected and applied as uniformly as humanly possible across all relevant program elements.

So, leave the politics out of it. What is good on a science basis? This DOE internal document from 1991 said to emphasize the following: Chemical sciences, materials sciences, engineering and geosciences, energy and biosciences, biological and environmental research. Leave about the same: Applied math, nuclear physics, high energy physics. Deemphasize—their own language—deemphasize superconducting super collider and advanced energy projects.

So, an internal DOE analysis, when you leave the politics out of it, rated the SSC 10 out of 11 in terms of what we ought to be doing.

Sigma Xi, the preeminent scientific society in America—comprises re-

search scientists. These are research scientists from across the spectrum of research science, not just high-energy physics. Sigma Xi took a survey in 1988 and asked their scientists to rate different proposals. They asked them for the three best uses of public funds for scientific research. The results? Mr. President, the results were:

	Percent
Untargeted individual research awards	23
Biosphere/Geosphere systems	19
AIDS	16
Engineering Research Centers and Science and Technology Centers	13
Superconducting Materials	9
Space Station	6
SDI	4
Human Genome Project	4
Other (mostly health related)	4
Superconducting super collider	2

The SSC even rated below the strategic defense initiative and the space station.

These are not politicians speaking. These are the research scientists in America.

I know there was some talk earlier this was not a real statistically relevant survey. I want to read for the RECORD the forward to this study done by Sigma Xi:

This report is a summary "sketch" of the results of the survey, and it offers an outline of characteristics, opinions, and preferences of the Sigma Xi members. A complete portrait awaits in-depth analysis. It may be too much to claim that the membership of the Society represents all of science, but it is a fact that individuals from more than 160 disciplines who are employed in academia, industry, and government responded to the questionnaire. No other survey can claim such a comprehensive canvas.

No other survey can claim such a comprehensive canvas of scientists all over America. That is Government scientists, industry scientists, academia scientists. And they rated the superconducting super collider dead last.

Finally, the Industrial Research Institute did a study of the R&D corporate vice presidents for the big companies in America, the R&D corporate vice-presidents, those corporate vice-presidents in charge of research and development in industry in America. They were asked to rate five major large science projects. They gave them just five: human genome, national aerospace plane, space station, strategic defense initiative, superconducting super collider.

No. 1, human genome project; No. 2, national aerospace plane; No. 3, space station; No. 4, strategic defense initiative; No. 5, SSC.

These are the corporate vice-presidents in charge of research and development in America, many of those scientists or engineers in their own right.

All that aside, I asked what other elements may go into this decision? It has to do with tradeoffs and priorities. We cannot fund everything. For example the High-Speed Rail Association said that for $10 billion—what we are going to put into the SSC—we could do the following. We could complete a high-speed rail system from Dallas to Austin to Houston that would go 200 miles an hour; we could build the same system all across the State of Ohio; we could upgrade the tracks to 150 mph from Boston to New York—all of this for the cost of one SSC. And with the private funding that would come with high-speed rail, that $10 billion would go even further. And if you build this high-speed rail you will get more high tech out of it, you will get more jobs, you will get technological innovations that we can sell abroad and export abroad. And I dare say, precious little of what we are going to put into the SSC could ever be exported.

Mr. President, I have here a statement made by President Bush on July 30, when he was down in Texas. Let me just read what President Bush said about this:

The superconducting super collider is a big priority, a big part of our investment in America's future. And when you talk basic research this is the Louvre, the pyramids, and Niagara Falls all rolled into one.

With friends like that, the proponents of the SSC do not need any enemies. I can tell you that.

Mr. JOHNSTON. Will the Senator yield? Is the Senator aware that President-to-be Clinton has also endorsed this project in equally glowing language, has he not?

Mr. HARKIN. I doubt he is going to compare it to the pyramids. I do not know if he wants to build any pyramids.

Mr. JOHNSTON. He does not use the same language but he does support it.

Mr. HARKIN. There are legitimate arguments for the SSC. I have not said there are none. I have just said what are the other scientists saying about it, and what are the tradeoffs, and what else can we do with that money; because we have to make those kinds of decisions.

But the President of the United States comparing it to the pyramids? Give me a break. The last thing we need to do is build some pyramids in this country. What we need to do is we need to put people to work building things we can build and export and that we can make money on.

Again, priorities. Let me get back to what the distinguished Senator from New Mexico was saying. I am going to come out on the floor of the Senate in September with my appropriations bill.

Mr. President, I guess my time has expired. Obviously, I am only halfway through what I want to say.

Mr. BUMPERS. Mr. President, I ask unanimous consent the Senator from Iowa be granted an additional 7 minutes.

Mr. JOHNSTON. Mr. President, I do not want to hold up. I will yield the Senator from Iowa—can he make it on 4 minutes? Because I think we are going to have enough time out of the testing argument, which starts at 1:30, so there will be enough time without having to move back the 6:30 vote.

Mr. HARKIN. Later on? That is fine with me, as long as I can get through.

Mr. JOHNSTON. I yield the Senator 4 minutes of my time.

Mr. HARKIN. I cannot finish in 4 minutes, but if I can do that in the testing period I appreciate it, and I appreciate the chairman yielding me some of his time.

As I said, I am going to bring my appropriations bill out in September. We are not going to have enough money.

Seventy-four percent of the research grants approved by NIH—Mr. President, listen carefully—74 percent of the research grants approved by peer review for NIH will not be funded. They will not be funded. This is basic research. You have 10 doors to open, to unlock some of the mysteries of what is happening medically. Seven of them will not be opened because we do not have the money.

Mr. President, $1.3 billion worth of clinical trials research this year is going unfunded. This is on prostate cancer, breast cancer, heart disease. Who knows? In one of these clinical trials one of those doors to open might be a cure. Mr. President, 500,000 people will die of cancer this year. Diabetes, 12 million suffering from it; AIDS, 1.5 million. The way I see it, spending $8 to $10 billion on the SSC is like fixing up the basement when your house is on fire. Our house is on fire in this country.

We need to put money in basic research but we need to put it in the basic research that will make our lives better, that will enhance our technology and make us better, competitively, than other nations.

Mr. President, I have a lot more to say. I know my time is up.

I have heard about the six-tenths of a percent, and that is true; the chairman is right. Six tenths of a percent. But will it crowd out other science? The CBO has said if we spend for general science, space, and the technology programs—if we froze those at the 1991 level through 1996, which is probably what we are going to do, and if the large science projects like the SSC, and the space station, and the Earth observatory system go as planned, other science spending will go down 45 percent relative to the levels the administration has proposed.

So what we have here is big science at the expense of little science.

Mr. President, we are being asked to spend $8 billion to $10 billion to find out what happened in the few milliseconds after the big bang when most school kids in America cannot even tell you what the big bang is.

So, again, for me it is a matter of priorities. We have a ladder, we have a lot

of basic research that needs to be done in this country. We, in this body, need to decide how we are going to prioritize those.

My priorities, I must tell you quite frankly and tell my distinguished chairman, my priorities are the human genome project, heart disease, cancer research, making sure that those programs at NIH are funded, making sure that we do fully fund Head Start, and maternal and child health care programs and Early Start programs and immunize every kid in America.

But, Mr. President, when I bring my bill out on the floor in September and I ask for money to immunize every child in America, when I ask for money for maternal and child health care, when I ask for money to fund NIH research, do you know what I will be told, Mr. President? You do not have enough money.

When we go to the taxpayers, we tell them to take out their wallets and we take their money, we take their tax dollars, it comes from one pocket. Where are you going to spend it?

I would love to complete the SSC, and I think there may be a time in the future when we can. But right now, Mr. President, I think we have some other things to spend that had-earned tax dollar on.

I will finish my comments, I hope, later on during the debate on the testing. I appreciate the chairman yielding the floor.

Mr. President, I ask unanimous consent that an editorial from the Morning Register be printed in the RECORD.

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

ON TRACK; OFF TRACK

A tremendous future could await the magnetically powered train, a silent swiftie that would zip through the air inches above its tracks. And for just $45 million in federal help, development of a prototype could begin.

There is no practical future, meanwhile, for a magnetically powered atom-smasher, whose only purpose is to break tiny particles of matter into even tinier components. At a cost of $11 billion, it could help explain how the university began. But while it might be fun to know, the answer to that $11-billion question isn't worth a bucket of warm spit.

So guess which is expected to stand the better chance in the '93 budget?

"Maglev" could achieve a speed of 300 mph and still stop every few miles to pick up passengers, thanks to the magnetic levitation system's super-fast acceleration and deceleration. Magnets in the Maglev system would push the train up and off its tracks, while other magnets send the train barreling down its railbed at airliner speed.

Likewise, magnets in the atom-smashing Superconducting Super Collider would send subatomic particles around the inside of a 50-mile-long underground oval at nearly the speed of light, then crash them into each other head-on, whereupon some of the 2,500 scientists employed the SSC would examine the wreckage to see if hitherto unknown particles of matter had been isolated.

The Maglev could revolutionize mass transportation, providing cheaper, faster service with less environmental impact than present forms. But typically, Europeans or Japanese could be the first to capitalize and hence reap the rewards of this all-American invention (Brookhaven National Laboratories and Massachusetts Institute of Technology).

The super expensive super collider-toy could solve some mysteries of the big-bang theory. Even if it does, it is unlikely to have any practical benefits to mankind.

President Bush once supported Maglev, signing legislation authorizing $725 million for development. Last spring he changed his mind. He wants Congress to strip the relatively modest $45 million in prototype money from the '93 budget. But he still wants the SSC, with its ridiculous price tag. After all, it would be built in his home state of Texas.

The U.S. House, at least, has other ideas. Last month the House voted 232–181 to kill the SSC. That was a gutsy vote; smart bureaucrat-scientists had managed to put a piece of the SSC action in 45 of the 50 states (including Iowa). But House members, including majorities in seven of the 10 states profiting most handsomely, voted to appropriate just enough money ($34 million) to shut it down. It has already cost more than $1 billion.

Iowans Dave Nagle, Neal Smith and Jim Ross Lightfoot voted to fund the boondoggle. Jim Leach, Fred Grandy and Jim Nussle voted to kill it.

Unfortunately, the SSC has important friends in the Senate. Kent Jeffreys of the Competitive Enterprise Institute in Washington, D.C., describes SSC as an "ill-conceived science project with weak economic justifications," but with "a tremendous amount of special-interest support." That means the issue is far from dead.

But Maglev may be.

The SSC was first approved by President Ronald Reagan, who was a sucker for high-drama, high-budget items such as Star Wars and human space shots. Sober scientists warned at the time that financing it could dry up federal money for more mundane but practical projects. That could include Maglev—as deserving a scientific project as has come before Congress in some time.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, this is a debate about fundamental science and fundamental values of the United States. Let me tell you what this debate is not about. This debate is not about whether the superconducting super collider is going to use up all the money for other science.

Mr. President, as I have demonstrated, the superconducting supercollider is six-tenths of 1 percent of the Federal R&D budget funding; *six-tenths of 1 percent.* The NIH budget, to which the Senator from Iowa was referring, is 19.4 percent of the Federal budget, and I am glad it is. It consumes about $15 billion annually, and I am glad it does. But, Mr. President, to say that this $15 billion program is being eclipsed by this six-tenths of 1 percent for the superconducting super collider is an argument that simply does not wash.

As I have mentioned before, the superconducting super collider is forty-three one-thousandths of a 1 percent of the budget—forty-three one-thousandths of the 1 percent of the Federal budget. It is six-tenths of 1 percent of the Federal R&D budget.

The question is not whether this is going to eclipse the rest of science in America. You do not have to be a genius at fractions and at mathematics to figure that out. What is at issue, Mr. President, is whether or not this fundamental science to break the code of the universe, to determine what the basic laws of matter and energy are, whether that is worthwhile doing.

The distinguished physicist, Leon Lederman, testifying before our committee, said, in trying to put it in layman's language, that this inquiry is so basic it is as if, he said, you were some extraterrestrial looking down at the Earth at a soccer game and you could see all of the men or women running around the field but assume the soccer ball was invisible. It would make no sense the fact that these figures were running around to no apparent purpose. But if you can suddenly put the soccer ball into vision, you would understand what the game was about.

In like matter, Mr. President, when we can make a mathematical formula which can tell how the four basic forces of nature—gravity, the electromagnetic force that controls, of course, all radio, electricity, lights, cooling, heating, the weak force which is radio activity, nuclear energy, if you will, and the strong force which binds together the nucleus of the atom, those four forces are related, so the scientists believe, and they believe they can reconcile those four forces and translate one into the other, just as Einstein and the theory of relativity. Every school boy knows the formula $E=mc^2$. Energy equals mass times the speed of light square, the theory of relativity that tells you that mass is energy and energy is mass.

When Einstein came up with that theory, he did not say, well, if I can come up with this theory and prove it, I will be able to harness nuclear energy, or that I will create a science that will treat 20 million Americans in the year 1992 with nuclear medicine, or that I can come up with a theory which can lead to all kinds of breakthroughs in medicine and science and improve vastly the gross national product of America. He did not say that.

He went into the theory of relativity for knowledge sake and that knowledge has paid off handsomely.

Mr. President, we believe that the knowledge of the universe, from the smallest things, the smallest particles, the so-called Higgs Boson, which is one of the biggest missing pieces here, they think it is there but they have to have very high energies, in effect, to crack that nut. They have to have a huge hammer of enormous force in order to crack the nut of the strong force that

binds that nucleus together in order to examine its constituent parts, to come up with a mathematical theory that will make sense of it all. We believe that is the most fundamental inquiry in science today. We believe it is ultimate truth, ultimate truth in that these are the ultimate parts—we used to think the atom was ultimate and then the proton and neutron were ultimate. But now we believe that these parts and these forces are ultimate, ultimate truth, as it were.

That is what the superconducting super collider is designed to discover. It is on time, on budget, its cost to complete is $5.4 billion in 1992 dollars. Those are no longer whimsical estimates, Mr. President. We recognize there has been cost escalation in the past because we redesigned the magnets, we redesigned the injector, we increased the size of the circumstances. That is well known and it is totally admitted.

But now we have a design which is fixed. It has been manufactured. It has been tested as far as the dipole magnets are concerned, the central part of the machinery. We have had test diggings in the chalk formations around Waxahachie. Those have come in under cost, under projected costs.

We believe, Mr. President, that this $5.4 billion cost to finish is a very conservative cost. Keep in mind that there are $900 million of contingency fees in here and if we do not use those, then it is not $9.4 it is $5.4 billion to finish. We believe the cost estimates are good costs, that not only can we afford it, we cannot afford to stop this project.

Mr. President, can you imagine what it would mean to this country if having embarked on this endeavor, taken homes, lives, put together a team of thousands of the top scientists in the world, advertised, in effect, our intentions globally and then suddenly withdrew from this? If we are going to withdraw from this in high-energy physics, why does it make sense to do any other high-enegy physics anywhere in America? And we do a lot of other projects throughout the country. Why does it make any sense to do fusion research? Everybody knows that fusion will not pay off until 2040 or 2050, if then.

Why go into all of this other basic research. The fact is, Mr. President, a great Nation, the leader of the world, not just in military might but most importantly in science and, in turn, in gross national product, cannot afford to retreat from this kind of project.

Mr. President, I yield the floor.

Mr. SYMMS. Mr. President, I rise to oppose the Bumpers Amendment to eliminate funding for the superconducting super collider. I appreciate the concerns of my colleague from Arkansas about developing clear priorities for science research and development in this country. However, in my view, the SSC ought to be a priority program.

Whole new industries could be developed by the research to be done by the SSC. Research in physics from 1910 to 1940 helped develop the following technologies—radar, x rays, televisions, microwaves, semiconductors, computers, and lasers. Most of these technologies originated in the United States and created entirely new markets for us in the post-World War II era. Today, these industries make up one-fourth of the Nation's gross domestic product.

Research is probably one of the most beneficial use of taxpayer dollars. A better understanding of atomic particles could revitalize science and math education and could revolutionize the United States economy. Such a revolution could dramatically improve living conditions throughout our society. That is a benefit worth pursuing.

Another reason to support the SSC relates to the many young men and women who have served our country so well in military service. Next year will see hundreds of thousands of defense-related jobs lost.

Building the SSC is one way for the Federal Government to soften the blow to the economy caused by the drastic defense cuts supported so far by this Congress.

The Senate Appropriations Committee mark for SSC in fiscal year 1993 doesn't break the budget like many other programs do. At $550 million, the SSC project is little more than a chink in the armor of a $400 billion deficit.

The bottom line here is that the SSC ought to be a budget priority. It is a program that will build America's future by investing in our economic strength today.

Mr. President, I would urge my colleagues to vote against this amendment.

I ask unanimous consent that a letter, of which I have received hundreds in my office, in support of the SSC be printed in the RECORD.

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

Dear SENATOR SYMMS: I want to ask for your support on funding for the Super-Conducting Super Collider Project. The benefits that this nation and the world will gain from the SSC are immeasurable. The Project will:

Reestablish a manufacturing base for America in intensely competitive global marketplace.

Constructively invest over $20 billion dollars into the U.S. economy.

Create advanced technologies and tens of thousands of highly-skilled jobs.

Draw America's youth to careers in science and engineering with hope for the future.

And, the SSC Project already has:

Awarded over 19,000 work contracts in over 47 states.

Made 10% of the SSC federal funding available to small disadvantaged businesses.

Applied SSC's technologies to medical life-saving diagnostic equipment and developments.

Enhanced math and science educational programs for America's schools.

Increased physics research in over 100 universities across the country.

The United States of America was once recognized clearly as the world leader in the development of emerging technologies. Please help us reignite that leadership and build a productive nation driven by a technology base second to none.

Sincerely,

BILL MOFFITT.

IDAHO FALLS.

Mr. BOREN. Mr. President, an election year does not excuse this body from making poor, unwise public policy. Unfortunately, the pressures of an election year has once again jeopardized a program known not for its past failures but is future potential and applicability. The superconducting super collider [SSC] is the program that some in this body would like to see fall victim to the congressional guillotine. I rise today to oppose the effort to cut funding for this important and worthwhile project.

Opponents of the SSC would like to wrap themselves around the banner of fiscal responsibility. They ask how can this country fund a project during these lean budgetary times that reaps no tangible benefits and only adds to the budget deficit?

Let us not be fooled by these arguments. Since my arrival in the Senate, I have supported measures to control Federal spending. That is why I support the balanced budget amendment and the Domenici proposal to deal with the spiraling costs of entitlements. To truly control the budget deficit, the answer does not lie with eliminating funding of a project that represents less than 1 percent of the total Federal R&D project.

Furthemore, we are not throwing money at a black hole. As a GAO report states, the job-creating multiplier effect of SSC expenditures will be that every $1 equivalent spent generates $3 in economic utility. This is an investment whose rewards will come in many forms.

This debate is not only about one of the world's most important scientific enterprizes. This is also about this country's leadership in tomorrow's world. The best minds of this country's scientific community are working to unlock the most fundamental questions of our universe. While they march toward that goal, they will revolutionize the computer industry, the medical community, and transform our industrial and technological base. Economic opportunities never anticipated will arise, scientific advancements never predicated will proceed, and educational worlds never explored will emerge. Even if the original scientific goals are not completely met, the knowledge gained will completely change our lives. Our reach, as the poet Browning stated, should exceed our grasp.

The question is will this country lead in this initiative or will we let others do that task. Can we capitulate our undisputed leadership in this area because of misguided arguments? How can we encourage our youth who must live in tomorrow's world to study the math and sciences, when the Congress is unwilling to commit to a project that would enhance and promote such studies? How can we challenge our scientists, educators, and industrialists to lead in their fields if the Government fails to support their pioneering spirit?

Whether we like it or not, this debate reveals something fundamental of this country's priorities. The choice is between boldly taking the initiative or meekly surrendering our leading position. The choice is between making wise investments for the future or foolishly withdrawing under the false guise of fiscal responsibility. Let us not be deafened by the cocophony of political demagoguery. I urge the Senate to stand with the scientists, educators, and experts in the field who urge this body to fund this project. To paraphrase the Greeks, science is too important to be left to the politicians. Indeed, let us marshall our innovative and creative forces, and commit this country to excellence.

Mr. LEAHY. Mr. President, the superconducting super collider is designed to house over 10,000 magnets each weighing 12 tons. The magnetic force of the SSC could be great enough to draw $12 billion of taxpayers money from the U.S. Treasury over half a continent away unless we act today.

Six weeks ago, the Senate was locked in a rhetorical debate on balancing the Federal budget. No real cuts, no hard choices, no reduced spending options were offered in that debate on amending the Constitution to require a balanced budget. Today we can make a real cut in wasteful spending that will add $12 billion to the Federal debt.

The SSC is wasteful Government spending. Supporters suggest that spending $12 billion on this particle accelerator will lead to new technologies and new jobs. Deputy Secretary of Energy W. Henson Moore testified in recent congressional hearing about the numerous technological spinoffs from the SSC. Dr. Nicholas Blumberg, president of the American Physical Society, responded in a Senate hearing saying, "I can assure you these are spinoffs of small scale science, not of the SSC, and the attribution of the SSC to other spinoffs * * * is also highly questionable." Mr. President, the few technologies that might emerge from the SSC do not justify its $12 billion price tag.

The SSC is not a jobs program either. Proponents of the super collider say 6,000 jobs are at stake if we kill this program. Last year we spent about $500 million on the SSC. That's about $80,000 per job—not a very cost-effective jobs program. The Congressional Budget Office points out that more jobs and new technologies could be created if Federal dollars were spread among a broad base of research programs.

An internal analysis done by the Department of Energy to rank all of its science programs on their merits placed the SSC 10th out of 11 programs. The analysis recommended that the SSC be deemphasized in the DOE's budget. President Bush recommended spending about 75 percent of the high-energy physics budget on the SSC. Funding for science research programs is effectively a zero-sum game: if we increase funding for the SEC it crowds out research dollars for other scientific research.

The SSC can't deliver the jobs it promises. It can't deliver the science and technology it promises. However, Mr. President, the fundamental reason I am opposed to the superconducting super collider is because it costs too much money.

In 1989, Secretary of Energy Watkins stated that if the SSC costs a dime more than $5 billion, we shouldn't build it. The independent cost estimating staff at the Department of Energy has estimated the SSC will cost 68 billion dimes more than Admiral Watkins' figure.

In 1986, the earliest cost estimate for the SSC was between $3.9 and $4.2 billion. The first SSC budget in 1988 put the cost at $5.3 billion. The 1990 budget request put the final cost at $5.9 billion. Design modifications made before the 1991 budget proposal added another $1–$2 billion to the SSC's total cost. The current DOE cost estimate is $8.3 billion. As I have stated, DOE's Independent Cost Estimating arm puts the cost at $3.5 more than the DOE has told Congress.

So, we've gone from a 1986 cost estimate of $3.9 billion to a current independent cost estimate of $11.8 billion.

The Department of Energy has continually claimed that $1.7 billion of the costs of the super collider would be borne by foreign contributions. The attitude of the DOE has been "build it and they will come." But, the foreign contributions have not come. To date, only $50 million in foreign contributions have materialized. Japan has refused to make a commitment, even after President Bush's hat-in-hand request last January.

Mr. President, I would strongly encourage my colleagues not to be drawn in by the magnetism of this collosal waste of funds. The superconducting super collider is not a jobs program. The technological spinoffs will be negligible. The addition to Federal debt will be enormous. Funding for the SSC must end.

The PRESIDING OFFICER. Under the previous order, the pending amendment will be set aside and the Senator from Oregon [Mr. HATFIELD] is to be recognized to offer an amendment at this time.

Mr. SIMPSON. Mr. President, many months ago I initially opposed the SSC and supported Senator BUMPERS' amendment to cut the SSC funding last year. However, my education continues. Discoveries from this basic research are said now to be directly linked to possible dramatic advances in the methods of cancer diagnosis and proton therapy.

I understand, too, the research will also benefit the development of magnetic levitation frictionless trains and magnetically propelled nonmoving parts, silent underwater boats, vessels, and other means of transportation. The SSC will also advance new computer architectures and new forms of energy.

I have also learned that doctors have reported that excess protons generated by the collider might be used for cancer treatment and other tests such as those used in mammography.

A university study shows that the proton beam of the collider's linear accelerator can be used for medical applications without additional costs in the program.

In fact, the collider's immense beam power could be focused on the human body to treat deep-seated masses, such as brain tumors or prostate cancers. The proton treatment also may help to avoid many of the side effects of conventional radiation treatment, which use x rays to destroy tumors. In other words, the first benefits of the SSC may very well be medical therapy with proton beams from the collider. These benefits could indeed, be seen immediately, if not within the next 5 years.

Finally, I understand that a cancer therapy program at the collider site would have the advantage of bringing together many of the world's outstanding minds in medicine and physics. For these and a myriad of imaginative possible benefits to all people, I will support the SSC and feel that we should continue to fund this worthy project.

Mr. DURENBERGER. Mr. President, this is one of the most difficult votes that I will have cast in my 14 years in the U.S. Senate. For I recognize that in voting against continued funding for the superconducting super collider, it may appear to some people that I am voting against advancing to the very edge of the frontiers of scientific knowledge.

I am not a physicist, not even a scientist. But I recognize that our advancement as human civilization is founded on our capacity to investigate and understand the scientific underpinnings of existence. Much of the material progress that mankind has achieved is owed to science.

What distinguishes the Members of the 102d Congress from the Members of the First Congress in 1789, is not the quality of our intellect and ability to engage in political discourse. It is the

extraordinary technology that has evolved through centuries of patient scientific investigation. In science, each advance in understanding the nature of matter lays the foundation for the next advance.

We live in a world where I can get on an airplane and be in Minneapolis, in slightly more than 2 hours. I can witness events, as they are happening, anywhere on the face of the globe, while sitting in my living room. Our life expectancies are more than double what they were a century and a half ago because scientists in the 18th, 19th, and 20th centuries painstakingly learned the scientific basis of life.

So, Mr. President, I recognize the critical importance that science plays in every aspect of our being.

I also know that with each advancement in science, we can unleash direct and indirect harm to the world that we know and live in.

Early in this century, the discovery of radium and its use as an illuminator on wrist watches caused unexpected cancers in the workers in the factories where the illuminated dials were assembled.

The discovery of freon made the possibility of air-conditioning and home refrigeration not just a luxury for the select wealthy few, but everyday items that are found in most homes in America. Yet the wide dispersal and availability of freon-based products has been clearly linked to the erosion of the ozone shield that protects all life from cosmic rays.

And of course, there is the discovery of fission and fusion—the energy that appears to drive our universe. Used peacefully, atomic energy was once thought to be the answer to mankind's seemingly insatiable desire for electricity.

But today, 47 years after the first test of atomic power, we are having to cope with the question of what we do with spent fuel and other byproducts of chain reaction. Where can they be stored? Is it conceivable for 1992 engineering to design a container that will safely store nuclear waste for the next 10,000 years? It's an inconceivable question.

So, Mr. President, technological advance is a two-edged sword. On the whole, I believe we are far better off because of the knowledge developed through science. Therefore, no one should assume that my vote against the superconducting super collider represents a declaration against scientific research.

I am voting against continued funding for the SSC based on my belief that this decade of world leadership and the 21st century beyond demands more of us as a nation than did the 20th century of scientific invention. It demands we revalue investment in science as opposed to the arts and humanities. If we had unlimited resources, if we were engaged in a scientific competition with a global superpower like the former Soviet Union, and if this project would lead to an enhancement of our national security, then I would be willing to continue funding this project.

But in 1992 we face no such threat. Our country is militarily secure and faces no credible military threat. Whether what is learned from building and operating the superconducting super collider could provide us with any greater degree of military security is something no one can answer. But I am willing to take the risk of ceasing construction of the collider because I believe it will be decades before this country faces any credible foreign military threat.

Mr. President, the threat that exists in this country comes from within. Many of our cities are literally crumbling under the weight of deferred physical maintenance and social neglect. Our health care system is rapidly reaching the point where cost is becoming prohibitive, and access more remote. The wonders of science have given us unbelievable cures, but at a cost which discourages investment in prevention. Our educational infrastructure is badly in need of fundamental overhaul. We must begin to face up to these problems and begin the process of assigning more focus to our domestic priorities. Mr. President, let me put this in a slightly different light. It is a problem of the human spirit.

In my view, the $8 billion to $12 billion that will eventually be expended to construct and operate the superconducting super collider can better be spent on financing the critical needs of our Nation that are currently being addressed with patchwork programs and patchwork financing.

I have no expectation that will happen, but I believe it should.

During the Gramm-Rudman-Hollings era, when I founded Americans for Generational Equity, I argued that if Congress reduced non-needs-based financing of programs for the elderly, it would not guarantee more spending on children. While we should, we don't. But, if I am correct, at least this legacy of debt we send our children will be mitigated. Deficit reduction is not all bad.

Mr. President, I cannot claim that I understand the national values inherent in the research that could be conducted by the superconducting super collider. I am required to acknowledge, however, that without my vote and without Federal public investment, national research on high energy physics and cosmology will be confined to accelerator projects in other nations, or to smaller-scale, longer-term research projects in this country.

It is difficult for me to reach a decision which requires me to compare this effort and its potential benefit with the costs to the people of this Nation of our failure to invest in less politically powerful research projects.

I cannot make the argument others have made that a no vote on the super collider will save the money necessary to invest in other research. It won't. No other projects have the political leverage this one has in an election year.

Nor can I make the argument its chief sponsor makes: That its costs pale by comparison with all other federally financed research. That argument went out with me the third time in a row I heard it made on this floor as a justification for an investment decision that could not stand on a more valid comparative argument.

Mr. President, when will our Nation take a breather from science? When do we get to spend some time and some research investment on the arts and the humanities; on behavior; on human relationships; or the application of the arts of history, language, geology, and anthropology.

Mr. President, the 20th century gave us great education and great science. And the application of technology has truly changed the quality of our material lives. But we have come to rely too much on technology. We need a revival of the spiritual in our country.

We are both the better—and less well—for all we learned and all we have as a result. We need to pause.

Mr. President, I ask unanimous consent that two articles on the superconducting super collider be inserted in the RECORD.

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

[From the New York Times, August 3, 1992]

LET'S CONTAIN THE SUPERCOLLIDER

The superconducting supercollider, an enormous and costly instrument for probing the structure of matter, poses a stark issue for the Senate today:

Should the nation, faced with recession and budget deficits, continue to build an $8-billion machine to explore scientific questions that are of great intellectual interest but may have little practical payoff? Or should it write off the $1 billion spent so far and terminate the project?

The House voted in June to cancel the project as unaffordable. But President Bush traveled to the construction site in voter-rich Texas last week to declare support for "one of the greatest scientific projects in the entire world." The Senate is expected to approve further funding today, setting the scene for a showdown with the House over whose view will prevail.

On the merits, the mammoth machine is worth building—provided it can be financed without robbing a host of other vital scientific projects.

The supercollider will be a huge underground instrument, 54 miles in circumference. It will accelerate two beams of protons in opposite directions around a giant ring lined with magnets. When the protons smash together, they will release showers of debris from which scientists hope to divine a deeper understanding of the fundamental forces and particles that shape the universe.

Unlike the controversial space station, which is primarily an engineering feat, the

supercollider is at the cutting edge of research in two important fields. It is a key to further advance in high-energy physics, which seeks to find the most elementary particles and forces from which everything else is made. And its findings will shed light on events at the very creation of the universe, the domain of cosmology.

Even critics don't quibble that the supercollider will perform good science. But its relative importance remains in dispute. Some critics note that a large accelerator now being built in Europe may answer some of the same questions. Others contend that less costly small-scale physics is even more important because it involves more scientists and students, and it studies phenomena that are relevant to the every-day world.

Proponents have greatly exaggerated their case. They suggest, plausibly, that the machine might revolutionize our understanding of force and matter. But they neglect to mention that it may prove a dud, finding little of interest. And they predict spinoff benefits for industry and medicine without acknowledging that $8 billion invested more broadly in science might yield even greater benefits.

Proponents have repeatedly low-balled their cost estimates, only to revise them upward. And they insist that foreign nations will foot part of the bill, with little to show for their optimism.

In the past, this page has opposed the collider for fear its escalating costs would divert funds from more fruitful research. But with care and determination, it now looks possible to do both. Project managers seem finally to have stabilized their costs and surmounted the most worrisome technological hurdle—the huge superconducting magnets.

The collider should be completed because it will perform pioneering research in a field long dominated by the U.S. but where Europe is taking the lead. It would be a shame for a great nation to shrink from this intellectual adventure.

The project should be canceled only if it threatens to damage other fields of science, thus doing more harm than good.

Congress could assure the happier outcome by continuing the collider while setting firm limits to the total budget for high energy physics in future years. That way the new machine could be financed largely by shrinking or closing its obsolescent predecessors. Resources would not need to be drained from other vital research.

[From the New York Times, August 3, 1992]

SCIENCE, MAYBE, BUT POLITICS FOR SURE

(By Clifford Krauss)

WASHINGTON, August 2.—In a chamber renowned for talkers, Senator Alan K. Simpson, the Republican whip, is regarded as a champion.

But after he and other undecided Republicans were invited to the White House recently for a hardsell lobbying session on the superconducting supercollider, the Wyoming Republican was suddenly at a loss for words.

"I'm no scientist," he said. "Don't ask me what it all is."

With the Senate expected to vote on the big-ticket item early this week, many lawmakers can recite—more or less—the boilerplate on the particle accelerator: It will help discover the fundamental forces of nature by racing subatomic particles around a track until they smash, simulating the conditions that existed just after the birth of the universe.

But if few members of Congress are scientists, all are politicians, and many are also lawyers, adversarial thinkers trained to translate complicated subjects into their own terms: budgets, jobs and, ultimately, votes.

Scientists who say the supercollider offers no practical benefits are quoted by opponents, while supporters quote scientists who say the supercollider offers the limitless promise of new frontiers—so the technical arguments are pretty much a wash.

"The truth is, I do not think there is a single person in this body who has the scientific background to know for sure whether this is the greatest investment ever or the worst investment," said Representative Newt Gingrich of Georgia, the Republican whip, in a rare moment of the House floor debate on the supercollider.

So, like the debates over the space station planned by NASA, the debates over the supercollider are dominated by economic and electoral, not scientific, issues. And just as in other legislative battles, the issues in the two expensive science projects boil down to the benefits of reducing unemployment versus the benefits of reducing the deficit.

Opponents call the $8 billion supercollider and the $30 billion space station space-age pork. "The truth is we just can't afford them," said Representative Leon E. Panetta, the California Democrat who is chairman of the House Budget Committee.

Supporters counter that the projects are needed to sustain the nation's competitive edge in aerospace technology and physics, and they will also create tens of thousands of high-paying jobs.

The importance of the jobs argument was demonstrated in the House vote on the supercollider on June 17. The votes of state delegations correlated closely with the amount of money the project was expected to bring. Texas stands to gain the most from the supercollider since it is being built in Waxhachie, about 20 miles south of Dallas. The state's delegation voted 26 to 1 against an amendment to cut financing. The Illinois delegation, which would obtain $48 million in project contracts this year, voted 18 to 2 against the amendment. New York members, happy their state will receive $44 million in contracts, voted 23 to 10 against the amendment.

But in the end, the supercollider went down to defeat by a vote of 232 to 181, because the dominant issue in the debate was the deficit—at least for lawmakers whose states would not benefit from the contracts and jobs.

"Timing was everything," said Representative Sherwood Boehlert of upstate New York, a Republican leader of the forces opposing the project. He noted that the vote came less than a week after the House narrowly missed reaching a two-thirds majority to pass the balanced-budget amendment so deficit considerations were still fresh.

But now lawmakers say the heat of the balanced-budget debate has cooled, and in the last month the focus of Capitol Hill has shifted back to jobs. So although fiscal conservatives from states not likely to gain from the space station argued last week the country faced a black hole of $130 billion in project costs over the next quarter century, the House decided to go ahead with it by a resounding vote of 238 to 181.

The Senate is expected to approve financing for the supercollider by a handy margin. When the matter goes to a House-Senate conference committee later this summer, few believe that the House will put up much resistance to providing money for the project. "As a practical matter," Mr. Boehlert said, "most members of Congress have signed on not as a science project but as a public works jobs program."

Mr. SANFORD. Mr. President, I cannot vote for what I consider a valuable project run in a wasteful and inefficient manner.

If we have a new administration, I would hope we could look forward to making this project more efficient. It has considerable scientific promise.

I may very well vote next year to continue the SSC project if the new President assures that we will achieve that proper level of efficiency.

Mr. KOHL. Mr. President, it is with mixed emotions that I rise to support Senator BUMPERS amendment to cut funding for the superconducting super collider [SSC].

After a careful review of the issues associated with funding the SSC, I have reached two basic conclusions. Let me review them with you.

First, there are at least three legitimate arguments which justify construction of the SSC: The pursuit of knowledge, the impact of cancelation on the scientific community, and the spinoff effects of this research on commercial technology. Mr. President, I find each of those arguments to be persuasive. On an intellectual level, who could be against the kinds of research which might allow us to reach the Holy Grail of science: A grand unified theory which could unite the elemental forces of nature and explain the status of matter in the moments after—and perhaps even before—the Big Bang. And if we deny American physicists the tools they need to get those answers, I am sure that we will see some particle physicists move to Europe to work with countries which do have at least some of those tools and that loss means that we will not have the teachers here to train a new generation of specialists in this field. Finally, I am convinced that completing the SSC would yield some as-yet unknown findings which can be translated into commercial technology. Other pure science projects have yielded commercial technologies in the past and there is no reason to believe that this project wouldn't.

But there is a second conclusion I have reached as well, Mr. President. And that is simply this: Despite the value of this project, we cannot afford it. We cannot afford it.

Those are sad words, Mr. President. But they are also true.

We have a $400 billion budget deficit this year. We have a $4 trillion national debt. The size of those numbers staggers the imagination and often beclouds the mind. They are not just numbers: They are a time bomb almost ready to explode and devastate the American economy; they are a dagger aimed at the heart of the American society. You see, Mr. President, those deficits and that debt are dragging this

economy, and this Nation, down. We cannot respond to the recession—to the economic and human costs—because we do not have the money. We cannot invest in education and infrastructure here at home because we do not have the money. We cannot respond to the human need created by starvation in the third world and political reform in the former Eastern bloc because we do not have the money. And, Mr. President, we cannot spend over $8 billion on the SSC because we do not have the money.

I regret that Mr. President. I regret it very much. But I am convinced that we have to deal with the deficit. we have to reduce it. And to do that, we have to make some tough choices—choices which make us unhappy, which cannot be justified on the basis of the intrinsic value of the project in question.

Over the past few weeks a number of physicists have come to my office to make the case for the SSC. They made a good case. But they made it only from their perspective as physicists. My perspective is supposed to be broader, to encompass the national interest as well as the interest that all human beings have in answering basic scientific questions. And from that perspective, Mr. President, I must say we cannot afford it.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum. the time to be equally divided.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. 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. HATFIELD. Mr. President, might I inquire as to the parliamentary situation we are in at the moment?

The PRESIDING OFFICER. The Senator from Oregon is to be recognized to offer an amendment.

Mr. HATFIELD. For what period of time?

The PRESIDING OFFICER. The Senator will control 2 hours and 15 minutes of debate on the amendment.

Mr. HATFIELD. Mr. President, today we now turn to the consideration of a provision of the energy and water appropriations bill that addresses the question of underground nuclear testing.

The PRESIDING OFFICER. The Senator must offer his amendment to control the debate.

Mr. HATFIELD. I thank the Chair. I will offer the amendment at a period of time following a few remarks.

Is that permissible?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, to further explain the reason I am not sending the amendment to the desk immediately, like so many things in life, we have become increasingly dependent upon technology, and the computer is broken down in the legislative drafting office. I am in no way trying to catch anyone by surprise. When the amendment is printed up, it will be made immediately available to all interested parties.

Mr. President, some months ago, Senator MITCHELL, the majority leader, and I circulated a proposal for a 1-year moratorium on any underground testing of nuclear devices.

As the Senate knows, we now have 53 cosponsors of that proposal. The House of Representatives has already adopted a similar proposal on this Energy and Water Subcommittee appropriations bill. And the House Armed Services Committee has, as well, stated its opposition for underground testing, at least for a period of a year.

Mr. President, when one reviews the number and the persons who have signed this proposal on the Senate side, it lifts it out of the traditional hawks and doves, military and antimilitary people of the Senate. That is the last kind of debate we need at this particular moment on this issue, if we could set aside those historic and traditional labels that may have been pertinent to the issues in the past, but today those old divisions and labels I think do not apply.

In an effort to reach out to those who had not signed our proposal—namely, the other 47 Members of the Senate—and for different reasons, as well as for the variety of reasons of those who did sign it, we have been meeting with members of the Armed Services Committee, our staff, the staff of the majority leader, Senator MITCHELL, and others who are interested in this subject. So that when the amendment is presented to the desk today, it will be an amendment to this bill which will be chiefly sponsored by Senators MITCHELL, EXON, and myself.

If you take the original 1-year moratorium and compare it to the amendment we are offering today, it has some very significant changes, significant in the sense that we recognize, as sponsors of the 1-year moratorium, that a case can be made about testing for safety purposes. We go further than the current bill's language, which provides only for safety testing. We say, upon procedures that are outlined in this amendment, if the President feels it is necessary to do a reliability test, we even provide for that. But it has to be certified, and it has to be explained and described in sufficient detail that Members of Congress at least will know precisely what the plan is.

Now, that is just one part of the change. I want to say that we have kept the very basic purpose of suspending testing as of now, or when the bill is passed and signed into law.

We have reduced it from 12 months to 9 months, and we feel that the argument can be made that in that 9-month period it would probably be required to fulfill the other contingencies, the other requirements, from the position we are in now wherein the administration has no plan for comprehensive testing or for testing for safety purposes as at least indicated by the testimony given to the House of Representatives Committee on Military Affairs.

We also are trying to lift this whole procedure, this amendment, out of the framework of 1 year or 9 months. We are saying now, what about the events that should follow the ban on testing, whether 9 months or a year? What do we want to trigger beyond just 12 months or 9 months? Something certainly more profound than just suspending the test for 9 months.

I think, without exception, this entire body of Senators agree that a long-term objective would be to get back to the comprehensive test ban treaty on a multinational basis, to halt the arms race throughout the world and especially in the rogue countries that we identify, as well as the superpowers.

In other words, we are trying to say this is the first step toward long-term goals, and we think this kind of a test step is very important to trigger the responses that we want to trigger around this world.

Mr. President, I want to make sure, too, that we understand that whatever position you take on 9 months, 12 months, or a test ban at all, that surely there has to be some kind of an end to this activity. Are we really wedded to or locked into the proposition that somehow testing goes on in perpetuity? That is why, again, I think we have strengthened our proposal by attempting to set forth the options beyond the limitation of the ban on testing.

So we take notice of the immediate pause in our testing program but try to outline a rational policy which leads to an end of underground testing in this country, to an end of it, and to an end of underground testing throughout the world.

Our immediate pause sets an end date for the program, September 30, 1996. So, we are not only suspending the program for 9 months, but we are also setting a date for an end of the testing program period.

I would like to place this whole issue into some historic context because I believe that will help again to understand how we arrived where we are and why we propose this amendment.

I want to say that, in some ways, this is a very simple amendment, very simple. It is a timeframe, stating goals, stating what we hope to accomplish. I know there will be those who will say, "Oh, but it is not a simple issue. It is a very complex issue. It is confusing. It

is dangerous." But I want to say, from the point of the process—and hold it to the process—it is a simple, straightforward amendment. I think we ought to, as I say, try to put it into some context.

When Senator MITCHELL and I first introduced our 1-year moratorium, we believed, as we do now, that the United States was in the best possible position to respond to the call to reassess our testing policy. We also wanted to develop the best possible vehicle to respond to the Russian testing moratorium. Since we first introduced our proposal, that moratorium has been joined by France, our ally in Western Europe, and France's decision to end its testing program through the end of this year.

So our purposes were twofold: One, to give our country the time, the space, if you will, to review the testing program in order to get a fresh outlook toward our post-cold-war arsenal.

Our second purpose in this proposal was to give some more weight to the United States' role as the primary advocate of nonproliferation worldwide. I think in one sense it is even of greater urgency. I say that because of Russia's new experience in democratic government. The comprehensive assistance program to that democracy still hangs in legislative limbo, and our aid has been disjointed and perhaps not as generous as it could be.

Mr. President, when President Boris Yeltsin was here not too many months ago, he made it very clear that a suspension of nuclear testing by the United States could be an important signal to send to them. It would be more important not only to send to the political leadership of Russia, but to the Russian military. Bear in mind that as we have observed this evolution of geopolitics in the former Soviet Union, let us be mindful of a number of factors. One is, we do have, new political leadership in Boris Yeltsin.

I shall never forget his first visit here to the United States and a group of Senators were invited to meet with him, I might mention, at a time when the White House was debating the question of whether they would receive him at the White House. The first statement he made to us was a very dramatic statement. He said: "I stand before you as the first Russian in 1,000 years of history to be elected to a public office of responsibility." Mind you, the first Russian in 1,000 years of history to be selected by a constituency to hold public power. It boggles the mind.

But let us be mindful that, as dramatic as the political shift has been, the Russian military is greatly the same. Even the inventory of the positioning or the location of their various and sundry nuclear weapons is not clearly defined.

So let us not be so overwhelmed, as we could well be, by the political, dramatic change, but recognize there is an infrastructure of a secret police and there is the presence of the military still as an organization in Russia, and, like many political leaders today, Mr. Yeltsin is facing his two flanks, his flank to the left and his flank to the right. That certainly should cause us again to be helpful in any way we can to stabilize this fledging democracy because, again, a failure of this democracy now in Russia could swing either way. It could swing back to the conservative hold of the old military secret police kind of dictatorship, or who knows where it could proliferate further. I think we must understand that this test ban proposal has significance far beyond our own political situation at home.

Over the past 8 months, as I have indicated, 53 Senators have come to agree that a 1-year ban to testing is a prudent way to respond. I am very happy to say that out of our discussions and the modification of the original 1-year moratorium, the chairman of the Strategic Committee of our Senate Armed Services Committee, Mr. EXON, now joins in urging us to suspend testing for 9 months, or until June of next year, along with the other provisions.

The bill, Mr. President, as we now have it on the floor for consideration, appears to place a moratorium on underground tests. But, unfortunately, this bill, unless modified by our amendment, will allow underground nuclear testing to continue as may be planned by the administration. This bill, unless modified by our amendment, will allow the President to continue underground tests at the rate he chooses, so long as he certifies that each test is in the national interest and for the purposes of safety. Although, again, I underscore that the term "safety" is not defined, and there are no safeguards against multiple tests being used and conducted during "those safety tests."

Safety is the word we will hear over and over and over today. I do not have a problem with that word. Safety is arguably the only aspect of the nuclear arsenal we should worry about anymore. After all, we really are not worried about whether or not the weapons in our arsenal are going to do the job when they are dropped or propelled toward an enemy. What we are concerned about these days is whether our nuclear arsenal is going to do harm to us, to our environment, to our service men and women, and some of us, about being a potential target of a so-called enemy. So safety is a very important issue. But where I will disagree, I believe, with those who will seek to defeat the amendment and retain the ability to test and test and test, is the level of confidence we have in our existing stockpile.

Parenthetically, I want to stop here for a moment and remind my colleagues of the history of the test ban debate. It has been noted that this issue is the oldest item on the current nuclear arms-control agenda. Congress has been considering the issue since the beginning of the nuclear age. Presidents have been grappling with the debate since that time.

During those debates, we were told that we could not stop testing because we could not verify that the other guys had stopped, or how to verify their commitments to stopping. Then we were told we could not stop testing, because we had no confidence in the stockpile, and that debate went on. Reliability was the No. 1 concern of those debates. It would not surprise me to hear that issue discussed today, despite the fact that reliability testing has no place in the bill, as written, or in other considerations that would be debated. We were also told we needed to keep testing, because we need new nuclear weapons.

Well, remember the report on safety which raised the possibility of newer generational warheads, safer warheads. Well, that was put to sleep pretty quickly. I am doubtful that I will hear anyone argue that point here today.

And we sometimes are told that we need nuclear testing to understand effects. We need nuclear testing to know how our weapons will respond to nuclear war. These tests are about winning a nuclear war. Mr. President, it is 1992 and some still are insisting that we need to plan for winning a nuclear war.

So we are left with safety. Let me again say that, obviously, I am no opponent of safety. I support an effort to negotiate a comprehensive test ban, and I support an end to nuclear proliferation. I support an end to the possibility of nuclear war, period. I want to rid this Earth of these insidious weapons. But while we have them, I want them to be as safe as possible.

So when I offer this amendment, I line up with anyone in this body, and with the administration, for it is the administration itself that announced to Congress in March of this year.

> The Air Force and Navy, in cooperation with the Office of the Secretary of Defense and the Energy Department, evaluated the safety of all ballistic missiles that carry nuclear warheads.
>
> It was determined that there is not now sufficient evidence to warrant our changing either warheads or propellants.

That is our existing arsenal.

In other words, the administration itself has already told the Congress that the arsenal is, for the time being, considered to be satisfactorily safe. "We are not now planning to upgrade any weapon in the arsenal." That is the statement of the administration.

Perhaps we will do that in the future, and I probably would support such a decision. But the Department of Energy, the Air Force, the Navy, and the Office of the Secretary of Defense, have

already evaluated our nuclear force and have decided not to change a thing.

So all this talk about the urgent need for safety testing is just that—it is talk. They come up with this at a time when they feel that maybe the Congress will put a ban on the underground testing.

Let me assure you that the decision to suspend tests is not based only upon our concern for international security. The current arsenal's safety stature has been evaluated by several independent scientists, and they have concluded, as well as the administration, that this is the safest arsenal the United States has ever had. The Senate Armed Services Committee and the Foreign Relations Committee have received extensive information regarding the safety status of our current arsenal.

Perhaps there are reasons to make it safer. This amendment allows for these *reasons to be investigated and judgments* to be made based upon unbiased science and utilizing cost benefit analyses. So as much as we discuss safety, it is not the only issue. We are providing for safety tests in this amendment. The most critical issue we are required to deal with today is the need to assume fully the mantle of leadership and effort in the nonproliferation area. This amendment assures that we will. The wording of the committee bill does not.

I want to mention some of the individuals and organizations who have been in contact with our efforts since Senator MITCHELL and I first introduced the bill to limit testing for 1 year. This proposal is supported by a corps of groups who have worked tirelessly to end the nuclear threat. Our bill is supported by environmental organizations, who express their belief that underground nuclear testing has resulted in irreversible damage to our country. And it is supported by an impressive array of politicians from other countries, *including* Russian parliamentarians. So, Mr. President, in the vernacular or in the wording of the so-called political arena, if you want an environmental vote this is an environmental issue as well as a defense issue, nuclear testing issue; it is an environmental issue as well.

Also two different groups endorsing the moratorium are especially worthy of note. First a call from 30 Nobel Laureates deserves mention. These scientists in their statement to Congress have called upon us to give support to the prompt cessation of nuclear weapons testing.

As the statement notes, and I quote from these Nobel scientists:

For the first time since Hiroshima and Nagasaki were destroyed by nuclear bombs, *here exists an excellent opportunity to terminate* the nuclear arms race and to rid mankind of the threat of a nuclear holocaust. A major remaining concern is nuclear proliferation.

The other endorsement I will mention is that of six scientists who participated in the Manhattan Project which led to the first test of a nuclear weapon on July 16, 1945.

In their message to Congress, Drs. Owen Chamberlain, Bernard Fell, Carson Mark, Joseph Rockblatt, Glenn Seaborg and Harriet York wrote:

We continue to believe that a comprehensive test ban is in the best interest of the United States and all of the other countries of the world. The advantages of an immediate mutual moratorium and of a comprehensive test ban outweigh, in our judgment, any perceived benefits of further tests for any reasons.

For any reasons.

(Mr. AKAKA assumed the chair.)

Mr. HATFIELD. Mr. President, this statement is from the very scientists who helped us create the nuclear age. Now they are urging us here today to put in place a 1-year moratorium as part of the effort to put the nuclear genie back in the bottle. As I indicated, they wrote it on the basis of a 1-year moratorium and we have modified it to present a 9-months moratorium.

There is one more authority of support for this proposal to end testing for a year, and that authority, Mr. President, is the American people. In a poll just conducted the public has made its belief in its future. Seven-two percent would recommend the United States stop testing nuclear weapons right now, either temporarily while we attempt to get all countries to stop, or, whether or not the United States is joined in a moratorium, either way. Seventy-two percent of the people of this country want testing to end now. They do not want excuses. They want an end to nuclear testing.

Mr. President, I hope the Senate is listening to the findings of this national poll. We do not run our Government on the basis of polls. But certainly as an institution of Government that is often criticized for being out of touch with the will and the feelings of the people, this is a perfectly marvelous example of where they speak with great power and majority.

Mr. President, I believe that the American people understand that the United States needs to continuously evaluate its nuclear arsenal and the effect of nuclear weapons worldwide. So much energy and dollars were invested in countering the Soviet threat that it is difficult to think creatively in this new world order. But we must do so. It is a time to evaluate our nuclear testing programs, which consume almost half a billion dollars a year, despite the fact that the program no longer has a credible mission beyond the possibility of safety programs.

Mr. President, the current language is the same old business in the same old way, giving little or no evidence, especially using the term "safety" to define it, that we have shifted gears on the basis of the dramatic traumatic change of geopolitics of this world. It is not business as usual. It is to face up to the whole new universe of which we are a part, to find the leadership in this area.

Half a billion dollars. Well, I could think of many things that I would have that half a billion dollars to expend, offset the deficit for part, perhaps. Half a billion dollars. Or it would allow a million more women, infants and children to participate in the WIC Program of this country, where we are not covering all of the eligibles and all of the needs of people. A half a billion dollars to increase environmental cleanup work. Half a billion dollars to increase the Federal budget by alternative energy by 50 percent.

The testing regime like every other program in this bill cannot be insulated from the kind of scrutiny every other project, defense and nondefense, receives in these tough fiscal times.

It is discouraging to me that this Government has not initiated the evaluation of the testing program. Its announcement that it will limit itself to 6 tests, probably 6 tests for the administration did not restrict itself with a ceiling each year for the next 5 years that is a total of 30 tests for safety and reliability of an arsenal that is smaller and safer than ever before. Even more troubling to me is that the 5-year program outlined is not accompanied by a plan to end testing as is required of the *United States as a signatory nation of* the Nuclear Nonproliferation Treaty.

The Government's announcement of a 5-year program only represents its intentions to continue testing as desired during that link in time. It does not in any way respond to the tremendous opportunities that exist now or in the next 5 years. Nor does it respond to what may very well be a crisis of confidence in the United States' willingness to end the nuclear threat come 1995 when the Nuclear Nonproliferation Treaty is reviewed.

The United States has thus far been able to shun its responsibilities to assume leadership in the talks to limit and ultimately halt underground testing. And the Government while arguing that nuclear nonproliferation is its *most pressing concern* in the wake of the war with Iraq and the dissolution of the Soviet Union appears to be blind to the role nuclear testing plays in the nonproliferation effort.

And you cannot separate those two goals. In a letter to me written about 2 weeks ago, Secretaries Cheney of Defense, Watkins of Energy, and the National Security Advisor, General Scowcroft, wrote:

A test moratorium is not needed to create an environment conducive to deep reductions in nuclear weapons.

Mr. President, I wonder then why the French announced the reason they stopped their testing program for a year which is that it wanted to inspire

countries to deal urgently with the problem of nuclear proliferation. And in its letter to me the administration wrote:

Despite what some may claim, our nuclear testing program does not hinder nuclear nonproliferation efforts.

Why then is our own arms control experts gearing up for a crisis when the NPT review conference commences in 1995? The United States, Mr. President, is on notice, after all, by the nonnuclear States that it will be held to the demand for a substantive show of good faith in meeting the terms of that treaty. The NPT preamble states that it is the intention of parties to the treaty to "Achieve at the earliest possible date the cessation of the nuclear arms race and undertake effective measures in the direction of nuclear disarmament."

And the preamble states that the signers seek "discontinuance of all test explosions of nuclear weapons for all time."

I am sure that many nations of the world will look at our actions beyond what our words may be. And those who believe that our obsession with the continuation of the testing program is not standing in the way of nuclear nonproliferation efforts obviously are not listening to the vast majority of countries who will be attending that 1995 conference.

In its conclusion the administration's letter to me states: "A halt to testing would not eliminate any warheads nor would it increase international security."

Well, again, I say perhaps these officials, if they had attended the congressional luncheon with President Yeltsin, would feel a little differently, for it was at this most recent meeting—congressional meeting—which President Yeltsin argued forcefully for the Congress to approve a testing moratorium to match his country's moratorium. Again, I emphasize the fact that Yeltsin needs help in exerting the control over the very powerful military establishment in his country, and he has said this. He is on record. Surely, this is in our national interests, and surely it would increase international security to respond to Yeltsin's call for a moratorium.

Finally, I want to mention the situation in Asia. The immediate threats of an uncontrollable nuclear arms race in that region is matched only by the threat of an arms race in the Middle East.

Congress has spent much time considering the emerging threats in Asia. China, India, and Pakistan are all of immense concern to all of us. Experts have reported that it is likely that the Chinese would join in a moratorium on underground testing. No one knows for certain but it certainly has been reported.

If the United States stops testing, it is likely the British, who use our Nevada test site, by the way, will follow suit. China would then be isolated in its testing program and probably at least, let us say, have a possibility of stopping that testing.

The question of India and Pakistan is even more clear. All of this is conjecture. But as we are so willingly ready to risk for war, is it not about time we are willing to take some risks for reducing the arms race and the food of that arms race, the energy propelling that arms race, is technology.

India has already indicated it will not join in the proposed five-nation conference to address proliferation issues unless the United States and the other nuclear powers stop testing and producing nuclear testing.

Given these facts, it is impossible to argue that a testing moratorium will have no impact upon international security.

Mr. President, I want to conclude by again emphasizing that this amendment will suspend testing for 9 months. Its purpose is precisely designed to allow a response to the French and Russian moratorium, while at the same time providing the information necessary to evaluate the program and make decisions about our smaller, safer nuclear arsenal.

Mr. President, we are going to hear about nuclear accidents, and all these things that we are deeply concerned about happening. Let us say that many of those horror stories will be on arsenals from which we have already destroyed the weapons, or are in the process of destroying many of those weapons. So let us not use something out of the past to try to argue continuation of nuclear testing.

Mr. JOHNSTON addressed the Chair.

Mr. HATFIELD. Does the Senator wish me to yield?

Mr. JOHNSTON. No, I thought the Senator had concluded.

Mr. HATFIELD. Mr. President, I would be happy to yield for a question at any time or yield the floor to the Senator. I have now a copy of the amendment that I wish to refer to in some detail.

Mr. President, after the safety tests as provided here that may be required, and after the Congress has approved them on the basis of the recommendations and certification by the President, after those tests are completed, our Nation will end underground testing and thus honor its treaty obligations toward ending the nuclear threat and to assume the moral leadership necessary to reach that and to help make that goal possible.

I call upon the Senators to join the 51 Senators who have already supported the Mitchell-Hatfield 1-year moratorium by voting for this amendment offered today.

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

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

The PRESIDING OFFICER. The Senator has an hour and 32 minutes remaining.

Mr. COHEN. I just want to ask the Senator to yield for a question pertaining to one provision.

The Senator from Oregon has made a number of major changes in the original Hatfield-Mitchell proposal; I think some very constructive ones. I was concerned about the absolute cutoff of 1996. Is that irrespective of whether the former Soviet Union resumes testing, or the French resume testing?

Mr. HATFIELD. We have a safety valve for that possibility.

Again, I apologize to the Senator from Maine for not having in his hand by now this amendment. We are making some copies just as quickly as we can.

Mr. COHEN. I now have a copy.

Mr. HATFIELD. Mr. President, let me readdress my response to the Senator from Maine on the question.

We have made a very definitive end to that testing period. During the testing period that we say before 1996, should the Russians resume, then we would have that safety valve at that point. But in 1996, it would definitely end.

Mr. COHEN. Irrespective of whether there is a resumption on the part of former Soviet Union, or the French, or Pakistan, or anyone else, there would be no testing under any circumstance by the United States no matter what the world situation was?

Mr. HATFIELD. That would be the commitment we would be adopting in this amendment in 1992.

Mr. COHEN. I thank the Senator.

Mr. HATFIELD. Mr. President, I now have a copy of the amendment which I have been talking about and would like to send it to the desk and place it formally before the body.

The PRESIDING OFFICER. Will the Senator withhold while the Chair makes some announcements?

Mr. HATFIELD. I am happy to withhold.

COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1993

APPOINTMENT OF CONFEREES

The PRESIDING OFFICER. Under the order of July 27, 1992, the Senate having received from the House of Representatives H.R. 5678, the text of S. 3026, as amended, is incorporated into the House bill as Senate-passed amendments, the House bill, as amended, is deemed read a third time and passed, and a motion to reconsider laid upon the table.

So the bill (H.R. 5678), as amended, was passed.

The PRESIDING OFFICER. Pursuant to that order, the Senate insists on its amendments, requests a conference

with the House, and the Chair is authorized to appoint conferees. Pursuant to the order, the Chair appoints the following conferees:

The President Officer appointed Mr. HOLLINGS, Mr. INOUYE, Mr. BUMPERS, Mr. LAUTENBERG, Mr. SASSER, Mr. ADAMS, Mr. BYRD, Mr. RUDMAN, Mr. STEVENS, Mr. HATFIELD, Mr. KASTEN, and Mr. GRAMM conferees on the part of the Senate.

The PRESIDING OFFICER. S. 3026 is indefinitely postponed.

APPOINTMENT OF CONFEREES—H.R. 429

The PRESIDING OFFICER. Pursuant to the order of July 31, 1992, the Chair will now appoint conferees on the bill H.R. 429.

The Presiding Officer appointed Mr. JOHNSTON, Mr. BUMPERS, Mr. FORD, Mr. BRADLEY, Mr. BINGAMAN, Mr. WIRTH, Mr. FOWLER, Mr. WALLOP, Mr. HATFIELD, Mr. DOMENICI, Mr. BURNS, Mr. CRAIG, and Mr. SEYMOUR conferees on the part of the Senate.

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2633

(Purpose: To revise section 507 relating to the conduct of nuclear weapons testing)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for himself, Mr. MITCHELL, Mr. EXON, Mr. LEVIN, and Mr. WELLSTONE, proposes an amendment numbered 2633.

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

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

The amendment is as follows:

On page 82, strike out line 19 and all that follows through page 83, line 5, and insert in lieu thereof the following:

SEC. 507. (a) Hereafter, funds made available by this Act or any other Act for fiscal year 1993 or for any other fiscal year may be available for conducting a test of a nuclear explosive device only if the conduct of that test is permitted in accordance with the provisions of this section.

(b) No test of a nuclear weapon may be conducted before July 1, 1993.

(c) On and after July 1, 1993, a test of a nuclear weapon may be conducted—

(1) on if—

(A) the President has submitted the annual report required under subsection (d);

(B) 90 days have elapsed after the submittal of that report in accordance with that subsection; and

(C) Congress has not agreed to a joint resolution described in subsection (d)(3) within that 90-day period; and

(2) only if the test is conducted during the period covered by the report.

(d)(1) Not later than March 1 of each year beginning after 1992, the President shall submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, in classified and unclassified forms, a report containing the following matters:

(A) A schedule for resumption of the Nuclear Testing Talks with Russia.

(B) A plan for achieving a multilateral comprehensive ban on the testing of nuclear weapons on or before September 30, 1996.

(C) An assessment of the number and type of nuclear warheads that will remain in the United States stockpile of active nuclear weapons on September 30, 1996.

(D) For each fiscal year after fiscal year 1992, an assessment of the number and type of nuclear warheads that will remain in the United States stockpile of nuclear weapons and that—

(i) will not be in the United States stockpile of active nuclear weapons;

(ii) will remain under the control of the Department of Defense; and

(iii) will not be transferred to the Department of Energy for dismantlement.

(E) A description of the safety features of each warhead that is covered by an assessment referred to in subparagraph (C) or (D).

(F) A plan for installing one or more modern safety features in each warhead identified in the assessment referred to in subparagraph (C) that does not have any such feature and, as determined after an analysis of the costs and benefits of installing such feature or features in the warhead, should have one or more of such features.

(G) An assessment of the number and type of nuclear weapon tests, not to exceed 5 tests in any period covered by an annual report under this paragraph and a total of 15 tests in the 4-fiscal year period beginning with fiscal year 1993, that are necessary in order to ensure the safety of each nuclear warhead in which one or more modern safety features are installed pursuant to the plan referred to in subparagraph (F).

(H) A schedule, in accordance with subparagraph (G), for conducting at the Nevada test site, each of the tests enumerated in the assessment pursuant to subparagraph (G).

(2) The first annual report shall cover the period beginning on the date on which a resumption of testing of nuclear weapons is permitted under subsection (c) and ending on September 30, 1994. Each annual report thereafter shall cover the fiscal year following the fiscal year in which the report is submitted.

(3) For the purposes of paragraph (1), "joint resolution" means only a joint resolution introduced after the date on which the Committees referred to in that paragraph receive the report required by that paragraph the matter after the resolving clause of which is as follows: "The Congress disapproves the report of the President on nuclear weapons testing, dated ." (the blank space being appropriately filled in).

(4) No report is required under this subsection after 1996.

(e)(1) Except as provided in paragraphs (2) and (3), during a period covered by an annual report submitted pursuant to subsection (d), nuclear weapons may be tested only as follows:

(A) Only those nuclear warheads in which a modern safety feature has been installed pursuant to the plan referred to in subsection (d)(1)(F) may be tested.

(B) Only the number and types of tests specified in the report pursuant to subsection (d)(1)(G) may be conducted.

(2)(A) One test of the reliability of a nuclear weapon other than one referred to in paragraph (1)(A) may be conducted during any period covered by an annual report, but only if—

(i) within the first 60 days after the beginning of that period, the President certifies to Congress that it is vital to the national security interests of the United States to test the reliability of such a nuclear weapon; and

(ii) within the 60-day period beginning on the date that Congress receives the certification, Congress does not agree to a joint resolution described in subparagraph (B).

(B) For the purposes of subparagraph (A), "joint resolution" means only a joint resolution introduced after the date on which the Congress receives the certification referred to in that subparagraph the matter after the resolving clause of which is as follows: "The Congress disapproves the testing of a nuclear weapon covered by the certification of the President dated ——." (the blank space being appropriately filled in.")

(3) The President may authorize the United Kingdom to conduct in the United States, within a period covered by an annual report, one test of a nuclear weapon if the President determines that it is in the national interests of the United States to do so. Such a test shall be considered as one of the tests within the maximum number of tests that the United States is permitted to conduct during that period under paragraph (1)(B).

(f) No underground test of nuclear weapons may be conducted by the United States after September 30, 1996.

(g) In the computation of the 90-day period referred to in subsection (c)(1) and the 60-day period referred to in subsection (e)(2)(A)(ii), the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded.

(h) In this section, the term "modern safety feature" means any of the following features:

(1) An insensitive high explosive (IHE).

(2) Fire resistant pits (FRP).

(3) An enhanced detonation safety (ENDS) system.

Mr. HATFIELD. Mr. President, one of the chief cosponsors, Senator EXON, chairman of the Subcommittee of Strategic Forces and Nuclear Deterrence, has arrived and would like to be able to speak, and I would at this time to yield the floor. I see my comanager of the bill, Senator JOHNSTON, also wishing to take the floor. I ask if we could give Senator EXON an idea of how much time——

Mr. JOHNSTON. Mr. President, I would like to speak for a short period of time. I hope Senator EXON will remain here because I want to express some thoughts and concerns to which I wish he as well as the Senator from Oregon would respond. That is the reason I would like to speak before he speaks, because I would like to have him speak to that.

Mr. HATFIELD. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Louisiana [Mr. JOHNSTON] is recognized.

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

I would like to sharpen the issue here, if I may. The House bill contained

a moratorium on any nuclear testing for this year for any purpose unless the former Soviet Union tested their weapons. That is the way the energy and water appropriations bill, which contains the nuclear testing money each year, came to us from the House. So our committee had to respond to that moratorium.

What we did in the Appropriations Committee is to provide a moratorium for any purpose save safety. The language which we used was as follows:

None of the funds made available in this act may be used for any nuclear testing unless the President certifies to Congress that it is in the national interest to conduct an explosive weapons test or tests for the purposes of safety of nuclear weapons. Such certification shall be provided in advance of each test and contain an explanation of the purposes and reasons for the test. For classified measures the certification may be transmitted in a classified annex.

Mr. President, it is my understanding that something like four or maybe five tests are planned this year and that I think I am correct in saying all are for safety save one test. So I think it is important, therefore, to zero in on this question of safety.

Why is testing of nuclear weapons so important? It is so important because nuclear weapons, even today's nuclear weapons, represent a great danger to the American public and to the world because of the lack of safety of their devices. As the sheet from the national lab, the Lawrence Livermore Lab which conducts these tests, states:

Nuclear weapons that are accident proof, that remain safe under all credible accident conditions, will be needed for the reduced stockpile envisioned for the 21st century. Most of the currently projected reduced stockpile of nuclear weapons will not have even the modern safety features available with existing technology, insensitive high explosives that is nearly impossible to detonate accidentally, and fire resistant pits to contain plutonium in a fuel fire. We need to improve the safety of the stockpile to these current standards promptly. But this requires nuclear testing of specific designs.

Further, we need to design warheads that are truly accident proof by utilizing a "binary nuclear weapons" concept, in which the high explosive and plutonium are physically separated until after launch. Only such weapons can be made impervious to all credible accidents.

So our situation now is that most of our nuclear weapons in the inventory are not safe. They do not contain the insensitive high explosives, the fire resistant pits, and they certainly do not contain the binary nuclear weapons concept that would protect them.

Why is this important? We have been very, very lucky in this country. I have here a description of 32 different nuclear weapons accidents—32. It so happens that none of these were very close.

Mr. President, I ask unanimous consent to have this report printed in the RECORD. It makes absolutely fascinating and hair-raising reading to realize how close to absolute disaster we came.

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

Department of Defense

NARRATIVE SUMMARIES OF ACCIDENTS INVOLVING U.S. NUCLEAR WEAPONS, 1950–1980

Attached are unclassified summaries describing the circumstances surrounding 32 accidents involving nuclear weapons. Also attached is the Department of Defense (DOD)/Department of Energy (DOE) definition of "accident" used in researching this project.

Twenty-six of these summaries were first released by the Air Force in 1977; another was prepared following the Titan II explosion in Arkansas in September 1980. These previously released summaries are marked with a figure "1"; in some cases they include new material made available as a result of more search.*

There never has been even a partial, inadvertent U.S. nuclear detonation despite the very severe stresses imposed upon the weapons involved in these accidents. All "detonations" reported in the summaries involved conventional high explosives (HE) only. Only two accidents, those at Palomares and Thule, resulted in a widespread dispersal of nuclear materials.

Nuclear weapons are never carried on training flights. Most of the aircraft accidents represented here occurred during logistic/ferry missions or airborne alert flights by Strategic Air Command (SAC) aircraft. Airborne alert was terminated in 1968 because of:

Accidents, particularly those at Palomares and Thule

The rising cost of maintaining a portion of the SAC *bomber force constantly on airborne* alert, and,

The advent of a responsive and survivable intercontinental ballistic missile force which relieved the manned bomber force of a part of its more time-sensitive responsibilities. (A portion of the SAC force remains on nuclear ground alert).

Although normal DOD policy is to neither *confirm nor deny the presence of nuclear* weapons or components, recently revised DOD Directive 5230.16 governing public affairs guidance allows for confirmation when required to protect public safety or as a means of reducing widespread public alarm. Therefore, in some of the events summarized here, confirmation of presence is not published. Except for Palomares and Thule, it is not possible to specify the location of the accidents that occurred overseas.

Most of the weapons systems involved in these accidents are no longer in the active inventory. Those include the B–29, B–36, B–47, B–50, B–58, C–124, F–100, and P–5M aircraft, and the Minuteman I missile.

With some early models of nuclear weapons, it was standard procedure during most operations to keep a capsule of nuclear material separate from the weapon for safety proposes. While a weapon with the capsule removed did contain a quantity of natural (not enriched) uranium with an extremely low level of radioactivity, accidental detonation of the HE element would cause neither a nuclear detonation nor contamination. Modern design incorporates improved redundant safety features to insure that a nuclear explosion does not occur as the result of an accident.

This list of accidents was compiled by DOD/DOE researchers during December 1980–January 1981. The researchers reviewed all available records of the military services and DOE, applying current definition to determine if an event warranted categorization as an accident.

For example, one event not covered by these narratives was included in a "Chronology of Nuclear Accident Statements", released by DOD in 1968:

The researchers found, however, that only a small retrorocket on the missile had accidentally fired. The missile and its warhead were not damaged. That event does not warrant inclusion in a list of accidents involving nuclear weapons.

Another event from the 1968 list, involving a *U.S. Navy Terrier missile* (January 1966; NAS Mayport, Florida) was not considered to be an accident, but has been categorized as a significant incident. In that incident, a nuclear warhead separated from the missile, and fell about eight feet. The warhead was dented; no other damage occurred.

The other events in this list, that were also cited in the 1968 "Chronology * * *", are *identified with a figure "2".*

The events outlined in the attached narratives involved operational weapons, nuclear materials, aircraft and/or missiles under control of the U.S. Air Force, U.S. Navy, or the Atomic Energy Commission (a DOE predecessor agency). The U.S. Army has never experienced an event serious enough to warrant inclusion in a list of accidents involving *nuclear weapons. The U.S. Marine* Corps does not have custody of nuclear weapons in peacetime and has experienced no accidents of significant incidents involving them.

To the best of our knowledge, this list is complete. Reporting requirements varied among the Services, (particularly in the earlier period covered by these narratives) so it is possible, but not likely, that an earlier accident has gone unreported here. All later events, however, have been evaluated and are included if they fall within the established definition of an accident.

DEFINITION OF AN ACCIDENT

An "accident involving nuclear weapons" is defined as—

An unexpected event involving nuclear weapons or nuclear weapons components that results in any of the following:

Accidental or unauthorized launching, firing, or use, by U.S. forces or supported allied forces, of a nuclear-capable weapon system which could create the risk of an outbreak of war.

Nuclear detonation.

Non-nuclear detonation or burning of a nuclear weapon or radioactive weapon component, including a fully assembled nuclear weapon, an unassembled nuclear weapon, or a radioactive nuclear weapon component.

Radioactive contamination.

Seizure, theft, or loss of a nuclear weapon or radioactive nuclear weapon component, including jettisoning.

Public hazard, actual or implied.

February 13, 1950/B–36/Pacific Ocean, off Coast of British Columbia:

The B–36 was enroute from Eilson AFB to Carswell AFB on a simulated combat profile mission. The weapon aboard the aircraft had a dummy capsule installed. After six hours of flight, the aircraft developed serious mechanical difficulties, making it necessary to shut down three engines. The aircraft was at 12,000 feet altitude. Icing conditions complicated the emergency and level flight could not be maintained. The aircraft headed out over the Pacific Ocean and dropped the weapon from 8,000 feet. A bright flash occurred on impact, followed by a sound and shock wave. Only the weapon's high explosive material

detonated. The aircraft was then flown over Princess Royal Island where the crew bailed out. The aircraft wreckage was later found on Vancouver Island. (*1)

April 11, 1950/B-29/Manzano Base, New Mexico:

Aircraft departed Kirtland AFB at 9:20 p.m. and crashed into a mountain on Manzano Base approximately three minutes later, killing the crew. Detonators were installed in the bomb on board the aircraft. The bomb case was demolished and some high explosive (HE) material burned in the gasoline fire. Other pieces of unburned HE were scattered throughout the wreckage. Four spare detonators in their carrying cases were recovered undamaged. There were no contamination or recovery problems. The recovered components of the weapons were returned to the Atomic Energy Commission. Both the weapon and the capsule of the nuclear material were on board the aircraft but the capsule was not inserted for safety reasons. A nuclear detonation was not possible. (*1)

July 13, 1950/B-50/Lebanon, Ohio:

The B-50 was on a training mission from Biggs AFB, Texas. The aircraft was flying at 7,000 feet on a clear day. Aircraft nosed down and flew into the ground killing four officers and twelve airmen. The high explosive portion of the weapon aboard detonated on impact. There was no nuclear capsule aboard the aircraft. (*1)

August 5, 1950/B-29/Fairfield/Suison AFB, California:

A B-29 carrying a weapon, but no capsule, experienced two runaway propellers and landing gear retraction difficulties on takeoff from Fairfield/Suison AFB (now Travis AFB). The aircraft attempted an emergency landing and crashed and burned. The fire was fought for 12-15 minutes before the weapon's high explosive material detonated. Nineteen crew members and rescue personnel were killed in the crash and/or the resulting detonation, including General Travis. (*1)

November 10, 1950/B-50/Over Water, outside United States:

Because of an in-flight aircraft emergency, a weapon containing no capsule of nuclear material was jettisoned over water from an altitude of 10,500 feet. A high-explosive detonation was observed.

March 10, 1956/B-47/Mediterranean Sea:

The aircraft was one of a flight of four scheduled for non-stop deployment from MacDill AFB to an overseas air base. Takeoff from MacDill and first refueling was normal. The second refueling point was over the Mediterranean Sea. In preparation for this, the flight penetrated solid cloud formation to descend to the refueling level of 14,000 feet. Base of the clouds was 14,000 feet and visibility was poor. The aircraft, carrying two nuclear capsules in carrying cases, never made contact with the tanker.

An extensive search failed to locate any traces of the missing aircraft or crew. No weapons were aboard the aircraft; only two capsules of nuclear weapons material in carrying cases. A nuclear detonation was not possible. (*1)

July 27, 1956/B-47/Overseas Base:

A B-47 aircraft with no weapons aboard was on a routine training mission making a touch and go landing when the aircraft suddenly went out of control and slid off the runway, crashing into a storage igloo containing several nuclear weapons. The bombs did not burn or detonate. There were no contamination or cleanup problems. The damaged weapons and components were returned to the Atomic Energy Commission. The weapons that were involved were in storage configuration. No capsules of nuclear materials were in the weapons or present in the building. (*1)

May 27, 1957/B-36/Kirtland AFB, New Mexico:

The aircraft was ferrying a weapon from Biggs AFB, Texas, to Kirtland AFB. At 11:50 a.m. MST, while approaching Kirtland at an altitude of 1,700 feet, the weapon dropped from the bomb bay taking the bomb doors with it. Weapon parachutes were deployed but apparently did not fully retard the fall because of the low altitude. The impact point was approximately 4.5 miles south of the Kirtland control tower and .3 miles west of the Sandia Base Reservation. The high explosive material detonated, completely destroying the weapon and making a crater approximately 25 feet in diameter and 12 feet deep. Fragments and debris were scattered as far as one mile from the impact point. The release mechanism locking pin was being removed at the time of release. (It was standard procedure at that time that the locking pin be removed during takeoff and landing to allow for emergency jettison of the weapon, if necessary). Recovery and cleanup operations were conducted by Field Command, Armed Forces Special Weapons Project. Radiological survey of the area disclosed no radioactivity beyond the lip of the crater at which point the level was 0.5 milliroentgens. There were no health or safety problems. Both the weapon and capsule were on board the aircraft but the capsule was not inserted for safety reasons. A nuclear detonation was not possible. (*1)

July 28, 1957/C-124/Atlantic Ocean:

Two weapons were jettisoned from a C-124 aircraft on July 28 off the east coast of the United States. There were three weapons and one nuclear capsule aboard the aircraft at the time. Nuclear components were not installed in the weapons. The C-124 aircraft was enroute from Dover AFB, Delaware when a loss of power from number one and two engines was experienced. Maximum power was applied to the remaining engines; however, level flight could not be maintained. At this point, the decision was made to jettison at 4,500 feet altitude. The second weapon was jettisoned at approximately 2,500 feet altitude. No detonation occurred from either weapons. Both weapons are presumed to have been damaged from impact with the ocean surface. Both weapons are presumed to have submerged almost instantly. The ocean varies in depth in the area of the jettisonings. The C-124 landed at an airfield in the vicinity of Atlantic City, New Jersey, with the remaining weapon and the nuclear capsule aboard. A search for the weapons or debris had negative results.(*1)

October 11, 1957/B-47/Homestead AFB, Florida:

The B-47 departed Homestead AFB shortly after midnight on a deployment mission. Shortly after liftoff one of the aircrafts outrigger tires exploded. The aircraft crashed in an uninhabited area approximately 3,800 feet from the end of the runway. The aircraft was carrying one weapon in ferry configuration in the bomb bay and one nuclear capsule in a carrying case in the crew compartment. The weapon was enveloped in flames and burned and smoldered for approximately four hours after which it was cooled with water. Two low order high explosive detonations occurred during the burning. The nuclear capsule and its carrying case were recovered intact and only slightly damaged by heat. Approximately one-half of the weapon remained. All major components were damaged but were identifiable and accounted for.(*1)

January 31, 1958/B-47/Overseas Base:

A B-47 with one weapon in strike configuration was making a simulated takeoff during an exercise alert. When the aircraft reached approximately 30 knots on the runway, the left rear wheel casting failed. The tail struck the runway and a fuel tank ruptured. The aircraft caught fire and burned for seven hours. Firemen fought the fire for the allotted ten minutes fire fighting time for high explosive contents of that weapon, then evacuated the area. The high explosive did not detonate, but there was some contamination in the immediate area of the crash. After the wreckage and the asphalt beneath it were removed and the runway washed down, no contamination was detected. One fire truck and one fireman's clothing showed slight alpha contamination until washed. Following the accident, exercise alerts were temporarily suspended and MDS B-47 wheels were checked for defects.(*1)

February 5, 1958/B-47/Savannah River, Georgia:

The B-47 was on a simulated combat mission that originated at Homestead AFB, Florida. While near Savannah, Georgia, the B-47 had a mid-air collision with a F-86 aircraft at 3:30 a.m. Following the collision, the B-47 made three attempts to land at Hunter AFB, Georgia, with a weapon aboard. Because of the condition of the aircraft, its airspeed could not be reduced enough to insure a safe landing. Therefore, the decision was made to jettison the weapon rather than expose Hunter AFB to the possibility of a high explosive detonation. A nuclear detonation was not possible since the nuclear capsule was not aboard the aircraft. The weapon was jettisoned into the water several miles from the mouth of the Savannah River (Georgia) in Wassaw Sound off Tybee Beach. The precise weapon impact point is unknown. The weapon was dropped from an altitude of approximately 7,200 feet at an aircraft speed of 160-190 knots. No detonation occurred. After jettison the B-47 landed safely. A three square mile area was searched using a ship with divers and underwater demolition team technicians using Galvanic drag and handheld sonar devices. The weapon was not found. The search was terminated April 16, 1958. The weapon was considered to be irretrievably lost. (*1; **2)

March 11, 1958/B-47/Florence, South Carolina:

On March 11, 1958 at 3:58 p.m. EST, a B-47E departed Hunter AFB, Georgia, as number three aircraft in a flight of four enroute to an overseas base. After leveling off at 15,000 feet, the aircraft accidentally jettisoned an unarmed nuclear weapon which impacted in a sparsely populated area 6½ miles east of Florence, South Carolina. The bomb's high explosive material exploded on impact. The detonation caused property damage and several injuries on the ground. The aircraft returned to base without further incident. No capsule of nuclear materials was aboard the B-47 or installed in the weapon. (*1; **2)

November 4, 1958/B-47/Dyess AFB, Texas:

A B-47 caught fire on takeoff. Three crew members successfully ejected; one was killed when the aircraft crashed from an altitude of 1,500 feet. One nuclear weapon was aboard when the aircraft crashed. The resultant detonation of the high explosive made a crater 35 feet in diameter and six feet deep. Nuclear materials were recovered near the crash site. (*1; **2)

November 26, 1958/B-47/Chennault AFB, Louisiana:

A B-47 caught fire on the ground. The single nuclear weapon on board was destroyed by the fire. Contamination was limited to the immediate vicinity of the weapon residue within the aircraft wreckage. (*1; **2)

January 18, 1959/F-100/Pacific Base:

The aircraft was parked on a reveted hardstand in ground alert configuration. The external load consisted of a weapon on the left intermediate station and three fuel tanks (both inboard stations and the right intermediate station). When the starter button was depressed during a practice alert, an explosion and fire occurred when the external fuel tanks inadvertently jettisoned. Fire trucks at the scene put out the fire in about seven minutes. The capsule was not in the vicinity of the aircraft and was not involved in the accident. There were no contamination or cleanup problems. (*1)

July 6, 1959/C-124/Barksdale AFB, Louisiana:

A C-124 on a nuclear logistics movement mission crashed on take-off. The aircraft was destroyed by fire which also destroyed one weapon. No nuclear or high explosive detonation occurred—safety devices functioned as designed. Limited contamination was present over a very small area immediately below the destroyed weapon. This contamination did not hamper rescue or fire fighting operations. (*1; **2)

September 25, 1959/P-5M/Off Whidbey Island, Washington:

A U.S. Navy P-5M aircraft ditched in Puget Sound off Whidbey Island, Washington. It was carrying an unarmed nuclear antisubmarine weapon containing no nuclear material. The weapon was not recovered.

October 15, 1959/B-52/KC-135/Hardinsberg, Kentucky:

The B-52 departed Columbus Air Force Base, Mississippi at 2:30 p.m. CST, October 15, 1959. This aircraft assumed the #2 position in a flight of two. The KC-135 departed Columbus Air Force Base at 5:33 p.m. CST as the #2 tanker aircraft in a flight of two scheduled to refuel the B-52s. Rendezvous for refueling was accomplished in the vicinity of Hardinsberg, Kentucky, at 32,000 feet. It was night, weather was clear, and there was no turbulence. Shortly after the B-52 began refueling from the KC-135, the two aircraft collided. The instructor pilot and pilot of the B-52 ejected, followed by the electronic warfare officer and the radar navigator. The co-pilot, navigator, instructor navigator, and tail gunner failed to leave the B-52. All four crewmembers in the KC-135 were fatally injured. The B-52's two unarmed nuclear weapons were recovered intact. One had been partially burned but this did not result in the dispersion of any nuclear material or other contamination. (*1; **2)

June 7, 1960/BOMARC/McGuire AFB, New Jersey:

A BOMARC air defense missile in ready storage condition (permitting launch in two minutes) was destroyed by explosion and fire after a high-pressure helium tank exploded and ruptured the missile's fuel tanks. The warhead was also destroyed by the fire although the high explosive did not detonate. Nuclear safety devices acted as designed. Contamination was restricted to an area immediately beneath the weapon and an adjacent elongated area approximately 100 feet long, caused by drainoff of firefighting water. (*1; **2)

January 24, 1961/B-52/Goldsboro, North Carolina:

During a B-52 airborne alert mission structural failure of the right wing resulted in two weapons separating from the aircraft during aircraft breakup at 2,000-10,000 feet altitude. One bomb parachute deployed and the weapon received little impact damage. The other bomb fell free and broke apart upon impact. No explosion occurred. Five of the eight crew members survived. A portion of one weapon, containing uranium, could not be recovered despite excavation in the water-logged farmland to a depth of 50 feet. The Air Force subsequently purchased an easement requiring permission for anyone to dig there. There is no detectable radiation and no hazard in the area. (*1; **2)

March 14, 1961/B-52/Yuba City, California:

A B-52 experienced failure of the crew compartment pressurization system forcing descent to 10,000 feet altitude. Increased fuel consumption caused fuel exhaustion before rendezvous with a tanker aircraft. The crew bailed out at 10,000 feet except for the aircraft commander who stayed with aircraft to 4,000 feet steering the plane away from a populated area. The two nuclear weapons on board were torn from the aircraft on ground impact. The high explosive did not detonate. Safety devices worked as designed, and there was no nuclear contamination. (*1; **2)

November 13, 1963/Atomic Energy Commission Storage Igloo/Medina Base, Texas:

An explosion involving 123,000 pounds of high explosive components of nuclear weapons caused minor injuries to three Atomic Energy Commission employees. There was little contamination from the nuclear components stored elsewhere in the building. The components were from obsolete weapons being disassembled.

January 13, 1964/B-52/Cumberland, Maryland:

A B-52D was enroute from Westover Air Force Base, Massachusetts, to its home base at Turner Air Force Base, Georgia. The crash occurred approximately 17 miles SW of Cumberland, Maryland. The aircraft was carrying two weapons. Both weapons were in a tactical ferry configuration (no mechanical or electrical connections had been made to the aircraft and the safing switches were in the "Safe" position). Prior to the crash, the pilot had requested a change in altitude because of severe air turbulence at 29,500 feet. The aircraft was cleared to climb to 33,000 feet. During the climb, the aircraft encountered violent air turbulence and aircraft structural failure subsequently occurred. Of the five aircrew members, only the pilot and co-pilot survived. The gunner and navigator ejected but died of exposure to sub-zero temperatures after successfully reaching the ground. The radar navigator did not eject and died upon aircraft impact. The crash site was an isolated mountainous and wooded area. The site had 14 inches of new snow covering the aircraft wreckage which was scattered over an area of approximately 100 yards square. The weather during the recover and cleanup operation involved extreme cold and gusty winds. Both weapons remained in the aircraft until it crashed and were relatively intact in the approximate center of the wreckage area. (*1; **2)

December 5, 1964/LGM 30B (Minuteman ICBM)/Ellsworth AFB, South Dakota:

The LGM 30B Minuteman I missile was on strategic alert at Launch Facility (LF) L-02, Ellsworth AFB, South Dakota. Two airmen were dispatched to the LF to repair the inner zone (IZ) security system. In the midst of their checkout of the IZ system, one retrorocket in the spacer below the Reentry Vehicle (RV) fired, causing the RV to fall about 75 feet to the floor of the silo. When the RV struck the bottom of the silo, the arming and fusing/altitude control subsystem containing the batteries was torn loose, thus removing all sources of power from the RV. The RV structure received considerable damage. All safety devices operated properly in that they did not sense the proper sequence of events to allow arming the warhead. There was no detonation or radioactive contamination. (*1)

December 8, 1964/B-58/Bunker Hill (Now Grissom) AFB, Indiana:

SAC aircraft were taxiing during an exercise alert. As one B-58 reached a position directly behind the aircraft on the runway ahead of it, the aircraft ahead brought advanced power. As a result of the combination of the jet blast from the aircraft ahead, the icy runway surface conditions, and the power applied to the aircraft while attempting to turn onto the runway, control was lost and the aircraft slid off the left hand side of the taxiway. The left main landing gear passed over a flush mounted taxiway light fixture and 10 feet farther along in its travel, grazed the left edge of a concrete light base. Ten feet farther, the left main landing gear struck a concrete electrical manhole box, and the aircraft caught on fire. When the aircraft came to rest, all three crew members aboard began abandoning the aircraft. The aircraft commander and defensive systems operator egressed with minor injuries. The navigator ejected in his escape capsule, which impacted 548 feet from the aircraft. He did not survive. Portions of the five nuclear weapons on board burned; contamination was limited to the immediate area of the crash and was subsequently removed. (*1)

October 11, 1965/C-124/Wright-Patterson AFB, Ohio:

The aircraft was being refueled in preparation for a routine logistics mission when a fire occurred at the aft end of the refueling trailer. The fuselage of the aircraft, containing only components of nuclear weapons and a dummy training unit, was destroyed by fire. There were no casualties. The resultant radiation hazard was minimal. Minor contamination was found on the aircraft, cargo, and clothing of explosive ordnance disposal and fire fighting personnel, and was removed by normal cleaning. (*1)

December 5, 1965/A-4/At Sea, Pacific:

An A-4 aircraft loaded with one nuclear weapon rolled off the elevator of a U.S. aircraft carrier and fell into the sea. The pilot, aircraft, and weapon were lost. The incident occurred more than 500 miles from land.

January 17, 1966/B-52/KC-135/Palomares, Spain:

The B-52 and the KC-135 collided during a routine high altitude air refueling operation. Both aircraft crashed near Palomares, Spain. Four of the eleven crewmembers survived. The B-52 carried four nuclear weapons. One was recovered on the ground and on April 7, one was recovered from the sea. Explosive materials exploded on impact with the ground, releasing some radioactive materials. Approximately 1,400 tons of slightly contaminated soil and vegetation were removed to the United States for storage at an approved site. Representatives of the Spanish government monitored the cleanup operation. (*1; **2)

January 21, 1968/B-52/Thule, Greenland:

A B-52 from Plattsburgh AFB, New York, crashed and burned some seven miles southwest of the runway at Thule AB, Greenland while approaching the base to land. Six of the seven crewmembers survived. The bomber carried four nuclear weapons, all of which were destroyed by fire. Some radioactive contamination occurred in the area of the crash, which was on the sea ice. Some 237,000

cubic feet of contaminated ice, snow and water, with crash debris, were removed to an approved storage site in the United States over the course of a four-month operation. Although an unknown amount of contamination was dispersed by the crash, environmental sampling showed normal readings in the area after the cleanup was completed. Representatives of the Danish government monitored the cleanup operations. (*1;**2)

Spring 1968/At Sea, Atlantic:

Details remain classified.

September 19, 1980/Titan II ICBM/Damascus, Arkansas:

During routine maintenance in a Titan II silo, an Air Force repairman dropped a heavy wrench socket, which rolled off a work platform and fell toward the bottom of the silo. The socket bounced and struck the missile, causing a leak from the pressurized fuel tank. The missile complex and the surrounding area were evacuated and a team of specialists was called in from Little Rock Air Force Base, the missile's main support base. About 8½ hours after the initial puncture, fuel vapors within the silo ignited and exploded. The explosion fatally injured one member of the team. Twenty-one other USAF personnel were injured. The missile's reentry vehicle, which contained a nuclear warhead, was recovered intact. There was no radioactive contamination. (*,1)

Mr. JOHNSON. Mr. President, one of these accidents was an accident at Grand Forks, ND, in 1980. This picture shows a B-52 on the runway, on a strip alert, which burned for 6 hours with nuclear weapons aboard.

These weapons on this B-52 did not contain insensitive high explosives. Or, to put it another way, they contained sensitive high explosives. Had this fire reached the high explosive part—keep in mind that the high explosive detonates the nuclear device. And the danger in this kind of accident is not from a nuclear explosion because in order to have the nuclear explosion, all of these small pieces of high explosive must detonate exactly simultaneously in order to crush the nuclear mass into a critical mass and that can happen only if it is intentionally detonated—I mean only if it receives the electrical impulse that intentionally detonates it.

The danger in this situation is that if any of these high explosives detonate, they will spew plutonium over a wide area.

As a matter of fact, this chart shows the situation. It shows what the pattern would have been in the Grand Forks case. This is the size of Grand Forks, population 44,000.

This is the possible plutonium dispersal pattern. This is what would have happened had the fire actually—had the wind been blowing in another direction, which would have spread the fire to the nuclear weapon itself—an area that big.

There are other nuclear accidents. This is a Titan II ICBM silo fire in 1980, in Arkansas. The ICBM or the warhead was actually blown out of the silo. It did not detonate.

There are other accidents. There was an accident in Palomares, Spain, where you had the weapon that hit the ground, there was a detonation of the high explosive, it spread plutonium over a very large area. There was not loss of life in that case. Luckily, it was in a rural area.

But it spread plutonium over a large area. In Thule, Greenland, the same thing happened. In Alaska, the same thing happened. Perhaps the most hair-raising of all was the accident in North Carolina where a B-52 broke up in flight. Two nuclear weapons were released. One, the parachute deployed and was recovered, and the other, the nuclear weapon went down and hit the ground. I understand that several of the safety devices on the nuclear weapon failed. Luckily at least one was successful.

In this case, the 24-megaton warhead was equipped with six interlocking safety mechanisms, all of which had to be triggered in sequence to explode the bomb. When the Air Force experts rushed to the North Carolina farm to examine the weapon after the accident, they found that five of the six interlocks had been set off by the fall. Only a single switch prevented the 24 megaton bomb from detonating and spreading fire and destruction over a large area.

Mr. President, my colleagues know that usually we deal with kilotons. For example, the new D5 nuclear warhead is 450 kilotons. This accident in North Carolina was 24 megatons, or 50 times as powerful as the D5 missile, and it was almost detonated.

Mr. President, the point is, I think as these pictures graphically show, we cannot abide not having these weapons tested for safety.

If I may show one more picture. This happens not to have been a nuclear weapon. This picture of this device is a bomb that was put into the hotel in Lake Tahoe back in 1980. It is a booby-trapped 1,000-pound bomb. They put it in the hotel and they brought in the greatest experts on bomb detonation in the world. This was also accompanied by a note that said "Do not fool with this bomb, it will blow up on you." They were asking for $24 million, whatever the extortion threat was. But that is a picture of the bomb. We sent in our experts to try to disarm the bomb. They were up there in a helicopter with all kinds of devices. Mr. President, it did not work, as this photograph shows. This is the Lake Tahoe, the Frontier Hotel, whatever the resort hotel. There it is going up, exploding. The purpose of this picture is to also illustrate that there is a terrorist dimension to the purpose of safety.

I am spending a lot of time on safety because the case is irrefutable that this country, indeed the former Soviet Union, all countries need to test for safety. We need fire resistant pits, we need better electrical systems, we need insensitive high explosives, we will need eventually the binary safety devices.

So what does this have to do with where we are now and what are the differences between the two bills? As we came out of the Appropriations Committee, we saved test only for safety, not for reliability, only for safety. And the President must certify in advance about what the purposes is, what he hopes to achieve, and send that to the Congress.

The Senator from Oregon proposes that we have a moratorium for 9 months, no testing for safety in the meantime. This means that we would, I am sure, have to cancel how many of those tests that are presently planned for safety.

What does that achieve, Mr. President? Why do we want to stop testing? Keep in mind, these are underground tests. They have nothing to do with pollution of the atmosphere and those other problems we used to have. It has nothing to do with the pollution of the ground. Even the Senators from Nevada have recognized that these tests are conducted with perfect safety.

I guess it has something to do with some international treaty and why that proposal gets you closer to an international treaty and what you would hope to achieve on an international treaty by delay of 9 months and the cancellation of some of these safety tests, I do not know.

In other words, Mr. President, the sooner we get to alleviating the danger of this kind of accident, the better off we are. The sooner we can get all of our nuclear facilities with safety devices, I think the better off we are.

The only thing I know of, the amendment of the Senator from Oregon goes into a plan which the President would need to file in advance, and I think that would be useful. I think it would be useful to know what he plans to do. But if the President should miscertify—and these experts will know exactly what these tests are under our amendment when he files in advance—they will know if he says we are going to test the W-88 warhead or whatever it is, and we hope to find this out, they will know if that is true or not and we will be here next year in case the President willy-nilly wants to have a large number of nuclear tests. But, Mr. President, it seems to me that we would be better off to go ahead with those planned tests that we have right now, tests for safety, and not cancel those or delay those for the 9 months involved.

Mr. President, there are almost 10,000 employees out in Nevada for these tests. It seems incredible, but this is a large staff of scientists who conduct these tests, almost 10,000 in number. It seems to me inordinately wasteful if we all recognize that tests must be done to keep a cadre of 10,000 people, or 9,000, whatever the figure is, on the

payroll waiting for 9 months before you commence the tests. If these tests are necessary, then let these people, expensively employed, go ahead and do their jobs testing for safety, for no other purpose.

We cannot fire these people for 9 months and then say come back on September 30 or September 1, whenever the date is, and we will rehire you at that time. You have to keep them on the payroll twiddling their thumbs while they wait for the President to give them the directions to test for safety.

Mr. President, let me say just one final word. The Union of Concerned Scientists, which supports some form of test ban, certainly a test ban treaty and some form of moratorium, one of their leading experts was in my office recently. He affirmatively and strongly stated that, yes, we need to test for safety, for all of the reasons that I have just stated.

I am sure that there would be a difference in what he would say as to the number of tests necessary over the next number of years between him and the people at Lawrence Livermore lab. But everyone who is knowledgeable in this debate recognizes the need to test for safety. I think the question now at hand between us is whether there ought to be a moratorium for 9 months canceling those tests now planned for safety, in effect wasting that money for 9 months, while we decide what to do. It is a fairly narrow question, but I think an important one. I hope my colleagues will address that question.

Mr. HATFIELD. I will be happy to respond to the Senator's question.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, first of all, let me reiterate again, from the testimony of the administration—bear in mind, the Senator from Louisiana has implied that somehow there is a program all ready to go, and that those scientists out there would be sitting around twiddling their fingers if he put this moratorium through. Mr. President, again, the Air Force and the Navy, in cooperation with the Office of the Secretary of Defense and the Department of Energy, have evaluated the safety—and I am quoting. This is from Dr. Robert Barker, the Assistant Secretary of Defense for Atomic Energy. This is March 19, 1992.

All of these agencies have evaluated the safety of all ballistic missiles that carry nuclear warheads. It was determined that there is not now sufficient evidence to warrant our changing either warheads or propellants.

Now, there is no such plan the administration has waiting for testing.

Let me add one other document——

Mr. JOHNSTON. Mr. President, will the Senator yield at that point?

Mr. HATFIELD. Sure.

Mr. JOHNSTON. The Senator spoke of warheads and ballistic missiles. That does not include cruise missiles?

Mr. HATFIELD. Propellants.

Mr. JOHNSTON. Cruise missiles. It does not include cruise missiles and iron bombs from airplanes, does it?

Mr. HATFIELD. If the Senator will withhold just 1 minute, here is another document, Mr. President, in which it talks about warheads of all kinds—bombs, missiles, and so forth—and the grade that they give. There are three tests, as you know, three safety tests, and the military has taken each one of these, indicating the entry and the stockpile and the safety rate: A, B, or C. And not one of them is rated under C, as far as safety is concerned.

It is on this document that was based this statement by the Assistant Secretary of Defense that we have no plans at this moment to upgrade the safety of this arsenal.

Does the Senator have any other information that would indicate the administration has a plan ready to go, or that would be somehow unduly restricted for a 9-month delay? I have searched. I have asked the questions. I have not found any answer to that.

If the administration started today to develop a plan for safety testing, I would say to the Senator from Louisiana, it will take a major part of that 9 months, probably, with all the other activities that are ongoing. And also the 9 months overlaps the expiration of the moratorium of the Russians. I would think this is all the more reason, from a nonproliferation point, and stability of the world, that we ought to push on this. But the safety factor, we provide for that after the 9-month moratorium.

The Senator showed a demonstration of a B–52 and explosion. Let us bear in mind, B–52's are no longer flying around with those bombs for 24 hours a day.

And let me also say——

Mr. JOHNSTON. The Senator is correct; they are no longer on alert.

Mr. HATFIELD. That is right.

Mr. JOHNSTON. But the bombs are available to put on the planes.

Mr. HATFIELD. Mr. President, let me go back again to the fact that the Assistant Secretary of Defense says the Air Force, which is in charge of those B–52's, has no plans to upgrade its current arsenal for safety purposes—the Air Force. So I think that type of exhibit is without validity as to this issue.

I would say to the Senator from Louisiana, 53 Senators out of the Senate would like a 1-year moratorium—1-year moratorium. We are suggesting on this modification 9 months, with these outyears. And beyond the moratorium, nonproliferation conferences and safety device definitions, and having the Congress come back and take the President's recommendation seriously and reevaluate the whole testing question.

So I think here we have a pretty clear case, Mr. President, that we have attempted to not only cooperate with the administration and those who have felt we should not limit tests, or we would go on and test and test and test and test. We want to modify, of course, to satisfy the Senator from Maine on the matter of the end of 1996: we have no problems with that.

So we are trying to develop the consensus where we can have the moratorium. That is first out—the moratorium. That is as much domestic as it is international.

I would say to the Senator, down in Nevada there are many of those fine scientists, and so forth, who could be engaged in nonnuclear safety programs. We are not going to lose them. Where are they going, with Russia being on a moratorium, France on a moratorium. The world market, with that kind of science expertise, is not that readily available. I am for keeping them in place. I do not want to lose that scientific community.

But by the same token, I must say, there are many other things besides the testing. Or they can be planning for the tests. They can be doing a lot of things. In a 9-month period, a simple gestation period for human life, we cannot utilize that time with these scientists for all the related activities to safety and the reduction of the arsenals that are all part of the grand design, hopefully, to lead us to a safe world?

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. Mr. President, I yield however many minutes the Senator from Nebraska wishes.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. EXON].

Mr. HATFIELD. Mr. President, if the Senator will yield 1 minute, I would like to add the Senator from Michigan [Mr. LEVIN] as an original cosponsor of this modification.

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

The Senator from Nebraska.

Mr. EXON. Mr. President, I thank my friend from Oregon for yielding.

I have listened with great interest to my colleague from Louisiana, who has put in a lot of effort on the concern that is before the Senate right now. As a member of the Armed Services Committee and chairman of the committee of jurisdiction, we have looked very long and hard at that. We have made two trips to the Nevada test site to get some firsthand knowledge as best we could. We have had thorough briefings from the scientists there with regard to the potential safety problems.

Let me say that I have some of the same concerns so well expressed by the Senator from Louisiana during the remarks he just made on the floor, and I congratulate him for those remarks. I think testing for safety purposes is something with which we should proceed.

The concern that I and other Senators have had—the concern we had with the original proposal, to be offered by the Senator from Oregon, joined by the majority leader, the Senator from Maine, which essentially was the same position taken by several committees and the House of Representatives by a very large vote, was that there would be a moratorium, period, for 1 year. That, in essence, was the thrust of all of the proposals that had been advanced.

That proposal had not only passed the House of Representatives by a substantial majority, but 52 or 53 Members of the Senate evidently had signed on to such a proposal in the form of a letter to the Secretary of Defense.

I oppose those measures. I oppose those measures now. I congratulate the Senator from Oregon and the Senator from Maine, the majority leader, and others who I think have been convinced by the lengthy discussions in which we have been involved that, indeed, there should be a window—a reasonable window, if you will—for proper testing, with a strong emphasis on safety testing, as has just been brought out and talked about by the Senator from Louisiana.

Indeed, I agree, not with the degree but that there is a potential problem with safety with regard to our intercontinental ballistic missiles.

I would simply like to say, Mr. President, the Senator from Louisiana said that our inventory of such weapons today is "not safe," as I heard the Senator from Louisiana. I think that is not a totally accurate statement. I think it would be far better to say—and put this in a proper perspective by so saying—those weapons are not as safe as we would like them to be; or they can be made safer, and should be, through testing, if that is possible. And I think it is.

That is why, if the Senator will take a very close look at the amendment offered by the Senator from Oregon and other cosponsors, including this Senator, I believe that most, if not all, of the legitimate concerns he has brought up are addressed.

With regard to cruise missiles, my interpretation of the Drell report—I stand corrected if there is evidence that I am not accurate—was that the Drell Commission, which made a very in-depth study of this, indicated that there was no reason for concern about the safety of cruise missiles. Therefore, I think we can downgrade that somewhat as a matter of concern.

Simply stated, the Senator from Oregon and those associated with him have come a long way, a very long way, Mr. President, from their proposal to eliminate all testing for a 1-year period, period.

What is wrong with that? What is wrong with that is, I am sure, is that the signal would be clearly sent to all of the very talented people that we have at the Nevada test site that this is simply a forerunner to closing that facility within a matter of months. If that would happen, I am concerned—from signals, and contacts, and conversations that I have had with people very close to that situation—that an outright 1-month moratorium period without any consideration for what we are going to do in the future would cause us to lose a great deal of the expertise that we have now to get on with the business of safety and the safety from the spread of plutonium, as has been addressed by the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. EXON. Certainly.

Mr. JOHNSTON. I think there is a fairly narrow but important difference between the Hatfield amendment and the Appropriations Committee amendment. The Hatfield amendment as of now has a moratorium for any purpose for 9 months. That is that you cannot test for safety or any other purpose during that 9 months.

Am I not correct that, of the tests planned for the coming year, three or four of those tests were for safety purposes?

Mr. EXON. I think the Senator from Louisiana is correct.

Mr. JOHNSTON. Is there any good reason to have those 10,000-odd people out there sort of twiddling their thumbs when we need to move forward with this test for safety? Is it really the reason that the Senator is for that, to sort of avoid the total moratorium? Should we not proceed for that 9 months?

Mr. EXON. I suspect, in answer to my friend from Louisiana very directly, if you could have that option, it might be the best of all worlds. It has been my concern, I say to my friend from Louisiana, which I take it has been one of his concerns and why he got into this matter, that he was not in support of the action taken by the House of Representatives nor was he in support of what 52 or 53, over half of our colleagues in the Senate, have expressed in letter form to the Secretary of Defense.

Mr. JOHNSTON. The Senator is correct.

Mr. EXON. Therefore, it comes back to the situation of how do we best solve this problem? It seems to me that the people out there would not be twiddling their thumbs if the Hatfield-Exon-Mitchell-Nunn, et al., amendment is passed. They would indeed be planning for the safety tests that would be made in the future. It takes a long time to adequately and correctly plan these tests.

Mr. President, the Senator is so right. Let me emphasize once again, we had an accident with a nuclear warhead in Missouri. We had an accident with a nuclear warhead in North Dakota. We have had other accidents.

So far, Mr. President, we have been successful with the safety means in place, or crossing your fingers, you might say. Maybe there was some degree of luck in the fact that we did not have an explosion of plutonium. However, it did not happen, which partially proves that the system that we have now cannot be adequately, or properly, or honestly described as "not safe." Nevertheless, there are binary—which is another way of saying separating-type—features that can very likely be put into our ICBM inventory that have to be properly tested, which is one of the reasons that this Senator, at least, feels that we should not be talking about or enacting any piece of legislation here, as the House of Representatives already has, that would send a signal to those people out there that we are not going to do any more testing at all for whatever reason.

So, I believe that the Senator from Louisiana and this Senator are on exactly the same track. I just would like to have the opportunity, as I have now done, to try to take back some of those statements that were made that our nuclear ICBM inventory is "not safe." It simply is not as safe as it could be, and, if we are going to make it safer, we are going to have to have some tests, which are clearly allowed under reasonable conditions by the amendment offered by the Senator from Oregon.

I think the Senator from Oregon, once again, would agree that indeed he and his colleagues have come a long, long way to try to accommodate many of the concerns that have been raised by the Senator from Oregon and others in this particular area.

Mr. President, if I might go into a little bit of the details on why I support and join with the Senator from Oregon. After a great deal of conversations, talk back and forth, we made some proposals that I thought were very reasonable. I felt, though, that maybe they would be rejected out of hand. They were not rejected out of hand.

Friday afternoon we came to a basic agreement that I think has encompassed the real need with regard to the future. And the fact that, as the Senator from Oregon just indicated, my close friend and colleague, Senator LEVIN, from Michigan, has now come on our bill as a cosponsor indicates to me what I thought about the attitude of Senator LEVIN when the Senator and I discussed this in my office on Friday last.

Senator LEVIN was one of those, by the way, who signed a letter to the President, but I think that the arrangements, and the compromise, and—above all else—the consensus position, is best represented in the amendment that is now before the

body. A lot of hard work and compromise has gone into that.

Mr. President, as an original cosponsor of the Hatfield-Mitchell-Exxon, et al., amendment, I rise to urge my colleagues to support this position, which represents a balanced, sound approach to bringing our nuclear testing program in line with recent arms control progress between the United States and the former Soviet Union. The cold war adversarial relationship between the United States and Russia has transformed into a positive alliance where newfound trust and cooperation has yielded revolutionary agreements sharply slashing our respective nuclear stockpiles.

To be sure, the world of 1992 bears little, if any, resemblance to the world of 1972. The Russians have stopped nuclear testing. The French have stopped nuclear testing. Even the Chinese, who have a limited testing program, are making encouraging comments about joining a testing moratorium. The prospect of reaching an international court whereby nuclear nations agree to halt all testing and in the process slam shut, maybe just slam it down, the atomic Pandora's box is no longer simply a pipe dream. It is real, Mr. President, and it is within our grasp, but only achievable if the United States, the most powerful nation in the world, nuclearwise and otherwise, begins to show leadership and fulfills its pledge—I say again, Mr. President—fulfills its pledge for a comprehensive test ban, a pledge made in the United States-signed treaty, a pledge made by both the Reagan and the Bush administration.

Without a comprehensive test ban, the chance of halting the spread of nuclear weapons to nonnuclear nations is greatly diminished. Without a rudimentary testing program, a new member to the nuclear arms club will not have the confidence in its arsenal necessary for full operational effectiveness and deterrent capability.

A comprehensive test ban is the key to nuclear nonproliferation. It is in this context that the United States must view the justification for future nuclear tests, for it is in this context, in light of the Russian and French pledges, that the world is judging us. The issue comes down to a simple question: Is or is not the United States serious about nuclear nonproliferation?

As chairman of the Armed Services Subcommittee on Strategic Forces and Nuclear Deterrence, I made two trips to our nuclear testing range at the Nevada test site. I have been briefed at length by Department of Energy officials and national laboratory scientists in highly classified sessions. The amendment before the Senate is the product of my conclusions reached as a result of these visits and other considerations.

My first conclusion is that there are needed upgrades to our nuclear weapons stockpile that should be pursued in order to improve weapons safety. Though no new weapons are planned for the U.S. arsenal, three specific upgrades identified by the congressionally created Drell panel—fire-resistant pits, insensitive high explosives and enhanced nuclear detonation safety systems—should be retrofitted into our weapons so as to significantly reduce the possibility of a catastrophic peacetime accident occurring. Our amendment allows for no more than five safety tests a year for a period of 3 years—15 total—a sufficient number to properly test out these much needed improvements.

My second conclusion is that after over 820 nuclear detonations, the United States has no compelling need to test for warhead reliability extensively. Even so, the amendment allows for reliability testing—no more than one per year—so long as it is counted against the five tests per year limit and only if Congress does not disapprove the substitution after notification by the President. This latitude to use 3 of the 15 allowable tests for purposes of reliability testing is designed to accommodate unforeseen testing needs, though I believe it will not be needed.

My third conclusion is that a comprehensive test ban is in the national security interests of the United States. Once the testing for the previously mentioned safety improvements is complete, our Nation can match the Russian and French initiative and end its program of testing with the knowledge that its nuclear arsenal is a safe, thoroughly tested deterrent which will continue to be the mainstay of our Nation's superpower status. Without American participation there can be no true comprehensive test ban treaty. And without a comprehensive test ban treaty, the spread of nuclear weapons technology into the Third World—a legitimate threat to the future security of our country—cannot be stemmed. For this reason, the amendment sets September 30, 1996, as the end date of the U.S. nuclear testing program, provided Russia does not test beyond this date as well. If Russia does test after this date, the ban would be lifted.

My fourth conclusion is that the United States cannot let the push for a temporary superpower moratorium on nuclear testing go unanswered. For this reason, our provision enacts a 9-month moratorium on testing while the President is directed to submit a report to Congress detailing the nuclear weapons inventory, modifications needed to incorporate all necessary safety upgrades, the tests, not to exceed five, to be performed in the next fiscal year, and a proposed plan to achieve a comprehensive test ban by 1996. Most importantly, after so many years of stalling and unfulfilled promises, the United States would be on the path toward a multilateral test ban, joined by Russia and, hopefully, the nations of the world.

In certain ways, this amendment is similar to the administration's present testing policy.

The administration's plan calls for six tests a year; this amendment authorizes no more than five, which is not a significant difference, most would agree.

The administration wants to test for safety and reliability; this amendment authorizes needed safety tests and a handful of reliability tests provided Congress affirms the need for such a nonsafety test.

The administration wants to permit the United Kingdom to conduct one test a year at the Nevada test site; this amendment allows for such a test.

The reluctance of the executive branch, however, to take advantage of a defining moment in the history of the nuclear age necessitates that the Congress act in order to fill the void in leadership and, in the process, move the world closer to effectively halting the spread of nuclear weapons. While the need for superpower testing has lessened, the need to stem the tide of nuclear proliferation in the Third World becomes more urgent.

In reining in the testing of these weapons, significant progress will be made toward closing the atomic Pandora's box destabilizing our future security. By enacting an interim moratorium that has been outlined and then completing what remains of justified safety testing, our country can move toward a test ban with Russia and lead the rest of the world through example, not just hollow, ineffective words.

Mr. President, I reserve the remainder of my time.

Mr. JOHNSTON. Will the Senator yield for a question on my time.

Mr. EXON. I yield.

Mr. JOHNSTON. Mr. President, as the Senator knows, this is not just a moratorium for this year but is permanent legislation on an appropriations bill.

I was just talking to the White House people out in the cloakroom about what it all means. Is the Senator supporting this as permanent legislation without having the Armed Services Committee take a look at the permanent legislation?

We have to deal with this as a moratorium for this year; it is in the House bill. No funds may be used for testing for this year. But this, of course, is permanent legislation. Is that the position of the Armed Services Committee that they want the Appropriations Committee to or that we want to legislate on this matter on the floor?

Mr. EXON. The Armed Services Committee, as the Senator knows, has just completed our authorization bill, and we had a very lengthy debate and study on that matter and could not reach an

agreement in committee. Therefore, it was the recommendation of the chairman, and it was the recommendation of I guess most of the people on the committee on both sides of the aisle, that we had best let this matter ride until we get to the floor.

We knew very well and talked about the various proposals that the Senator had put into this bill in the appropriations measure. We knew full well of the proposed amendment to be offered on this bill by the Senator from Oregon. We knew full well of the 53 Members of the Senate who had written to the Secretary of Defense indicating that we should just have a moratorium for a year, period. We knew all of those things. I simply am saying that we have worked very hard to try and come up with a compromise.

The Senator is absolutely correct. This is a 1-year appropriations bill and cannot carry beyond that?

Mr. JOHNSTON. No. This amendment does carry on beyond that.

Mr. EXON. It carries for how long?

Mr. JOHNSTON. 1996; it is permanent law.

Mr. EXON. That might well be, but the Senator knows that whatever we do here on an appropriations bill, or authorization bill, or anything else cannot bind future Congresses.

I simply say then that what we were attempting to do, what this Senator is attempting to do with this particular amendment, is maybe to set this down on this particular measure and have this or something very close to it be the hallmark of other types of legislation where it would be proper and very much in order to bring it up for debate or amendment. That is the best answer that I can give to my friend from Louisiana.

I want to make sure that he understands where we are coming from. I do not really believe that the Senator from Louisiana and the Senator from Nebraska are coming from far distances on this particular matter. Does that answer the question from the Senator?

Mr. JOHNSTON. Mr. President, I had not seen this amendment before today, in fact before this afternoon. The amendment which I proposed and which is the position of the Appropriations Committee is to have a moratorium for this year's testing except for safety.

It was our position that we needed safety. Everyone recognizes the need for those tests. There are safety tests planned for this year. I am in the process of getting information from the White House as to the nature of those they can give to us.

I think there is an important difference again between what this legislation does and our position. This legislation does not permit any tests—even those planned tests which are planned within the next 3 months for safety must be canceled under this legislation and no safety test or for any reason after 1996 may be taken.

I just wonder if we want to make the decision now to have no test for safety after September 30, 1996. Maybe we want to.

But I do not think the problem is we are worried about the Soviet Union building new weapons. I think the greater worry is both our weapons and the Soviet weapons are not sufficiently safe and endanger mankind by some kind of premature explosion.

The Senator says that the cruise missiles are OK. It is my understanding that the SRAM missile, which is still in the inventory and not on alert——

Mr. HATFIELD. Mr. President, whose time is this?

The PRESIDING OFFICER (Mr. ROBB). The Chair advises the Senator the current time is being charged against the Senator from Louisiana.

Mr. JOHNSTON. The SRAM does not have a sensitive high explosive and there is a new version of the air-launched cruise missile which will have a sensitive high explosive. I do not know that will go in the inventory. If so, it will have to be tested. The D-5 if put into the inventory needs to be tested.

It is the position of Lawrence Livermore that I earlier read that almost none of our present weapons in the inventory contained the kind of safety devices that we need, and we need those tests.

As I mentioned earlier, the Union of Concerned Scientists say we need safety tests.

I would say that it would be better to have the kind of moratorium which we have in the appropriations bill, which limits for this year any test except for safety which the President must certify and gives the Armed Services Committee and other committees of jurisdiction the chance to look at long-term permanent law, because this is permanent law as opposed to Appropriations Committee language. I think those are differences but important differences.

Mr. EXON. Mr. President, will the Senator yield me 2 minutes to try to respond to the Senator?

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. I am happy to yield time.

The majority leader has asked for time and has been waiting.

Mr. EXON. Mr. President, will the majority leader allow me 2 minutes to try to respond directly to the points raised by the Senator from Oregon?

Mr. HATFIELD. I am happy to yield 3 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for up to 3 minutes.

Mr. EXON. Mr. President, I am fearful that the Senator from Louisiana, while I am sure it is not his intention, is trying to throw cold water on a concept that we have advanced in that it would destroy safety testing. That is not the correct description of what we had done.

I think it would be legitimate to say that about the original proposal offered by the Senator from Oregon. The lab experts tell us, and we have been in contact with them, that 10 to 15 safety testings as authorized and could be approved in the legislation offered by the amendment from the Senator from Oregon would be more than is necessary to prove up on these safety matters. So that is not an issue.

If you want to argue, as you might, that under this amendment we would not test as quickly as we would under the Johnston proposal, I might say, yes, although I think that is a matter of degree. I would simply say that let us not try and use the same arguments against this proposal that the Senator from Oregon has offered as what he intended to offer.

This proposal, I think the Senator from Louisiana would agree, is far, far better with regard to the ability to test for safety purposes than was the original proposal offered by the Senator from Oregon and certainly that authored and passed in the House of Representatives.

I thank my friend from Oregon, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. Mr. President, I yield to the majority leader such time as he may consume.

The PRESIDING OFFICER. The majority leader, Senator MITCHELL, is recognized accordingly.

Mr. MITCHELL. Mr. President, I am pleased that for the first time since 1988 the Senate today has an opportunity to consider a measure to limit nuclear testing.

Much has changed since 1988. This provision, and I trust the vote today, reflects that change in a positive and appropriate way.

Like the distinguished former chairman of the Appropriations Committee, Senator HATFIELD, I have been a long-time supporter of limits on nuclear tests.

I commend the Senator for his efforts on this issue and I know that he shares my gratification that a total of 53 Senators agree on the need for an immediate testing moratorium and have cosponsored S. 2064 to express their support for a testing pause.

I am particularly pleased that the distinguished chairman of the Subcommittee on Strategic Forces and Nuclear Deterrence, Senator EXON, has joined me and Senator HATFIELD to craft a comprehensive nuclear testing policy.

Our amendment combines the concept of the moratorium bill with the

basic elements of a testing phaseout provision that Senator EXON included in his subcommittee markup—a provision which I understand had the support of all the Democrats on the Armed Services Committee.

This approach merges the immediate political demand to alter our testing practice with a longer term strategy to eliminate the need for nuclear testing altogether.

The amendment imposes a 9-month moratorium on nuclear testing.

The moratorium can be followed by a testing program to implement all necessary safety features on stockpiled weapons. Five tests can be conducted each year for 3 years. One exception per year may be made for a reliability test if Congress does not disapprove the test within 60 days. One exception may also be made to conduct a test for the United Kingdom. But in no case can the total number of tests exceed 5 tests per year or a total of 15 tests through September 30, 1996.

And then, as of September 30, 1996, the U.S. nuclear testing program will end.

This amendment truly reflects post-cold war thinking.

Five years ago, who would have predicted that the Presidents of the United States and a newly independent State of Russia would each offer proposals for massive arms reductions, many to be carried out unilaterally?

Who would have thought the START negotiations would have been completely and immediately overshadowed by a new strategic arms agreement that cut far deeper into the heart of both sides' arsenals?

Who would have believed that the race for strategic superiority would end so suddenly, and that the most immediate military threat to our security would be the efforts of countries other than the Soviet Union to acquire nuclear technology and the means to deliver it?

It is in this context—the end of the superpower arms race and the urgent need to strengthen nuclear nonproliferation—that this amendment is so important and timely.

There are many important reasons to enact a temporary moratorium now.

First, a United States moratorium is an appropriate response to the Russian and French testing moratoriums.

We all know the long history of Soviet, and then Russian, unilateral moratorium on nuclear testing: They were ignored by the Reagan and Bush administrations.

The most recent action was the renewal of a 1-year moratorium announced by President Yeltsin in October.

If there were ever an opportunity to help buttress Yeltsin against the military men who would resurrect the Russian nuclear arsenal, the moratorium provides one.

Yeltsin reportedly already has agreed that—in the absence of a United States response to the Russian moratorium—the Russian military can renew nuclear testing at the end of the year.

That would be an unfortunate development, representing an increased role for the military establishment and a diminution of the civilian authority's ability to press for continuing arms control measures.

Yeltsin's initiative subsequently was joined by the French.

In April, France initiated its own testing moratorium through the end of the year, and it finally agreed to sign the Nuclear Nonproliferation Treaty.

France and Russia have called for the United States to join and to negotiate a comprehensive testing ban. The Presidents of Canada, Kazakhstan and many other nations also have urged the United States to halt tests.

The only other nuclear powers, the United Kingdom and China, could well follow suit. Since the United States conducts nuclear tests on behalf of the United Kingdom, those tests would automatically stop. The Chinese would either join or be isolated in the world community. So a U.S. moratorium would make it possible that, for the first time ever, all nuclear powers stop nuclear testing.

This would be an historic acknowledgement of the transformation of international politics.

It also would provide a much-needed opportunity for the nuclear establishment of each nation to reevaluate the purposes of their nuclear testing program.

This is the second reason to implement a moratorium.

A hard look at our testing program would reveal that there is only one reason to resume nuclear testing—to ensure the operability of the two or three warheads that could be fitted with new safety devices. And then testing could stop altogether.

A testing pause would provide the political momentum for all nuclear nations to negotiate a multilateral, comprehensive test ban.

This is a third reason for joining the Russian and French moratorium.

It is regrettable that the Bush administration has such a poor record on this issue.

For decades, the United States had sought to negotiate an end to nuclear testing. Every American President from Eisenhower through Carter, Republican and Democrat, sought a comprehensive test ban. In treaties signed by the United States in 1963, 1969, and 1974 the United States solemnly and formally committed itself to continue negotiations to end such testing.

President Reagan pledged that he would continue this policy.

In 1986, President Reagan wrote to Congress that he would:

immediately engage in negotiations on ways to implement a step-by-step parallel program—in association with a program to reduce and ultimately eliminate all nuclear weapons—of limiting and ultimately ending nuclear testing.

This promise was used to induce the House of Representatives to end its insistence on a nuclear testing moratorium in conference on the fiscal year 1987 DOD authorization bill.

But, as we all know, this has not been upheld by the Bush administration.

In fact, the Bush administration has taken just the opposite position.

In response to a letter from the chairman of the Armed Services Committee, Senator NUNN, and Senators GORE and SIMON, the President's National Security Adviser, Brent Scowcroft, rule out the possibility of seeking an end to testing, even though that had been the objective of every American President since Eisenhower, and an objective to which the United States committed itself in three treaties signed previously.

It is time to face the facts: This administration will not willingly pursue further limits on testing. It must be required to take a pause, reassess its testing program, and understand how serious Congress—and the rest of the world—is about ending nuclear testing. The moratorium will do this.

Finally, a U.S. commitment to ending testing is a critical tool in the effort against nuclear proliferation. The Bush administration says it cares about halting the spread of nuclear technology. I believe it does. But it ignores the fact that nuclear testing gravely undermines U.S. nonproliferation objectives.

The 1969 Treaty on the Nonproliferation of Nuclear Weapons [NPT] offered an implicit quid pro quo to induce nonnuclear states to sign on: The nuclear powers would work to achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament.

For nonnuclear states, the sign of seriousness that the nuclear powers are upholding their end of the bargain is whether they are moving to end nuclear testing. No one can dispute the inconsistency of the administration telling other countries that they have no right to nuclear weapons, while insisting that we have the continuing right to build and test nuclear weapons.

Ending nuclear testing is the obvious first step toward nonproliferation. This is why other nations have been trying to get the superpowers to end testing for years. Consistent U.S. objections to testing limits has prevented progress in strengthening the Treaty on Nonproliferation.

At the last review conference in 1990, there was no progress on strengthening International Atomic Energy Agency procedures in two different areas be-

cause Mexico and other nations wanted to ban further nuclear tests.

The stronger agency procedures on which there was no action would have allowed special inspections of undeclared sites and required full scope safeguards for nuclear exports to non-nuclear states. These are important measures. They would have been useful regarding Iraq's nuclear program prior to the war. It is foolhardy to forestall strengthening international nuclear safeguards simply because we will not end an unnecessary nuclear test program.

In 1995, the treaty will again come up for review. This time, the treaty itself could be jeopardized. Joining the Russian and French moratorium would demonstrate America's good faith in improving efforts to achieve nonproliferation; to stop the spread of nuclear weapons to other countries.

The administration argues that America's choices about nuclear weapons have no relationship to the policies of other nations. Showing restraint on testing, they say, cannot help in the effort against nonproliferation.

Yet North Korea and other would-be nuclear nations frequently point to United States testing to defend their policies. At the very least, we give them an excuse behind which to hide.

Moreover, the administration itself—in another clear inconsistency—has claimed that U.S. nuclear restraint can aid nonproliferation efforts. President Bush explained that the United States formally ended nuclear material production "to show leadership on critical issues [and] to encourage countries in regions of tension such as the Middle East and South Asia to take similar actions." Those very words apply to this very issue. Ending testing does matter.

The United States should demonstrate that it takes its commitment to nonproliferation seriously and uphold its end of the Nonproliferation Treaty's bargain. Of course, a testing moratorium also will save hundreds of millions of dollars each year and save the environment from the effects of nuclear explosions.

But other critical reasons to pause in our nuclear test program are to readjust the U.S. testing program and to jumpstart progress toward a comprehensive test ban. That is why these are the other elements of the Hatfield-Exon-Mitchell provision.

The administration will be required to submit a report during the moratorium. In addition to outlining the nuclear arsenal, the need for any additional safety tests, and other technical details, the report must include a plan to negotiate a comprehensive test ban. The moratorium itself will encourage the other nuclear powers to join in such a ban. Russia, which has long sought a treaty banning nuclear tests, will obviously be eager to help achieve this goal.

Because the amendment mandates an end to U.S. tests by 1996, I am confident that the United States will do all it can to make this a multilateral achievement. Achieving a comprehensive test ban would be perhaps the clearest proof that what was once derided pie-in-the-sky thinking is now eminently practical.

The administration's arguments against this amendment are without merit. The administration would have us believe that a temporary moratorium will prevent tests ever again. The administration also would have us believe that continued testing remains necessary. Neither contention is true.

Because this amendment concerns only a temporary moratorium, the first objections are irrelevant. The legislation itself provides that tests can resume. In terms of the need for continued testing, ad infinitum—their arguments don't hold up to scrutiny.

First, the United States now has no plans to develop or design new warheads, and we have no nuclear warheads in production. So we obviously do not need tests to produce new warheads.

Second, testing for reliability is not necessary. Warhead design flaws that can be cited to scare people are flaws that were not revealed by nuclear testing, but by designers who realized that they had neglected some factors in their work.

The reliability of our nuclear stockpile can be monitored without tests almost indefinitely. We are talking about percentages of reliability or declining confidence that are very small. Furthermore, it is the missile, not the warhead, that is the least reliable part of the weapons system.

Finally, from 1964 to 1981, not a single nuclear test was conducted for reliability reasons. The sudden interest in the warhead reliability arises out of desperation for a rationale for continued testing.

Safety is a different matter. According to the March testimony of Robert Barker, Assistant Secretary of Defense for Atomic Energy, the Air Force, the Navy, DOD, and DOE concluded "that there is not now sufficient evidence to warrant our changing either warheads or propellants." Thus, no retrofits for safety have even been ordered by the administration. So a moratorium sure is± not going to affect our safety program.

But there is a rational for limited tests to ensure that every weapon that we keep in the stockpile will incorporate up-to-date safety features. Because two, or possibly three warheads that will be kept need additional safety features, we will need to conduct a limited number of tests on an example of each reconfigured weapon. Ray Kidder from Lawrence-Livermore National Laboratory has testified that only four tests would put insensitive high explosives on both the W-88 and W-76 warhead.

The regime set out by this amendment—15 tests over 3 years—ensures sufficient testing to successfully upgrade those weapons.

The administration has tried to defuse the growing congressional support for limits on nuclear testing by proposing its own so-called new policy. But the new policy is really the old policy. It is just more of the same. It barely affected the previously planned testing schedule. It did nothing to respond to the Russian and French moratoriums. And it remained sullen silent on the question of negotiating further testing limits—each of which is critical to any new policy.

Other have suggested other equally unsatisfying alternatives to the comprehensive policy presented by this measure that Senator HATFIELD, Senator EXON, and I have agreed upon. This bill, for example, contains a pseudomoratorium—a moratorium with waiver authority so broad that the President already has indicated he would use it. The provision in this bill would let the President conduct any nuclear tests for safety that he deems to be in the national interest.

Well, President Bush already has said that continued testing is in the national interest. So, the provision in the bill is not a moratorium at all. It is a green light to more testing. Another proposal is to put in law the President's so-called new policy—the one that's really the same as the old policy and does not really change anything. The proposal would include language urging the President to negotiate a comprehensive test ban.

The Senate already has passed such language and we already know that the administration will ignore it. So this alternative offers nothing new, either. The time has come for the United States to stop dragging its heels on progress toward a nonnuclear world. Dozens of Nobel laureates who helped develop nuclear weapons say the time is right to end testing.

Admiral Crowe endorsed a moratorium, saying that a United States moratorium should last as long as Russia and France suspend their tests. "The [U.S.] needs to take some steps toward a pause in nuclear testing," he said, "We need to do something on this issue."

The House of Representatives agrees. It included a moratorium provision in its energy and water bill, passed overwhelmingly. It voted 237–167 for the Kopetski-Green nuclear moratorium amendment to the DOD authorization bill. The American people also know that the time has come to pass this amendment. An overwhelming majority of Americans want to halt testing now.

In a recent poll conducted by ICR Survey Research Group, 72 percent of

Americans wanted the United States to stop nuclear testing, either without conditions or temporarily while seeking a multilateral test ban. Only 7 percent of those Americans polled supported continued testing regardless of the actions of other nations. That is the policy of the Bush administration.

Americans are ahead of their Government on this issue. They know that the world has changed and that we have an unprecedented opportunity to put the arms race behind us. They want us to start by ending nuclear testing.

The Russian moratorium expires in October. The French moratorium expires in January. Both nations will resume testing if the United States fails to join their moratorium. As the Russian Minister of Atomic Energy said: "The United States has the last word [on nuclear testing], and the whole world awaits this step." Let us speak clearly and forcefully, and take this step today.

I urge my colleagues to support the Hatfield-Exon-Mitchell amendment and vote against all weakening amendments offered today.

I thank my colleague for his courtesy in extending this time to me.

The PRESIDING OFFICER. Who yields time? The Senator from Louisiana [Mr. JOHNSTON].

Mr. JOHNSTON. Mr. President, when we put together the unanimous-consent request on this matter last Friday, the Senator from Texas was out of town. He has since called and asked me for 10 minutes to speak on the SSC. I told him I would give it to him out of my nuclear testing time.

At this time, I yield 10 minutes to the junior Senator from Texas to speak about SSC, or whatever else he wants to speak about.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I thank the distinguished chairman of the Energy Committee.

Testing is about safety and reliability, and as long as we want safety and reliability, we have to test. I am opposed to the test ban amendment that is pending.

But we are debating today two issues. We will first vote on funding for the superconducting super collider, and then we will vote on nuclear testing. I want to direct my remarks this afternoon to the SSC.

AMENDMENT NO. 2832

Mr. GRAMM. I want to begin by reminding my colleagues of the process we used to get to this point on the SSC.

On February 10, 1987, the Secretary of Energy announced that we were going to move ahead with building the superconducting super collider, the world's largest and most important scientific project to be built anywhere in the world in the last quarter of the 20th century.

States were asked to submit proposals for the site location. Forty-three proposals were received from 25 States and, as a matter of fact, a guy named Paul Jablonka proposed it be built on the Moon. That proposal, as far as I know, was immediately rejected.

But the Secretary of Energy set out a process whereby the National Academy of Sciences and the National Academy of Engineering, as a joint project, would look at each of the proposals, evaluate them, and choose the best site on technical merit. They immediately reduced down the 43 proposals to 36 sites in 25 States. After a comprehensive study, the final list came out. There were seven States on the list. When that study was completed on November 9, 1989, Texas was chosen.

I want to remind my colleagues—those from 25 States—States that submitted proposals for the SSC site—that their proposal was considered not by the administration; not by a political appointee; but by the National Academy of Sciences and the National Academy of Engineering. And a selection was made to build the SSC in Texas, as the best site from a technical viewpoint.

I also want to remind my colleagues that in competing for this $8 billion project, the State of Texas, offered and the Federal Government accepted, $1 billion of funds from the State. No other State made a similar gesture.

We now have come down to the moment of truth, Mr. President, as to what we are going to do about building the SSC. We have heard many arguments about funding. I would like to address two of them.

First of all, I would like to address the deficit argument. I remind my colleagues that we are operating under a spending ceiling. Nobody doubts that we are going to spend right up to the spending ceiling. So if we reduce funding for the SSC, the money is going to be spent somewhere else.

There are those who say: Well, this is a good place to start deficit reduction. I could respond by saying that when we voted to increase by 50-percent funding for the Public Broadcasting Service, that that was a good opportunity to begin deficit reduction. But the bottom line is we decided deficit reduction in the budget. We set out a spending limit. So the debate is not about deficit reduction; the debate is about priorities. That is the major argument, I think, for the superconducting super collider.

Twenty-five years ago, in 1967, the Federal Government spent over 5 percent of the nondefense budget on research in science and technology. Today, 25 years later, if we fund and build the SSC, we are going to be spending 1.8 percent of the Federal budget on science and technology in the future. In short, as a proportion of the budget, we have reduced by more than half the amount of money spent on science and technology.

I think we are basically down to a decision, and we all know what the decision boils down to: Do we want to spend money on science and technology in a long-term investment in the future of the country, or do we want to take the money from science and technology and spend it on something else?

The disadvantage that science has always had in debate on the floor of the Senate and on the floor of the House is that there is a limited constituency for the future. As a result, we consistently underfunded the future. We consistently invest more in the next election than we do in the next generation.

I doubt if there is a Member of the Senate who really understands to any degree what the SSC is about. We have all learned our little pat statements as to what it does, but it is an investment in high-energy physics. That is an area that the United States has been the world leader ever since the Manhattan project.

Between 20 and 30 percent of the gross national product of the United States today comes from high-energy physics that the United States of America was the pioneer in research on. Everything from the computer to the television has come as a result of high-energy physics research undertaken in this country. It is an area that we have been a leader in; it is an area that we are a leader in today; and the decision on this project is a decision as to whether we are going to stay the leader in this important area.

I believe that we are talking about an investment that will yield hundreds of thousands of jobs after the turn of the century, jobs in new technology and new techniques. I think it is important that we make the decision to invest not in the next election, but in the next generation.

So I want to ask my colleagues to look at the SSC, to look at what research and development has done for America in the past, to look at the high return we have gotten on the research we have undertaken. I hope that after taking that look that we decide to build the most important scientific project to be built anywhere in the last quarter of the 20th century.

I hope we build the SSC so America can stay No. 1 in science and technology because, in the longrun, the only way we can maintain the highest standard of living in the world, the only way we can pay the highest wages in the world, is to have the best technology and the best tools in the world. And the SSC is a sound, long-term investment in the future of America. I hope today we make that investment.

I yield back the reminder of my time.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

AMENDMENT NO. 2833

Mr. LEVIN. Mr. President, the Senator from Oregon indicated to me that he would yield me 10 minutes from his time, but he is not on the floor to do it.

The PRESIDING OFFICER. Without objection, the Senator from Michigan [Mr. LEVIN], is recognized for up to 10 minutes, with the time charged to the Senator from Oregon.

Mr. LEVIN. Mr. President, first, I want to congratulate the Senator from Oregon, the Senator from Nebraska, and the majority leader for working out this amendment on testing. It is a very important step forward towards a comprehensive test ban. It does it in a way which will allow for the completion of safety testing on the two to three warheads which can still arguably use some safety testing.

This initiative will finally, after years and years and years of commitment to a comprehensive test ban, put us on the road to a global ban on nuclear explosion. Most important, it will take a major step on the road to limit the proliferation of nuclear weapons.

What is important is that those two goals are inextricably linked. Moving toward a comprehensive test ban and limiting proliferation of nuclear weapons are inextricably linked. They cannot be separated. We cannot have nonproliferation without finally agreeing to a comprehensive test ban, because other nations will not agree not to proliferate, not to produce nuclear weapons, not to have tests, unless we also finally agree to end the testing of nuclear weapons.

This administration has made some notable progress in the area of nuclear weapons policy. But, on the question of continued explosive testing of nuclear warheads, it is frozen into cold war priorities. Instead of halting testing and leading a global effort to prevent proliferation of nuclear weapons, the United States is insisting on exploding nuclear warheads in the desert for as long as we have a nuclear arsenal.

That is the administration's position. And so we continue to test despite the Russian suspension of nuclear testing that began last October and the French suspension of testing that began in April. Both nations have called on the United States to join their moratorium in negotiating a comprehensive test ban treaty. But the administration has failed to show the slightest interest in negotiations on nuclear testing despite the cessation of testing in other countries, despite existing U.S. treaty obligations, and despite commitments from the Bush administration to negotiate further limits on testing.

Every President from President Eisenhower through President Carter pursued the goal of a comprehensive test ban treaty. In the Limited Test Ban Treaty signed by President Kennedy in 1963, the United States and other signatories pledged to achieve "the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to that end." That is the Limited Test Ban Treaty which has been approved by this country. We are a party to that treaty.

In 1969, President Johnson negotiated the Nuclear Nonproliferation Treaty that was subsequently supported by President Nixon. It repeated that pledge verbatim in its preamble. Article VI of that treaty is viewed by nonnuclear states as an agreement by the United States and other nuclear states to negotiate a comprehensive test ban. Every 5 years the parties to the nonproliferation treaty meet to review the treaty.

If anyone doubts that article VI and the achievement of a comprehensive test ban is crucial to the extension of the nonproliferation treaty in 1995, the next time it comes up for its 5-year review, they should read the record of the 1990 review conference of the Nonproliferation Treaty. At that conference the participants agreed to the following statement. We were one of the participants. We agreed to this statement in 1990. And every one of us should be aware of what we have pledged as recently as 1990:

> The conference noted that no multilateral negotiations had taken place between 1985 and 1990 toward the achievement of an agreement banning all test explosions of nuclear weapons for all time. Mindful that the extension of the treaty will be considered in 5 years—

That is 1995—

> the conference expressed its belief that a comprehensive test ban treaty would significantly enhance the universality and durability of the nonproliferation treaty beyond 1995. The conference reaffirmed that a comprehensive test ban treaty adhered to by all states would make the single most important contribution toward strengthening and extending international barriers against the proliferation of nuclear weapons and would contribute greatly to the limitation of the grave threat to the environment and human health represented by continued nuclear testing. The conference once again emphasizes the critical importance of a comprehensive nuclear test ban and calls for early action towards that objective.

We approved that. We subscribed to those statements as late as 1990.

Now, the Nonproliferation Treaty is not the only treaty commitment we have made to negotiate a comprehensive test ban. In 1974, President Nixon signed the Threshold Test Ban Treaty. Article I said: "The parties shall continue their negotiations with a view toward achieving a solution to the problem of the cessation of all underground nuclear weapons test." That commitment was shared by the Senate. In 1990 we voted to ratify the Threshold Test Ban Treaty containing that commitment, 98–0.

Although President Carter continued comprehensive test ban negotiations and made extensive progress, President Reagan halted those talks. Congress then took the initiative with both the House and the Senate voting several times to urge resumption of negotiations. In 1986, the House voted for the United States to join a Soviet moratorium. President Reagan then threatened a veto. The distinguished chairman of the Senate Armed Services Committee, Senator NUNN, then became personally involved in obtaining a commitment from President Reagan to resume talks on limiting test explosions.

In a 1986 October 10 letter to the Congress, President Reagan pledged to "immediately engage in negotiations on ways to implement a step-by-step parallel program—in association with a program to reduce and ultimately eliminate all nuclear weapons—of limiting and ultimately ending nuclear testing."

That is his commitment. That is President Reagan's commitment. In exchange for that commitment, the House of Representatives dropped its insistence on a nuclear testing moratorium for the fiscal year 1987 Department of Defense authorization bill.

The progress since then has just not occurred on comprehensive test ban negotiations. We have seen none from the Reagan administration or the Bush administration.

And now the Congress again must act, not just because we made a solemn commitment to act but because we have seen through the statement of a number of other countries, including France, that unless we live up to our solemn obligations, they will begin testing, and we clearly see before us that unless we live up to our commitment to stop the testing of nuclear weapons, we will lost the battle against the proliferation of nuclear weapons. We cannot have nonproliferation and endless testing of nuclear weapons. We must finally do what we have committed ourselves over and over again to do, which is to negotiate an end to the testing of nuclear weapons, if we are, in fact, going to achieve the greatest single goal for our own security, which is the nonproliferation of nuclear weapons.

On September 17, 1990, Arms Control and Disarmament Agency Director Ronald Lehman promised in a Senate Armed Services Committee hearing that the delay in resuming nuclear testing talks would not be lengthy. He said, "We are not talking about years." That was almost 2 years ago.

The chairman of the Armed Services Committee, along with Senators SIMON and GORE, wrote to the President's National Security Adviser, Brent Scowcroft, on March 31 of this year, citing many of these facts and seeking to know from the administration when further steps toward a CTB Treaty would be forthcoming. That letter noted:

When Congress reached its compromise agreement on nuclear testing with President Reagan on the eve of the Reykjavik Summit in 1986, it believed that it had received a solemn commitment from the President to pursue in good faith a step-by-step series of negotiations resulting in progressively more stringent limitations on underground nuclear tests.

But the response from General Scowcroft contained no commitment to work toward a CTB, no plans or schedule for resumption of negotiations. General Scowcroft ruled out any limits on nuclear testing beyond current United States plans and practices, and reaffirmed the U.S. intention to continue testing as long as we retain nuclear weapons, regardless of other nations' efforts to seek a mutual halt to explosive nuclear weapons tests. The administration's new policy on nuclear testing merely formalizes a previous decision to test up to six times a year. That policy flies in the face of logic. It violates treaty commitments which are the law of the land, and it violates Presidential commitments made to Congress.

Now there are several reasons we have conducted nuclear weapons tests. The main reason is to perfect new weapons designs. But the United States has no nuclear warheads in production, and no new warheads being developed or designed.

Another reason is to confirm that safety devices on warheads work as intended. Although safety questions have been raised about some warheads and missiles in the stockpile, no retrofits of warheads for safety reasons have actually been ordered at this time. The Air Force, Navy, DOD and DOE have concluded "that there is not now sufficient evidence to warrant our changing either warheads or propellants," according to March testimony from then-Assistant Secretary of Defense for Atomic Energy Robert Barker before the House Armed Services Committee Defense Nuclear Facilities Panel.

But this amendment allows for safety tests that would permit three kinds of safety devices to be installed in all warheads that will remain in the arsenal. Insensitive high explosives, fire resistant pits and enhanced detonation safety systems can be installed in warheads that will remain in the arsenal but lack these features, if the President reports to Congress that those safety features are required, and if the tests to support those retrofits are completed by September 1996.

Could there be any value to conducting some limited number of nuclear tests to support the addition of those safety features to warheads that lack them? The answer may be "yes."

But the costs of continuing to test nuclear weapons with no end in sight, developing a whole new set of safety features with totally redesigned warheads, or for so-called weapons effects tests, or to keep thousands of weapons designers employed—those costs are very high. Continuing testing for those purposes would actually promote nuclear proliferation, a far greater potential danger to our national security than the threat of accidental detonation of nuclear warheads, which is extraordinarily low and can be further reduced through greater care in transportation and other operational procedures.

Make no mistake—when we insist on testing without end, we are promoting proliferation of nuclear weapons. Other nations that have currently suspended their nuclear tests will begin testing again. "France will resume testing in the South Pacific if other nuclear powers fail to join its moratorium," said President Mitterand on July 15. And Victor Mikailov, Russian Minister of Atomic Energy and Power, said last month "If the United States doesn't stop testing, we will be forced to resume testing next year." So Russia and France have stopped testing—but the actions the Bush administration proposes could actually lead them to start again.

Even the Chinese, who recently conducted a large test, are—"serious about preparing for a comprehensive test ban. The other nuclear weapons states should be prepared for that"—says Shen Dingli, a Chinese physicist and arms control expert. "The test related to China's preparation for a test ban. It may be the last on a big scale," said Shen.

The whole world is concerned about nuclear proliferation, but the United States is promoting that dreaded result when we are a major obstacle to a worldwide comprehensive test ban. Our nuclear testing policy puts at risk the existing nonproliferation regime and jeopardizes chances to build a stronger regime. Weigh the value of effective nonproliferation against the value of continued testing, and the conclusion is clear.

The administration's policy cannot and should not stand. First, we need a moratorium, one that least matches the Russians and the French. Second, we need negotiations to complete a Comprehensive Test Ban Treaty. This amendment sets a target date of 1996 for achieving a CTB, and toward that end allows up to 15 tests to incorporate warhead safety features, even though we probably would not need all 15. Those tests—if the President orders them—must be completed and a final end to all testing secured as soon as possible.

And finally, we need a strategy to strengthen and extend the Nuclear Nonproliferation Treaty in 1995. The United States should be leading efforts to stop proliferation, not posing the greatest threat to the NPT regime we have.

I urge my colleagues to reject the current administration policy and approve this amendment to put the United States on course to end nuclear explosive testing in all nuclear weapons states as quickly as possible. That is one way we can begin addressing the foremost security threat—not warhead safety but nuclear proliferation.

Mr. President, again, I congratulate the sponsors of this amendment, and I ask unanimous consent that I be added as a cosponsor, if I am not already listed as one.

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

Who yields time?

Mr. DOMENICI. Mr. President, will the Senator yield me 15 minutes? I think I have it under the UC.

The PRESIDING OFFICER. The Senator is correct. The Senator from New Mexico is recognized for 15 minutes.

Mr. DOMENICI. I thank the Chair.

Mr. President, I thought the issues before the Senate this afternoon would be a 1-year full moratorium or a moratorium with the exception of permitting safety testing upon certification by the President. When I thought that was the issue, I felt very comfortable that we would understand what we are doing on the floor and we would choose one or the other.

But what has happened is, over the last 72 hours, a 1-year moratorium has turned into a permanent multiyear program for all nuclear testing. The Chair has heard it explained. Senators have heard it explained.

Mr. President, on plain, simple grounds, are we sure we know what we are doing? It seems to me that if ever there was a situation when we should not, on an appropriation bill, over the last 72 hours, devise a permanent, total program for the nuclear testing of American nuclear weapons, it is this one.

Now, frankly, it is very difficult to try to get the point across that nuclear testing for safety is serious business. Let me just show this chart.

This is a Minuteman III MK–12 reentry vehicle. This is it exposed to safety and reliability testing. It was down in the ground as one of America's nuclear weapons that could be there waiting to be used, and it would not have worked.

You see what happened? You could not simulate this. That is what nuclear testing is about. You take the weapons, and you test them to make sure that you do not have unsafe weapons.

Before I show you a couple more, let me tell you what we are supposed to do with our nuclear weapons system during the next 8 or 10 years, whether or not everything works out with the Soviet Union, whether or not we have the much-spoken-of nonproliferation treaty, we are going to make seven safety modifications to our current system. Not that anybody understands what they are, but just so we know they are real—the B–61, the W–62, the W–69, W–

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76, W-78, W-80, and W-88. These are all nuclear weapons. And we are going to do safety modifications on them because we already know that science and technology cries out for safety modifications.

In each of these we are going to implement things like enhanced nuclear detonation safety, insensitive high explosives, and fire resistant pits. All of these are things we are going to do to these weapons to make them safer, so we will not have that happening when they are sitting down there in the silo waiting around ready to be used, God willing never, but nonetheless ready.

I am told—and this is one group of experts—that if we are going to make these changes, these safety modifications—and I say to my friend Senator BENNETT JOHNSTON, we are told if we are going to make those needed safety modifications that approximately five tests are needed for each of those particular safety enhancements so that we will end up knowing that the needed safety modifications as planned are safe.

I do not know if five is right. I am told it is right. What if it is four? What if it is three? There are eight different warheads we are going to modernize, and from what I understand that modernization and needed safety enhancement is going to occur even within the small numbers of nuclear weapons that are contemplated under the new agreements with the Soviet Union.

In other words, we are going to have these weapons, they are going to be part of our arsenal, and I wonder why we would not want to be sure that they are safe and that the needed safety modifications had taken place. Why would we not do that? Does that have anything to do with the Soviet Union? Does it have anything whatsoever to do with nuclear proliferation? It seems to me that it has everything to do with whether you want safe nuclear weapons in the arsenal.

Having said that, it seems to me that Senator HATFIELD's proposed multiyear program for nuclear testing that originally was to be a moratorium—all of a sudden it sprang wings and from a moratorium it is a 5-year program. It seems to me that every one of us on the floor today agrees that modifications to enhance safety should be pursued, and being told that about five tests are needed to implement each new technology on each type of warhead, how could we be agreeing to 15? It seems to me we might not even know what we are talking about. Maybe we pick three a year, or four a year and say that sounds right. Maybe we could get something good out of the world on some other program, some other treaty. But what does it have to do with a valid, appropriate, American safety program?

Mr. JOHNSTON. Will the Senator yield?

Mr. DOMENICI. Yes.

Mr. JOHNSTON. The information I have is that after all the strategic weapon reductions that are planned there will be nine weapons in the inventory. Of those, seven need safety modifications; the B-61 needs two, the B-62 needs three: that is insensitive high explosive, fire resistant pit and enhanced nuclear detonation safety; that normally there is no way to certify a warhead without six or more tests; and that to install all safety modifications will take at least 40 tests unless they cut corners.

I do not know whether that is correct or not. That is the information given to me by the testers, by the Department of Energy.

The information they also gave me is that originally they had five safety tests planned for 1933. I can give you the information on it. The GABBS test, or ultra safe pit plutonium involved test, the counter bore test, optimized safety design with pit reused. There are two others, without going into detail of them.

It just seems to me that if we do not know enough about this to go beyond saying no test except for safety, that is an understandable, clear rule. Yet, this amendment would give us a long-time, permanent law which cancels safety tests, and has no safety test after 1996. It seems to me that is not connected to nuclear proliferation. That is connected to nuclear safety on the wrong side of nuclear safety.

Does the Senator agree with that?

Mr. DOMENICI. I agree. Since I have the exact same information regarding the same warheads that are going to be enhanced, they will be in the inventory and enhanced as described, I ask unanimous consent that the entire list be made a part of the RECORD.

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

SAFETY TESTS STILL NEEDED

After all the strategic weapon reductions, there will still be eight or nine weapon types in the stockpile: B-61, W-62, W-69, W-76, W-78, W-83, W-87, W-88, W-80.

Of these, seven need safety modifications: B-61 IHE, FRP; W-62 ENDS, IHE, FRP; W-69 ENDS, IHE, FRP; W-76 IHE, FRP; W-78 IHE, FRP; W-80 FRP; W-88 IHE, FRP.

ENDS=Enhanced Nuclear Detonation Safety.

IHE=Insensitive High Explosive.

FRP=Fire Resistant Pit.

Normally there is no way to certify a warhead without five or more tests.

To install all safety modifications will take at least forty tests, unless we cut corners.

Mr. DOMENICI. I said that we have been advised that there are about an average of 5 tests for each. If there are 8, that is 40. That sounds much different than 15, and it really is.

Mr. COHEN. Will the Senator yield? I do not think it is quite 15. The amendment as written allows for 5 per year for 3 years: minus 1 for reliability, if the administration chooses one for reliability, and minus 1 for the British test. It is basically 3 per year for 3 years, or a total of 9 tests for safety.

Mr. DOMENICI. I thank the Senator. He is more right than I am.

The point is, when you are talking about this kind of event in our history, we have gone through building this arsenal. It is here. If anybody thinks that we do not get very much out of these underground tests and these tests for safety, let us look at this one real quick.

I do not need to cite the missiles down the side here, but every system except one had unpredicted failures discovered on nuclear tests. There they are, with the little red checks, "major system test, unexpected results." That is why we do tests. We do not do these tests because we like to do underground nuclear tests. I think America would be delighted to never do them again. I am certain that our friends from Nevada in whose State much of this occurs—I mean if they knew that America never needed to do these, they will not be here on the floor. They are concerned because they have manpower, they have facilities. We are going to put them all up in some kind of state of confusion because on the floor of the United States Senate we are going to come up with an ill advised multiyear plan for about three tests a year.

If I were on the Armed Services Committee, far be it from me to advise anyone, but I would be here asking that you do nothing for more than 1 year on this bill, and give it back to those who delve into this in great detail to see if we are right about the 8 systems, to see if we are right about how many tests you have to do, and to see if that jibes up with the 3 that are in here for each of the next 3 years.

So I urge—although it seems to me that the die is sort of cast, and unless we hear from additional members of the Armed Services Committee on our side and some additional Democrats on the other side, other than Senator EXON and LEVIN—if we do not hear from any, the die is cast on the floor of the Senate, in spite of what we are being told about the 8 systems, we are going to cavalierly decide that enough is enough, these are not very good things, and it is going to help some other program of negotiating on proliferation, which is going to get a big positive boost out of this. Frankly, it seems to me that we should be sure if we have 2,000, or 18,000 or 12,000 nuclear weapons, and whether we have an agreement to lower it more than it is today, we ought to do the safety experiments to make sure that what we have are safe.

I yield back any time that I have to the chairman, Senator JOHNSTON.

Mr. REID. Mr. President, under the order entered, it is my understanding that I control 1 hour; is that true?

The PRESIDING OFFICER. The Senators from Nevada are going to control 1 hour.

Mr. REID. Senator BRYAN has asked me to request that 10 minutes of his time be extended to Senator COHEN.

The PRESIDING OFFICER. The Senator from Maine is recognized for 10 minutes.

Mr. COHEN. Mr. President, it has been stated by several members that we have come a long way on this issue, and indeed I think we have come a very long way. Last week, the committee was talking about an amendment that would have established a 1-year moratorium period—nothing about safety and reliability, simply a 1-year moratorium. I think that the committee members—certainly the Senator from Oregon and others—tried to negotiate in good faith to come up with some acceptable compromise. They have come down from a year to 9 months. They have, in fact, recognized that safety is a critically important issue in this entire debate. That safety is not something to be dismissed lightly, or to be denigrated, saying, "oh, there they go again with their safety considerations, another ruse foisted on the American people by the Bush administration." They have also recognized that there are issues dealing with reliability and nonproliferation and the nuclear testing talks.

I might say, for the information of my colleagues, I raised these issues about this linkage, and there is a linkage between our testing practices and our ability to encourage other nations to join in the nonproliferation regime. There is linkage between our testing policies and reestablishing nuclear test talks with Moscow. There is linkage between all of this.

So I think we were right to raise these issues in the Armed Services Committee. As the Senator from Nebraska pointed out, we did not reach any conclusion. I raised this linkage in the Armed Services Committee mark-up in response to questions raised by Senator NUNN—he is not here just yet, but he will be soon—about the failure of the administration to really aggressively pursue the nuclear testing talks during the past several years. I think that was a legitimate complaint, and we tried to address that during the Armed Services Committee's mark-up and we were unable to reach a consensus.

The Senator from Oregon said this is a simple issue. I would like to take issue with that statement. This is not a simple issue. This is a very complex and complicated issue. I go back to the mid 1980's, when we had something comparable to this in terms of its popularity. It was called the nuclear freeze movement in this country, which was very, very popular at that time. It was something deeply held by well-meaning people, as far as the need to establish a nuclear freeze immediately. It come right on the heels of the Soviet Union—at that time the Soviet Union—deploying SS-20's in Eastern Europe. Had a nuclear freeze been endorsed by the Senate and the House and embraced by the President, that would have meant that the United States could not have deployed the Pershing II missile in West Germany and the cruise missile in other countries. And by rejecting the freeze's popularity and the apparent simplicity—not unlike what has been suggested here that a test ban is a simple issue—by rejecting that, we were able to deploy our Pershing II, and re-enter negotiations with the Soviet Union. We were able to eliminate the threat of the SS-20. We were able to pull back our Pershing II's.

We did all of that because we had to engage in a somewhat paradoxical situation of having to deploy a system in order to get real reductions. I say to my friend that we have that sort of complexity involved in this issue as well. It is not simply simple. It is quite complicated.

It has been suggested that 72 percent of the American people want an end to nuclear testing. As we all know, in this business, it depends on how you ask the question. Do you want an end to nuclear testing? Answer, yes. Do you want an end to nuclear testing if it means that a substantial portion of our residual nuclear weapons are going to remain inherently unsafe? Ask that question and find out what the results would be. Do you want an end to the Federal deficit? Well, 75 percent of the people would say, obviously, yes. Do you want an end to the Federal deficit if it means increasing your taxes; or if it means cutting Social Security; if it means cutting veterans benefits; if it means putting a means test to all of our entitlement programs?

So how you ask the question, or phrase the question, depends very much on what kind of an answer you are going to get. I do not doubt that 72 percent of the American people want an end to nuclear testing. The real issue is whether or not we are going to have remaining something that is safe and indeed reliable.

The Senator from Louisiana has pointed out—and I think very effectively, as has the Senator from New Mexico—that there are serious safety issues that have been raised—not by politicians or bureaucrats at the White House or down at the Pentagon. These issues have been raised by a panel put together at the behest of Congress 2 years ago. The so-called Drell panel was created at the request of a House committee. The Drell panel was the one that came to the conclusion that a substantial portion of our inventory still has major safety problems.

The Senator from Louisiana started to deal with that, and he showed a photograph, which I did not see at the time, but perhaps it was that accident we had at Grand Forks Air Force Base, North Dakota, in 1980 with a B-52 bomber. That bomber was loaded with SRAM-A missiles, and the W-69 warhead on that SRAM-A missile is not equipped with insensitive high explosives, or with a fire resistant pit, or with the enhanced nuclear detonation safety systems. It has none of those safety systems. We were lucky in this particular tragedy. As I recall, it was Dan Rowen who used the expression "the fickle finger of fate." We were spared a major catastrophe by that fickle finger of fate, because the wind was blowing the wrong way that day.

Let me read to you what an expert witness said in testimony taken before the Appropriations Committee:

> The wind happened to be blowing down the axis of the aircraft. Had the wind be blowing across, rather than parallel to the fuselage, the whole system could have been engulfed in flames (including the SRAM-A missiles). There is a real world out there, and those kinds of accidents happen. You are talking about something that in one respect could probably have been worse than Chernobyl, because you had plutonium in the soil and on the soil, which you have to clean up.

So here we have a situation in which one accident could have been a major catastrophe of Chernobyl proportions, had the wind been blowing across the aircraft rather than along its axis. Those are the kinds of issues we are dealing with. Safety is so important because the SRAM-A missiles simply do not have the safety devices necessary to protect the American people.

Mr. President, it was suggested that we are spending a half-billion dollars to test our weapons. I do not know if that is the accurate figure, but let's assume it is. That is a substantial amount of money. I also point to the Drell Commission, which pointed out that had we had an accident that dispersed plutonium, one accident could in fact involve not only the personal tragedy of thousands of people being affected by the plutonium, but we could spend at least a half-billion dollars cleaning up the nuclear contamination. At least a half-billion dollars. Now we are talking about having thousands of nuclear weapons in our arsenal for the indefinite future. As long as we have them, they should be safer and they surely ought to be reliable.

The amendment as originally proposed last week, or passed by the House, simply said let us have a 12-month moratorium. It had no nexus, no connection with efforts to encourage nonproliferation; no connection with how we are going to get the nuclear test talks underway again with Moscow; no ultimate strategy for trying to get this genie at least under control, if not back in the bottle, which is probably impossible.

I looked at the amendment that has been offered by the Senator from Oregon and my colleague, Senator MITCHELL from Maine, and Senator EXON. I want to call to their attention, and that of my colleagues, to page 6 where I find some major difficulties with the language as it has been written.

By setting a date of 1996 and fixing that as a deadline after which there will be no more testing whatsoever, it seems to me that does several things. Most importantly, it fully takes away leverage we might have or might need at that point to exert over those nations we are trying to encourage to comply with this nonproliferation regime. If you fix it——

The PRESIDING OFFICER (Mr. WOFFORD). The time yielded to the Senator has expired.

Mr. COHEN. May I have an additional 3 minutes?

The PRESIDING OFFICER. Is the Senator yielded an additional 3 minutes?

Mr. BRYAN. Yes; the Senator from Nevada yields 3 minutes.

The PRESIDING OFFICER. The Senator is yielded an additional 3 minutes.

Mr. COHEN. Mr. President, I will try to be brief as I can on this issue.

If we fix a time certain after which there will be no further testing under any circumstances, it seems to me we lose the leverage to encourage the very objective we all want, that it, to get other Nations not to engage in proliferation.

In addition to that concern, on page 3, it seems to me the way the language of paragraph (F) as written would, in fact, preclude a safety device being installed if a weapon already has one safety device. If a warhead already has the enhanced nuclear detonation safety [ENDS] system, paragraph (F) would preclude adding the two other safety features. That is contrary to what the Drell panel recommended: We should have all three safety devices, not just one. So the way in which the language reads, it would preclude the testing of any system if you already had one safety device. In fact, you may need all three.

Second, I think it was suggested by the Senator from Oregon that safety tests might be used for multiple purposes. The difficulty with that is that we want to test some systems for survivability against weapon effects. Our communications system, for example, are tested under the subkiloton level for this purpose and that would not be allowed under this particular language because safety tests are conducted at much higher yields.

NEED TO IMPROVE WEAPON SAFETY

Mr. President, no greater responsibility has been placed upon our shoulders than to protect the American people against the almost unimaginable threat posed by nuclear weapons. For decades, the aspect of this threat that has required our greatest attention has been the prospect of a Soviet attack on the United States.

With the fading away of the cold war in recent years, we have suddenly become much more aware of other aspects of the threat that were previously all but ignored. We have only recently faced up to the negligence with which the Department of Energy's nuclear weapon complex has been operated for decades, endangering large parts of America. This matter has acquired such urgency that the Armed Services Committee has told DOE that henceforth priority will be given to bringing its facilities into compliance with environmental laws and to cleaning up decades of waste, rather than on modernizing the complex.

Another aspect of the nuclear threat that has received inadequate attention until recent years is the danger associated with accidents involving nuclear weapons. While this issue has certainly not been ignored, reviews conducted in recent years have shown that the dangers are worse than had generally been assumed and that much more can, and should, be done to reduce these dangers.

Two years ago, the House of Representatives appointed a special panel on nuclear weapons safety to review the extent of this danger and make recommendations regarding it. This group, commonly referred to as the Drell panel after its chairman, Prof. Sydney Drell, delivered an extremely sobering message in its December 1990 report.

In a finding that should cause us to pause, the Drell panel reported that the tremendous progress in supercomputer capabilities in recent years had led to the "realization that unintended nuclear detonations present a greater risk than previously estimated (and believed) for some of the warheads in the stockpile."

In assessing the overall weapon safety situation, the Drell panel quoted an earlier, 1988, DOE Nuclear Weapons Safety Review Group that concluded:

We still have risks from weapons that will remain in the stockpile for years. The potential for a nuclear weapons accident will remain unacceptably high until the issues that have been raised are resolved.

The Drell panel found that "although many things have been, or are being fixed, still more remains to be addressed" and that "there remains room for substantial improvement in nuclear weapons safety."

SAFETY FEATURES: THREE EXAMPLES

Far from being uniformly negative, however, the panel found that "safety standards can be raised if we take advantage of important new technical advances." Principal among these advances identified by the panel are:

Insensitive high explosive [IHE] to replace the conventional high explosive that compress the fissile material to produce a nuclear yield. In the panel's words "In certain violent accidents * * * (ordinary) high explosive has a high probability of detonating * * * causing dispersal of plutonium from the weapon's pit." In contrast, insensitive high explosive has very little likelihood of detonating in any plausible scenario.

According to the panel, use of "IHE is a very effective way—perhaps now the most important step—for improving the safety of the weapons stockpile against the danger of scattering plutonium."

Yet, even though IHE is viewed as the most important step to improve the safety of the stockpile, the Drell panel found that as of 1990 "only 25 percent of the stockpile is equipped with IHE."

Halting nuclear testing would prevent us from putting IHE into the warheads that will form the bulk of the stockpile for the indefinite future. Let me repeat, if proposals to halt testing are adopted, the majority of the nuclear stockpile remaining after the START II reductions will contain unsafe high explosive rather than the much safer IHE.

A second necessary safety feature is the enhanced nuclear detonation safety [ENDS] system, which isolates the electrical arming components from energy sources, such as lightning or other electrical disturbances, that could cause accidental detonation. The Drell Panel noted that barely half of the stockpile has the ENDS system, and that the others "do not meet the established stockpile safety criteria." Proposals to halt nuclear testing would prevent the incorporation of the ENDS system to these other weapons. This would raise unacceptable safety concerns.

A third safety feature is the fire-resistant pit, which is specially designed to prevent the release of plutonium even when the weapon is exposed to high temperatures for long periods, as might happen in a aircraft fuel fire. Proposals to halt nuclear testing would also prevent the incorporation of fire-resistant pits into the weapons we will retain.

Mr. President, safety features such as these are not luxuries. The simple fact is that our weapons today do not meet our existing safety critera, and, as the Drell Panel concluded, "the majority of the weapons in the current stockpile will have to be modified to meet existing safety criteria."

EVEN CTB DEVOTEES SUPPORT SAFETY IMPROVEMENTS

This is even acknowledged by the specialists who are often quoted by those who favor a halt to nuclear testing.

Dr. Ray Kidder is routinely cited as an authority by test ban advocates. At a seminar sponsored by the Congressional Research Service in May, he un-

equivocally stated that "IHE provides a major improvement in safety."

And yet the other person most frequently cited as an authority by test ban advocates, Prof. Frank von Hippel, acknowledged at a Foreign Relations Committee hearing 2 weeks ago that "after the implementation of the reductions that are underway, three warhead designs will not contain insensitive high explosive [IHE]." And, I would note, these three warhead designs will make up the majority of the weapon stockpile.

ACCIDENTS: SRAM–A

A vote to halt nuclear testing today is a vote to condemn the American people to live with unsafe nuclear weapons in their midst for years and years—indeed, until nuclear weapons are eliminated. Not just a few unsafe nuclear weapons, but a nuclear stockpile in which most of the weapons do not have critical safety features.

Anyone who believes that this is acceptable should review the consequences that could result from an accident involving a nuclear weapon.

Senators may recall an accident in 1980 in which a B–52 caught fire at Grand Forks Air Force Base in North Dakota. That bomber was loaded with short-range attack missiles, known as SRAM–A's. The W–69 warhead in the SRAM–A missile is not equipped with insensitive high explosive. It is not equipped with a fire-resistant pit. It is not equipped with the enhanced nuclear detonation safety system. It does not have any of the safety features highlighted as especially important by the Drell panel.

Testimony to the Appropriations Committee several years ago revealed that we were spared a catastrophe only by what comedian Dan Rowen used to refer to as the "fickle finger of fate." According to that testimony:

> The wind happened to be blowing down the axis of the aircraft. Had the wind been blowing across, rather than parallel to the fuselage, *the whole system could have been* engulfed in flames (including the SRAM–A missiles). There is a real world out there and those kind of accidents do happen. You are talking about something that in one respect could be probably worse than Chernobyl * * * because you have plutonium in the soil and on the soil, which you have to clean up.

In the Grand Forks accident, we were very lucky. The SRAM–A warheads on that bomber were not damaged by the fire. Next time, we might not be as lucky. This chart shows what could have happened. Had the warheads been damaged, plutonium could have been spread over a very large area, exposing a large number of people to this extremely dangerous, cancer-causing substance.

But this is not even the worst case—not by a long shot. As discussed in the Drell panel report, a fire aboard an aircraft loaded with the SRAM–A could result in a nuclear detonation. It goes without saying that the public health hazard represented on this chart would pale in comparison to that resulting from the immediate nuclear effects and the radioactive fallout produced by a nuclear detonation.

Only in the last 2 years have we finally faced up to the danger associated with this unsafe weapon system. In 1990, Secretary Cheney ordered that SRAM–A missiles be taken off alert aircraft.

But the Drell panel was categorical in stating that "It is not sufficient to pull such weapons off the alert ALPHA force but retain them in the war reserve stockpile * * *."

Moreover, the Drell panel stressed that "the SRAM–A is one such example, but not the only one."

ACCIDENTS: TRIDENT

The Drell panel also focused its attention on the Trident II D–5 missile. Neither of the warheads carried by the Trident missile have insensitive high explosive. The Navy has recently altered its missile handling procedures, greatly reducing the chances of the type of accident most often discussed. But so long as these warheads contain ordinary high explosive rather than IHE, there remains the danger of an accident.

Professor von Hippel, whom test ban advocates so frequently quote, testified to the Foreign Relations Committee earlier this month regarding the potential consequences of an accident at the Bangor, WA, Trident facility in which detonation of the high explosive in Trident warheads dispersed plutonium. According to Professor von Hippel, such an accident could cause thousands of additional cancer deaths. ["* * * anywhere from 20 to 2,000 additional cancer deaths."]

Beyond the public health hazards of this type of accident, the Drell panel estimated that such an accident would cost upwards of half a billion dollars to clean up.

Mr. President, these are not just abstract, hypothetical possibilities to me, and they should not be to other Senators. The SRAM–A was originally deployed in 1972 at Loring Air Force Base in my State of Maine, back at a time when the safety problems of the SRAM–A were not known. While Loring was subsequently converted to a non-nuclear base, the grave dangers associated with the SRAM–A that used to be deployed there lead me to be especially concerned about weapon safety issues. Even though my own constituents are no longer faced with the serious risk of a nuclear weapon accident, that does not mean that I can turn my back on other Americans who might be faced with similar risks today and in the future.

SRAM–II CANCELED

Some might respond that we can just retire the SRAM–A. A few will even cite testimony to Congress that DOE plans to retire the SRAM–A and replace it with the SRAM–II, which would have these various safety features. Senators might recall, however, that just last fall Congress and the administration decided to terminate the SRAM–II, both because of technical problems with the missile and as part of the arms control initiative adopted after the failed Soviet coup.

So we are stuck with the SRAM–A. And unless we want the American public held hostage to the "fickle finger of fate," we must act to make the SRAM–A safer. To do so, we could try to fix the unsafe W–69 warhead now in it. Or we could switch warheads, equipping the SRAM–A with the much safer W–89 warhead developed for the SRAM–II. In either case, however, testing would be necessary.

And, as the Drell panel emphasized, the SRAM–A is only one example of currently unsafe weapons we will retain in our inventory for the indefinite future.

Mr. President, we have been very fortunate in that the accidents that have occurred to date have not resulted in catastrophic consequences. But that does mean that we should do nothing more than hope that our luck continues. As the Drell panel summed up the matter:

> No matter how successful—and lucky—a system has been, it must not be allowed to breed complacency or justify the status quo. When one considers the potential for tragedy should a serious accident occur and considers the consequence of such an accident for our national security, it is clear that no reasonable effort should be spared to retain full vigor and care in the safety assurance process and to prevent any such accident from occurring.

Mr. President, there are other provisions of the amendment besides those I have discussed, which I think are objectionable in terms of the way they are written. I would be happy to discuss those with the Senator from Oregon or his staff. But I think the way in which it was written today, as it currently stands, I could not support that amendment.

I believe we have to be fully committed to the Drell panel's objective that no reasonable effort be spared to assure safety and prevent any accident. I do not believe that the amendment as currently drafted comes close to assuring that. At this point in time I would vote against the amendment as written.

I thank the Senators for yielding.

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the President has put forward a new nuclear testing policy that takes safety into consideration. In fact, a nuclear test scheduled for September of this year at the Nevada test site has already been canceled as a result of this policy. The

test did not primarily concern safety, and it was stopped.

The problem is not nuclear testing; it is nuclear weapons: There are too many of them, and there are too many of them in the wrong hands. The number of third world countries with nuclear capabilities seems to grow daily. Saddam Hussein's near success with developing a nuclear weapon should be an eye-opener for us all.

In addition to the United States, three Republics of the former Soviet Union, Great Britain, France, and China, four countries are believed to have nuclear weapons, or have the ability to assemble them in short order; namely, Israel, India, Pakistan, and South Africa. Several more nations are in pursuit of the bomb: Iraq, North Korea, Libya, Iran, Argentina, Brazil, Algeria, and, some say, Syria. Not all of these countries are exactly friends of the United States.

Some argue that if the United States stops testing, other countries will follow suit. Can anybody here say that Saddam Hussein would not have pursued his nuclear weapons program if the United States had ceased testing? The hypothesis is ridiculous and dangerous. Neither will Pakistan or India halt its nuclear development just because the United States stops testing. They fear one another, and they fear China, which recently tested a one megaton bomb. This is the type of test that is destabilizing, not the less than 20-kiloton explosions in the Nevada desert. If cutting off aid to Pakistan has not stopped their nuclear weapons program, setting an example by not testing certainly isn't going to do anything. The United States cannot afford such a symbolic and I submit, Mr. President, a useless gesture.

Though former President Gorbachev declared a 1-year testing moratorium, President Yeltsin has ordered his Ministry of Nuclear Energy and the military high command to ready the former Soviet test site at Novaya Zemblya for testing. The decree calls for tunnels to be prepared for a resumption of testing at the rate of two to four explosions a year. The Russians and the French will begin testing again. They will have to ensure the safety of their stockpile.

How could we object to the former Soviet Union, the Russian Republic, testing their weapons for safety purposes?

The events of the last few years show that test bans have nothing to do with ending the arms race. Our strategic stockpile will decline to 3,500 warheads by the turn of the century. United States-Soviet/Russian arms reductions demonstrate that eliminating testing is not necessary to achieve arms control. A halt to nuclear testing would not eliminate one nuclear weapon, nor would it increase international security. If anything, ending testing would decrease international security by sending a message of complacency to Third World countries.

It is essential that we test nuclear weapons to ensure their safety. Although they are among the most complex weapons in the U.S. arsenal, nuclear weapons are tested only a small fraction as much as other weapons systems adopted by our military forces.

Some proponents of a nuclear test ban say that the stockpile is already safe. But one of the arguments against nuclear testing is: "Isn't a safe weapon an oxymoron?" It's a silly statement, but I have heard it several times, even among those who should know better. Ask our military men and women in the field about the importance of safe weapons. It is no oxymoron to them. To them a safe weapon means survival. Ask civilians who live near bases where nuclear weapons are stored. It's no oxymoron to them.

In May of 1990, Defense Secretary Cheney acknowledged a safety problem with U.S. nuclear artillery shells in Europe. The defects had been found in hundreds of W79 short-range nuclear artillery shells based in Germany, Italy, and the Netherlands. These are shells that can deliver a 10-kiloton nuclear blast.

The safety problems were confirmed through testing at the Nevada test site in 1988. Because problems were identified through testing, they were fixed, and accidents were prevented.

Over the last 32 years, there have been 32 accidents involving nuclear weapons, almost a third of which involved the dispersal of radioactivity. These contaminating accidents occurred throughout the United States at bases in New Mexico, Texas, Louisiana, New Jersey, Indiana, and Ohio. In addition, radiation contaminating accidents have occurred in Palomares, Spain, where there was a mid-air collision; Thule, Greenland, where there was a crash, and there was a radioactivity dispersing accident at a SAC base overseas, the site of which is still classified.

These are just the accidents that have dispersed radioactivity. Other accidents involving nuclear weapons have occurred in the States of Washington, California, Florida, Georgia, South Carolina, Kentucky, North Carolina, Missouri, South Dakota, and Arkansas. In addition, accidents have occurred at sea and at U.S. bases overseas.

I ask unanimous consent that the details of these accidents be printed in the RECORD.

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

TABLE I.—SUMMARY OF ACCIDENTS INVOLVING U.S. NUCLEAR WEAPONS

Accident No.	Date	Location	Weapon configuration			Type of accident	Nuclear weapon response		
			Assembled weapons	Unassembled weapons	Component only		HE response		Contamination
							HE burn	HE detonate	
1	02/13/50	Puget Sound, WA		X		Jettison, 8000'		X	
2	04/11/50	Manzano Base, NM		X		Crash into mountain	X		
3	07/13/50	Lebanon, OH		X		Crash in river		X	
4	08/05/50	Fairfield-AFB, CA		X		Emergency landing, fire		X	
5	11/10/50	Over water, outside US		X		Jettison		X	
6	03/10/56	At sea (Mediterranean)			X	Aircraft lost			
7	07/27/56	SAC		X		B-47 crashed into bunker			
8	05/22/57	Kirtland AFB, NM		X		Inadvertent jettison		X	X
9	07/28/57	At sea (Atlantic)		X		Jettisons, 4550' & 2500'			
10	10/11/57	Homestead AFB, FL		X		Crash on takeoff, fire	X	X (low order)	
11	01/31/58	SAC base overseas	X			Taxi exercise, fire	X		X
12	02/05/58	Savannah, GA		X		Midair collision, jettison			
13	03/11/58	Florence, SC		X		Accidental jettison		X	
14	11/06/58	Dyess AFB, TX	X			Crash on takeoff		X	X
15	11/25/58	Chenault AFB, LA	X			Fire on ground	X		
16	01/09/59	US Base, Pacific		X		Ground alert, fuel tanks on fire			
17	07/06/59	Barksdale AFB, LA	X			Crash on takeoff, fire	X (1/5)		X (1/3)
18	09/25/59	Off Whidbey Is., WA		X		Navy aircraft ditched			
19	10/15/59	Hardinsburg, KY	X			Midair collision, impact	X (2/2)		
20	06/07/60	McGuire AFB, NJ	X			Missile fire	X		X
21	01/24/61	Goldsboro, NC	X			Midair breakup			
22	03/14/61	Yuba City, CA	X			Crash after abandonment			
23	11/13/63	Medina Base, TX			X	Sewage igloo at AEC plant	X	X	X
24	01/11/64	Cumberland, MD	X			Midair breakup, crash			
25	12/05/64	Ellsworth AFB, SD	X			Missile reentry vehicle fell			
26	12/08/64	Bunker Hill AFB, IN	X			Taxi crash, fire	X (3/5)		X (1/5)
27	10/11/65	Wright-Patterson AFB, OH			X	Transport a/c fire on ground			X
28	12/05/65	At sea, Pacific	X			Aircraft rolled off elevator			
29	01/17/66	Palomares, Spain	X			Midair collision, crash		X (2/4)	X (2/4)
30	01/21/68	Thule, Greenland	X			Crash after abandonment		X (4/4)	X (4/4)
31	Spring, 68	At sea, Atlantic	X			Lost weapons			

TABLE I.—SUMMARY OF ACCIDENTS INVOLVING U.S. NUCLEAR WEAPONS—Continued

Accident No.	Date	Location	Weapon configuration			Type of accident	Nuclear weapon response		Contamination
			Assembled weapons	Unassembled weapons	Component only		HE response		
							HE burn	HE detonate	
32	09/19/80	Damascas, AK	X			Missile fuel explosion			

Notes.- USAF September 19, 1977 press release to Richard Panter, Eye-Witness News Boston, obtained under the Freedom of Information Act, supplemented by DOD per Appendix I. The term "Assembled Weapon" means either that the separable nuclear capsule was installed but was not in the bomb's pit or sealed-pit type of weapon with the nuclear material integral with the HE subsystem. "Unassembled Weapons" means that the separable nuclear capsule was not installed in the weapon. (The USAF press release for accidents 1–13 used the term "assembled weapon" for the above plus where a capsule was on the aircraft). Contamination from all accidents except 29 and 30 was low in radioactivity and highly localized in area affected (in the parentheses). The first number indicates the number of weapons that had the named response, and the second number gives the total involved in the accident

Mr. REID. The accident that occurred in South Dakota which has been talked about here and has been illustrated, as it was before the full Appropriations Committee, involved a fire which, I repeat, if the wind had shifted—the fire burned for 5 hours—would have carried a plume of radioactive plutonium which would have left the State essentially unlivable.

How many Members of this body, especially those from States and regions where accidents have occurred—and I read off those 32 accidents—are willing to go home and tell their constituents they are not willing to take every step to keep the nuclear stockpile safe?

Every Senator should carefully consider how many nuclear weapons are stored in his or her State before deciding that testing for safety is unnecessary.

As Senator COHEN so eloquently stated, an independent congressionally appointed panel, the Drell panel, has recommended that the United States give greater emphasis to designs that would make nuclear weapons "as safe as practically achievable." To develop such designs will require some further testing.

These safety improvements include the use of insensitive high explosives, that is, explosives that are virtually impossible to detonate in a great majority of violent accidents. Other safety improvements include electrical systems that incorporate enhanced nuclear detonation safety for a nuclear warhead. Such electrical systems would, for example, protect a weapon from the effects of spurious electrical signals such as lightning.

Without nuclear testing our confidence in our nuclear deterrent would erode with time. In the future, we will rely on only a small fraction of the nuclear systems that we had in the past. We cannot afford to allow one of these systems to become unsafe or unstable.

Currently, selected nuclear weapons are withdrawn at periodic intervals from the stockpile for examination. Unexpected deterioration in certain components of a warhead, or unforeseen conditions to which the warhead may have been exposed, can cause varying degrees of uncertainty about its performance.

For example, the warhead for the *Polaris* submarine ballistic missile was discovered to have undergone some corrosion several years after its deployment. A nuclear test of the *Polaris* warhead showed that the corrosion was seriously affecting the warhead. This defect, if left uncorrected, would have caused a major portion of our sea-launched ballistic missile deterrent force to be inoperable and unsafe. This could only have been determined through nuclear testing.

In the future we will most likely have only one nuclear warhead for our sea-launched ballistic missiles. If problems occur with it—a very possible event—we will not have a reliable and safe submarine-based nuclear deterrent. One of the legs of the triad would, in effect, be crushed.

Acquisition regulations for nuclear survivable systems require that nuclear survivability must be demonstrated through a combination of underground testing and above-ground simulation. Potential downsizing of nuclear arsenals and military forces in the United States and the former Soviet Union does not negate the need for nuclear survivable systems.

In fact, it can be argued that the nuclear survivability of the remaining weapons systems in the United States will be more important, since we will have to do more with less. The Desert Storm experience should serve as a warning that future regional conflicts could involve nuclear-capable adversaries. What would have happened if Saddam Hussein had exploded a nuclear device over the battlefield? What would have happened to our tanks, aircraft, missiles, communications systems, and other systems? No one knows. We need to know.

We must be sure that every potential adversary knows we are prepared to survive attack. If deterrence is to work, U.S. forces must not present easy targets for preemptive attack in a crisis. Our retaliatory forces, as well as the warning sensors and command-and-control systems that alert and provide direction to them, must be capable of performing critical functions during and after exposure to nuclear effects.

The value of our deterrent is strongly dependent on being confident that our aircraft, our tanks, as well as other military systems, will operate as designed. Nuclear testing is the only way to ensure that such confidence is achieved. Changes to existing military systems, such as guidance upgrades, safety modifications, and new fuzes, must be validated to ensure that they do not compromise the systems' survivability.

The United States must maintain its capabilities in nuclear weapons safety design. As long as nuclear weapons remain on the world scene, the United States needs to maintain a competent cadre of nuclear weapons scientists. The nuclear weapons business is a highly specialized and relatively small community. It we stop nuclear testing for 9 months, we will lose these experts, or a lot of them. If we decide after that time to begin testing again, or if 3 months from now when the Russian moratorium ends and they decide to start testing again, will we be ready? The answer is probably, no. The Third World proliferators are dedicating their best and brightest scientists to this pursuit. It is incumbent on the United States to maintain its nuclear expertise.

One of the arguments against further testing is that it is bad for the environment. When a nuclear device is exploded beneath the Nevada desert, the surrounding rock is vaporized and quickly cools to a glass-like substance. This vitrified rock very efficiently contains the radionuclides, preventing them from spreading. The radionuclides are locked into the crystals.

An Office of Technology Assessment [OTA] report called the Containment of Underground Nuclear Explosions came to the conclusion that, since the accidental venting in 1970 during the Baneberry test, nuclear testing has been safe: "If the same person had been standing at the boundary of the Nevada test site in the area of maximum concentration of radioactivity for every test since 1970, that person's total exposure would be equivalent to 32 extra minutes of normal background exposure or the equivalent of 1/1,000 of a single chest x ray."

If you were to walk across the Nevada test site today, you would pick up less radiation than if you walked through the city of New York.

With regard to ground water, the EPA has been sampling ground water around the Nevada test site since 1972. To date, no radioactivity has been detected. The Nevada test site has an active ground water monitoring program called the hydrology and radionuclide migration program. This is a DOE Program with participants from Lawrence Livermore and Los Alamos National Laboratories, as well as the Desert Research Institute and the U.S. Geological Survey.

Again, from the OTA report:

No analysis of groundwater has ever found tritium [the most mobile of the radioactive material] at a distance greater than a few hundred meters from some of the old test sites. None of the water samples collected outside the boundary of the test site has ever had detectable levels of radioactivity attributable to the nuclear testing program. An independent test of water samples from around the test site was conducted by Citizen Alert at 14 locations. [Citizen Alert is an environmental community action group in Nevada.] Citizen Alert found no detectable levels of tritium or fission products in any of their samples.

The environmental vote today is a vote to continue testing for safety. It is a vote against the Hatfield amendment. Accidents involving the dispersal of radiation could be disastrous.

There are also those who say we should rely on computer modeling rather than actually exploding a nuclear device. Even tests done today using the most sophisticated computers available cannot accurately predict results. We still get plenty of surprises.

Of the 14 fiscal years 1991 and 1992 tests conducted to date, one had a yield nearly a factor of 10 below expected, two had primary yields half that expected, and one had a total yield about 16 percent below expected. You may say, "So what? They'll still do damage." But that is not the point. All test predictions were based on experienced judgment, the best computers and models, and the best nonnuclear tests. All were wrong, which indicates we still have an incomplete understanding of how a nuclear device will work. Without nuclear testing, there will be little confidence in our calculations if future safety issues are raised.

Most of the progress we have made in the safety of nuclear warheads is a direct result of nuclear testing. Recently, computer calculations of several nuclear weapons systems suggested that the weapons did not meet their safety requirements. It was impossible to determined the accuracy of the new calculations without conducting nuclear tests that isolated the predicted deficiencies. Subsequent nuclear tests confirmed the basic validity of these new computer codes, and established new limits in our design capabilities.

Our history of nuclear warhead development makes it abundantly clear that computer calculations could hardly substitute for a nuclear test to confirm that a warhead has been safely designed. These tests provide us with the only means we have to guarantee that the nuclear stockpile remains safe.

Between 1958 and 1961, the United States entered into a nuclear test moratorium. Let us take a look at what happened as a result.

What happened is one of the most dangerous results of the 1958-61 moratorium was that designers, in the absence of test data, began to believe their own theoretical calculations. An example is the W52 warhead for the Sergeant missile. During the test moratorium, a fatal production accident prompted scientists to change the high explosives in the warhead. Based on calculations and many non-nuclear tests, the lab had high confidence in its change of high explosives. The weapon, therefore, was stockpiled with the new explosives.

The scientists were so confident in their calculations that they did not test the W52 for 2 years after the moratorium was over. When they finally did conduct a nuclear test, they discovered it was a dud—it did not work. Fortunately, as a result of nuclear testing, we were able to fix the problem. What if the W52 had continued to have a safety problem as we stockpiled it? Without a test, we do not know what would have happened.

When the test moratorium ended, it was very difficult to get started again. We had lost our scientists and our testing capabilities had degraded to an unacceptable level. When testing finally did resume, there were surprises with nearly every test. The last thing a captain of a submarine carrying nuclear weapons needs on board his boat is a surprise.

A test ban will reduce our ability to make safety upgrades, and we will lose our technical capabilities, including experienced designers and test site capabilities.

John Curran once said: "Eternal vigilance is the price of liberty." As long as the United States maintains a nuclear deterrent as a fundamental element of defense strategy, some amount of nuclear testing will be required.

I ask my colleagues, whether they are cosponsors of the Hatfield amendment or not, to not let politics rule reason.

This modified amendment is not a good amendment. It is fallacious. It does not solve the problems that it seeks to solve. And we will rue the day we do not test for safety of our nuclear arsenal.

I yield the floor.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be deducted proportionately.

The Senator from Nevada.

Mr. BRYAN. Mr. President, unless one of my other colleagues desire to speak at this point I would like to use 10 minutes of the time which is under my control, and that of Senator REID, at this time.

The PRESIDING OFFICER. The Senator from Nevada [Mr. BRYAN].

Mr. BRYAN. I thank the Chair. None of us today would fail to acknowledge that winds of change have blown across the international landscape; that relations between east and west are measurably better than they were just a few years ago; that the collapse of the Soviet Union and a step back from the nuclear Armageddon that gripped America for the past four decades, is welcome news. Men and women throughout the world have rejoiced in these developments and I think it is a propitious moment for us to look to the century ahead, that perhaps we can indeed embark upon a future which provides greater peace and security for all of our citizens.

We ought not in that moment of flush euphoria, let this excitement about these dramatic international events of just the past few years cloud our judgment and our decisions regarding the issue of continued nuclear testing.

As long as the United States maintains a nuclear stockpile, we need to assure the capability to test our remaining weapons, and we must continue those necessary tests.

The Nevada testing facility is a unique resource, and the Nation's investment in it must be protected even if the frequency of testing is reduced due to the smaller number of nuclear weapons in the stockpile and the absence of new warhead designs.

An appropriate level of testing needs to be maintained in order to upgrade our current weapons stockpile to the highest standards of safety, and to maintain confidence in the existing stockpile as the weapons age, and as weapons components are renewed and recycled.

The administration has modified American nuclear testing policy in response to the rapidly evolving international situation to which I have just alluded.

In a recent policy change, the Department of Defense stated that the United States will conduct only the minimum number of nuclear tests necessary to evaluate and improve the safety and reliability of our shrinking nuclear stockpile.

To limit testing beyond these parameters is not only unnecessary but irresponsible.

A nuclear weapon is not a static, inert commodity.

As weapons age, they need to be maintained and modified.

Nuclear components such as tritium need to be replenished.

As our stockpile shrinks and ages, some testing will be essential to assure both the safety and the reliability of the remaining weapons.

Indeed, it would be irresponsible to abandon our capability to test the stockpile as it ages.

Underground testing is the cornerstone of ensuring the safety of our aging nuclear weapons stockpile.

The Department of Defense has committed itself to making our nuclear weapons as safe as modern technology permits.

Mr. President, that ought to be the goal of all of us, to make sure that existing nuclear stockpile is as safe as modern technology permits. That cannot be achieved without continued testing.

An independent, congressionally appointed panel chaired by Dr. Sydney Drell also recommended that the United States should give a greater emphasis to nuclear weapons designs, that would make these weapons "as safe as practically achievable." A moratorium directly threatens these important goals.

During the nuclear age, there have been several accidents involving nuclear weapons. The distinguished senior Senator from Louisiana has alluded to some of those. The distinguished senior Senator from New Mexico has alluded to others. The Senator from Maine, earlier this afternoon, mentioned others. And my distinguished senior colleague from Nevada, Senator REID, has mentioned others.

They have ranged from ones that did not disperse nuclear material, such as the Titan missile accident in Damascus, AR, to a few accidents in which explosives in the weapons detonated, dispersing nuclear material but not resulting in a nuclear explosion.

Future safety needs and changing safety designs should not be foreclosed by a testing moratorium.

For instance, an important safety feature, the development of insensitive high explosives [IHE's], required a substantial number of nuclear tests in the 1970's.

Nuclear weapons equipped with insensitive high explosives have extra protection from potential chemical explosions, if the warhead were dropped or pierced.

Only through additional testing will all our nuclear weapons meet this safety standard.

Research is currently being conducted on nuclear warheads that can withstand the intense temperature of an aircraft fire.

A moratorium on nuclear testing would threaten this research, and seriously limit future safety upgrades.

As our stockpile of nuclear weapons is reduced, the reliability of each nuclear weapon becomes absolutely critical to an effective deterrence.

Only through testing can we have adequate assurance that our nuclear weapons will function as expected in a time of crisis.

Stockpile surveillance, above ground experiments, and modeling often uncover flaws that cannot be resolved without the use of a nuclear test.

Almost one-half of the nuclear weapons systems developed since 1970 have needed nuclear testing to correct or evaluate defects.

Clearly, a testing moratorium would seriously hamper our confidence in our nuclear weapons stockpile.

Some of America's greatest technological resources have been devoted to design, production, and testing of our nuclear weapons.

Personnel at the Nevada test site in my own State are a small community of highly specialized workers, with expertise found nowhere else in the world.

If a testing moratorium is enacted, many skilled researchers and testing technicians will leave the program, threatening the viability of this vital national resource.

New military systems in areas critical to American security such as surveillance and communications are constantly being developed.

Nuclear testing is vital to ensuring the survivability of these systems.

Computer simulation techniques are continually being developed to limit the number of nuclear tests needed, but for the foreseeable future, simulation cannot replace the need for limited actual nuclear testing in this area.

Since 1958 the United States has deployed 41 different nuclear weapons systems.

Of these, 14 needed corrective modifications after they were ready for deployment.

These deficiencies were either discovered or corrective measures evaluated in subsequent nuclear tests.

Many may try to argue that our nuclear stockpile is safe enough.

However, safe enough is a dangerous concept when dealing with accidents involving nuclear weapons.

My senior colleague alluded to the W–79 warhead, a warhead that was believed to be unsafe. It went through a series of computer modelings and simulations, but only after testing at the Nevada test site was it determined that this nuclear artillery shell was indeed dangerous and could have detonated as a result of simply being dropped.

The tests that were used to confirm these results were conducted at the Nevada test site as part of the safety evaluation program.

Mr. President, this did not occur in the dawn of the nuclear age. This occurred just 4 years ago. I ask unanimous consent that an article in the Washington Post dated May 23, 1990, be printed in the RECORD.

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

[From the Washington Post, May 23, 1990]

DEFECTIVE NUCLEAR SHELLS DISCOVERED IN EUROPE—U.S. SECRETLY REPAIRING FAULTY WEAPONS

(By R. Jeffrey Smith)

In a series of secret moves, the U.S. government discovered—and is repairing—defective nuclear artillery shells that could have exploded accidentally while stored in Europe, and has started urgent studies of the designs of two other atomic warheads whose safety is suspect, according to senior U.S. officials and weapons scientists.

In the most serious incident, the government in 1988 belatedly discovered a defect in the W-79 short-range artillery shell after it had been deployed in Europe. Urgent orders were issued not to move the warheads, and repair teams hurried to the nuclear ammunition depots to disable the several hundred shells so they could not be accidentally detonated, the officials and scientists said.

The artillery shells, which are deployed in at least three West European countries and in U.S. stockpiles, are being modified so they will detonate only after being fired in battle, the officials said.

The Joint Chiefs of Staff, in a separate nuclear weapons safety incident, last year secretly imposed special restrictions on the handling and deployment of a short-range missile carried by U.S. strategic aircraft in order to avoid accidental explosions that could disperse cancer-causing, radioactive plutonium from the missile warhead, these sources said.

The Department of Energy, in a third case, last week agreed to a secret congressional request for an independent scientific inquiry into the possibility that a nuclear warhead now being deployed aboard Trident strategic submarines could be detonated in a possible missile-handling accident in port, according to the sources.

The problems with the three weapons have raised serious questions on Capitol Hill and in the Bush administration about U.S. nuclear weapons safety. Some experts forecast that additional problems may be uncovered by special scientific inquiries at the nuclear weapons laboratories ordered recently by Secretary of Energy James D. Watkins.

The Department of Energy (DOE) is responsible for the design and production of all nuclear warheads. The Department of Defense (DOD) determines warhead requirements and develops the weapons on which the warheads are deployed.

Watkins, while declining to discuss difficulties with specific weapons, said in an interview this week that "we're not all that comfortable" with the government's past approach to several safety issues, and that "we need to focus a lot more" on measures to diminish the risk of accidentally dispersing plutonium in warheads.

Watkins also emphasized that when weapons safety problems are uncovered, "we take the operational steps necessary to minimize those risks, take the weapons out of service if necessary and then look for some mid-term and long-term fixes. We're in that process right now."

He added in response to questions that "fortunately, we don't have many (weapons) that fall into that category, but I can tell you that we're serious about those things and we do what's necessary to make sure that we don't have any situation . . . where we can't meet our (safety) specifications."

In contrast to the wide attention recently given to environmental and scientific problems of nuclear weapons production, safety questions about individual weapons have scarcely been scrutinized outside the tight-knit community of weapons designers and the defense officials to whom they answer.

Some high-level Bush administration officials say they believe that safety issues traditionally have had a much lower priority than military concerns such as increasing a nuclear weapon's explosive power, efficiency or reliability.

But Watkins, who says he came into office in 1989 with a "very significant sense of laxity in the safety practices of DOE," has ordered what other officials say is the first comprehensive assessment of the probability of an accident involving any of the more than 20,000 nuclear warheads deployed with U.S. forces around the globe.

No nuclear weapon ever has been known to detonate accidentally and produce a nuclear yield. However, there have been unexpected

detonations of the volatile chemical explosives surrounding the nuclear materials in warheads, including several incidents that resulted in considerable radioactive contamination.

Officials say that Watkins's safety concern about the Short-Range Attack Missile-A, or SRAM-A, carried by strategic bombers led to establishment of a special committee on nuclear weapons safety last year that includes senior DOD and DOE officials.

Although it will report simultaneously to Watkins and Defense Secretary Richard B. Cheney, the two departments, in a conflict indicating diverging priorities on weapons issues, fought a heated battle over who would chair the committee. The dispute eventually was won by DOE.

"I felt it was necessary that we have a somewhat independent committee . . . that could stand off from military requirements, military demands and focus heavily on the safety issue," Watkins said. "I just felt that conflict of interest ought to be separated out."

The information about recent nuclear weapons safety problems in this article is derived from interviews with more than two dozen U.S. military and civilian officials and nuclear weapons scientists. None was willing to be quoted by name, because everything about the episodes is highly classified.

THE W-79

Officials say the most dangerous and politically sensitive incident was the surprise discovery in early 1988 that W-79 artillery shells deployed in West Germany, Italy and the Netherlands could accidentally explode if they were struck forcefully at a sensitive spot, perhaps by a stray bullet or impact from a nearby battlefield explosion in wartime.

A single, elliptical reference to the problem appeared in an unclassified report issued by Watkins three months ago. The report mentioned that a warhead developed by Lawrence Livermore National Laboratory under DOE supervision, identified only as "WXX," had recently caused "one-point safety concerns" that were confirmed by underground nuclear testing.

U.S. officials subsequently confirmed that the "WXX" was the W-79.

"Nobody was blase about it, but nobody was panicky either," said a senior military official of the government's reaction. "We did not foresee an imminent catastrophe. But when it comes to nuclear safety, we treat everything as potentially serious."

Computer calculations and underground tests before the start of production in 1981 had indicated no safety problems. But a new safety analysis at Livermore in 1988 raised concerns that were confirmed by secret underground nuclear tests in December 1988 and February 1989, officials said.

The tests indicated that the W-79 did not meet a secret government safety standard requiring that with any warhead design, under any circumstances, there be less than a one-in-a-million chance of an accidental nuclear explosion with a yield as powerful as a blast from about four pounds of TNT, enough to destroy a small room.

Several officials said an inadvertent explosion of the material surrounding the nuclear core was particularly likely to produce a nuclear yield if it occurred while the shells were loaded inside the 8-inch howitzers from which they are fired, an unusual circumstance in peacetime. But a senior military official said, "For a while, we were also worried that these things might go off if they fell off the back of a truck and landed in a certain way."

The officials did not say how big an accidental explosion a W-79 shell might have caused. The warhead is designed to explode in battle with up to a 10-kiloton nuclear yield, about two-thirds the force of the 1945 Hiroshima bomb.

A highly-placed foreign official said that after the confirming nuclear test, a small group in the West German government was told in a general way that "there was a chance of technical failure leading to an explosion" of the shells and that "some adjustments" to their design were needed to prevent any accident.

Senior West German officials "were not informed explicitly" how an accidental nuclear blast might occur, the official said, "but I do not rule out that a more detailed briefing was given to specialists" in the German ministry of defense, he added.

Officials said the information was kept otherwise secret to avoid panicking citizens or calling into question the viability of the U.S. nuclear force in Europe, which includes dozens of nuclear-tipped missiles, more than 1,000 nuclear bombs and hundreds of older, nuclear-tipped artillery shells.

"It was obviously a politically hot potato," a U.S. official said.

Another senior military official said the episode alarmed the Pentagon and induced tensions with DOE. "It was the sort of problem that never should have occurred," the official said. "There simply was no good excuse for it."

After ordering that all W-79 warheads be immobilized at their storage sites, the government sent teams of experts in early 1989 to install special "safing mechanisms" to block any detonation of the shells, several officials said.

Some of the warheads have been returned to the Pantex warhead production plant in Amarillo, Tex., so the "safing mechanisms" can be disabled and additional steel plating installed inside the skin of the shells at particularly sensitive spots.

Of the W-79 problem, Watkins said only, "Without any question, safety has been preserved." Pentagon spokesman Pete Williams said last night that "the point is: the weapon is safe." He added that "changes were made to the W-79, but I can't discuss the details of that."

The shells are in special U.S. storage bunkers overseas and at the Seneca Army weapons depot in New York state, including some that are still inoperative. Asked why, a senior official said, "it has to do with politics within the (Western) alliance."

But the Nuclear Weapons Council, three senior DOE and DOD officials who decide nuclear warhead production matters, was sufficiently concerned about the W-79 to decide early this year that its design would not be replicated in a slightly smaller artillery shell, the W-82.

"If one of these shells had a problem, then by definition the other one would certainly have it, too, in terms of the basic physics," one official said. "They basically have the same 'primary', or nuclear core, he explained.

The decision forced at least a two-year suspension of W-82 production, which had been scheduled to begin last February. Several sources said the delay was partly at the urging of Congress, which voted secretly last year to block W-82 spending until the Bush administration certified that it was safe.

President Bush announced on May 3 that he wanted to halt the W-82 deployment program in response to the declining military threat in Eastern Europe. A senior U.S. military official said the design defects, which Bush did not mention, played no role in the decision.

W-88 TRIDENT WARHEAD

Discovery of safety defect in the W-79 artillery shell prompted a more extensive review by the weapons laboratories of other warheads, which soon cast a shadow over the thermonuclear weapon now being deployed atop D-5 missiles in Trident submarines, the W-88.

Some U.S. weapons scientists have alleged, based on computer modeling of accident scenarios, that the W-88 could be detonated accidentally if the propellant fuel in D-5 missiles catches fire due to mishandling during loading operations at the Trident bases in Bangor, Wash., and Kings Bay, Ga.

A powerful nuclear blast or widespread dispersal of cancer-causing plutonium dust would result, these scientists say. They add that, in years past, the latter possibility has been taken so seriously that Livermore experts prepared maps of potential plutonium fallout over Spokane, Wash., near the Trident base at Bangor.

The allegations are the subject of a bitter scientific dispute at the highest levels of the Pentagon and DOE, according to some of the officials involved. The stakes are enormous, because the Trident missile system is expected to be at the heart of America's strategic deterrent force for the next three decades.

Although senior DOE and DOD officials say the risks are small, Watkins last week agreed to a secret, bipartisan congressional request that the issue be adjudicated by a special panel of three independent scientists cleared to review the nation's most sensitive nuclear weapons information.

Watkins said, "I have viewed all of the analysis, time and time again" on the W-88, as have the directors of the three U.S. nuclear weapons laboratories and I'm satisfied . . . that we can continue to do the analysis we have to do on that weapon without undue concern." He said it now meets all nuclear explosive and weapons system safety standards.

At the same time, Watkins said that "had I been intimately involved in this process" during key deliberations in the early 1980s, "I would not have" made the decision to use the warhead's current design. "I don't think that kind of decision will ever be made again, and certainly won't be made while I'm here, and I believe with the kind of discussions that we've had with DOD it's not going to be made again."

At issue is the use of volatile explosive materials in the W-88 warhead that scientists say would explode in a missile fire, producing forces that could compress the nuclear core in each bomb and begin a nuclear chain reaction. The Trident missile is considered particularly vulnerable to such an accident because its multiple warheads are arranged in a circle around the propellant fuel in the missile's third stage.

The warheads on most other U.S. ballistic missiles are arrayed on a platform that sits atop the final stage, allowing for the use of some form of insulating material to protect them from a missile fire.

Scientists at Livermore strongly protested the decision to use the volatile materials, but W-88 designers at Los Alamos National Laboratory said that using a less volatile material would not have substantially diminished the risk of an accident. The Navy also opposed the idea because the added weight of the alternate materials would have reduced the missiles' range or required the

deployment of fewer warheads on each missile.

Watkins said he would have "accepted the very modest penalties" associated with using the less volatile materials. He said "a special task team" has been formed to "see what can be done" about W-88 modifications.

The congressional request for an independent inquiry was initiated by Rep. John M. Spratt Jr. (D-S.C.), who chairs the House Armed Services Committee's panel on DOE defense nuclear facilities. He was joined by Rep. Les Aspin (D Wis.), the House Armed Services Committee chairman; Rep. William L. Dickinson (Ala.), the committee's senior Republican; and Rep. Jon L. Kyl (Ariz.), the senior Republican on the committee's defense nuclear facilities panel.

Details of the Trident safety problem described in this article were not obtained from congressional sources.

W-69 SRAM-A WARHEAD

Watkins said that in early 1989 he told senior aides to ask the directors of the nation's three nuclear weapons laboratories whether they were "satisfied" with the agency's handling of safety issues. "The answer was no," he said, and one lab director used the opportunity to raise strong concerns about a particular weapon that "needed to have some aggressive attention."

Watkins declined to say what the weapon was, but officials at another agency identified it as the SRAM-A, a 1970s-vintage weapon carrying a warhead that uses the same volatile material as the W-88 Trident warhead. Roughly 14 feet in length, the weapon can be slung below the wings of B-52, B-1B or FB-111 bombers or carried in the internal bomb bay. "It's basically a fuel tank with wings," one official said.

They said longstanding safety concerns about the weapons are partly based on an intense B-52 engine fire on the runway at Grand Forks, N.D., in September 1980 that injured a crewman and came close to causing an electrical short in the SRAM. The short might have caused the volatile material to explode, dispersing the plutonium in the weapon's core, several officials said.

Acting at Watkins's initiative, DOE officials sought to mention several safety problems involving the SRAM-A warhead in a routine report to Bush last year about the overall safety of the nuclear weapons stockpile. But DOD officials rebelled, causing submission of the report to the White House to be held up for more than three months, according to officials at both agencies.

Watkins said he used the dispute to win DOD's approval for a new weapons safety review committee under DOE's control. He also said the safety matters at issue were explained to Bush by national security adviser Brent Scowcroft with Cheney's concurrence.

"I would have just moved unilaterally (with Bush) had I not been satisfied that the thing was being well aired," Watkins said. Other officials said Watkins and Cheney agreed on the need to control aircraft operations involving the SRAM-A tightly while further analysis is being done.

DOD spokesman Williams said "the Joint Staff did approve modifications to procedures involving the SRAM-A," but declined to say what they were.

Mr. BRYAN. Mr. President, incorporating the best available safety technology into our remaining weapons, including such features as insensitive high explosives and fire-resistant pits will require further testing.

Let me, in the few moments I have left, evaluate the amendment that the distinguished Senator from Oregon and a number of our colleagues have offered.

First, Mr. President, it is clear it provides for a 9-month temporary, as it is referred to, moratorium. The nuclear testing program is not like turning your lights off in the evening and then the next morning when you have occasion to need them to flip them back on. This very skilled group of professionals, not all of whom are nuclear physicists, many have technical skills that are absolutely essential to support this program, these people will be thrown into chaos and the program, in my judgment, will be compromised. These people will understandably need to move to find new employment for themselves and we will lose this vital testing resource.

The 1996 cutoff, as contemplated by the amendment also, Mr. President, seems to me to be particularly ill-advised.

The PRESIDING OFFICER. The Senator has used 10 minutes. Any other Senator can yield additional time.

Mr. BRYAN. I yield myself an additional 3 minutes, Mr. President.

The PRESIDING OFFICER. The Senator is recognized for the additional time.

Mr. BRYAN. Mr. President, the 1996 cutoff seems to me particularly ill-advised because if our purpose is to impose leverage on those countries which either are or may embark upon nuclear testing, to impose a self-imposed restraint to me makes no sense in achieving that objective.

Let me invite my colleagues' attention to page 3, subparagraph f. Under the proposed amendment, a plan for installing—that is the test itself—the safety test, could only be conducted if the nuclear device did not have any safety feature. So the standard, Mr. President, would not be can we devise the safest possible techniques—and we basically today are talking about three such safety measures—but if a nuclear warhead had any one of the three, it could not be further tested to determine whether the additional devices could be added to it.

In terms of achieving the safest possible nuclear arsenal, it makes no sense at all to impose that type of a limitation on the program. As we know, there are three types of safety systems: The enhanced detonation safety system, the fire-resistant pit, and the insensitive high explosives. Even with the proposals advanced by the President, approximately two-thirds of our nuclear arsenal that will be in existence a decade from now in the year 2002 will not have all three of these safety systems provided as part of it. I should think it is in everybody's best interest that all three of these safety systems be added.

Moreover, Mr. President, I note that in defining what a modern safety feature is, the amendment would seem to limit us to the state of the art or the technology today. Perhaps next year or the year thereafter, or in a very short period of time, new safety procedures and devices will be discovered and those, too, ought to be added to the nuclear devices as part of the arsenal. It seems to me that the definition on page 7 of modern safety features may, indeed, limit the technology in terms of adding additional safety.

Mr. President, it seems to me that we share a common goal, and that is to have the safest nuclear arsenal possible. The amendment offered by the distinguished Senator from Oregon, although well intentioned, it seems to me is counterproductive to that objective. I urge my colleagues to defeat the amendment, and I reserve the remainder of my time.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that the senior Senator from South Carolina desires 6½ minutes. Senator BRYAN and I yield 3½ minutes to the Senator.

Mr. JOHNSTON. I yield 3 minutes of my time.

Mr. THURMOND. I think maybe I can finish in 5 minutes.

The PRESIDING OFFICER. The Senator from South Carolina is recognized for 6½ minutes.

Mr. THURMOND. Mr. President, the current debate on nuclear testing is one of the most critical defense issues the Senate will consider this year. During the debate, the primary question that we should ask ourselves is: Do we want this Nation to have a safe and reliable nuclear deterrent force?

In his testimony before the Armed Services Committee on July 28, Secretary Cheney eloquently touched on the importance of nuclear testing. He stated:

> Both the Congress and the Administration share the goal of assuring the safety of our nuclear stockpile. Continued nuclear testing is critical to this end. As both the Administration and respected experts have testified, continued testing is essential both for incorporating additional safety features into our weapons and for identifying, assessing, and correcting aging, safety, and other problems that may arise. There is simply no effective and reliable alternative to nuclear testing.

Mr. President, the Nation's nuclear testing program has changed significantly over the years. We have gone form a high of 96 tests in 1962 to a low of six in 1992.

The President's announced testing policy will further reduce that number. More importantly, however, it limits the purposes of these few tests to specific areas, namely: First, to evaluate and improve safety; second, to maintain reliability; and finally, to ensure that our forces can function despite possible exposure to nuclear effects.

Mr. President, regardless of how small our nuclear stockpile is—and let

me add that I support the reductions agreed upon by President Yeltsin and President Bush—we must ensure that these weapons are safe and reliable. As the size of the stockpile and the number of weapons types decrease, it is also increasingly important to ensure that the remaining weapons meet their performance specifications and that our military forces—including satellites, communications systems, and weapons support systems—can function despite exposure to nuclear effects.

Despite the increased use of computers in weapons design and our scientists' knowledge of nuclear physics, we can never be sure how a nuclear device will function. For example, of the six tests conducted in fiscal year 1992, one produced a yield nearly a factor of 10 below that predicted.

Mr. President, we should also remember that we are constantly developing new combat systems. Unless these systems are tested in a nuclear environment, which is almost impossible to simulate, we may be sending our forces into combat with communications and weapons systems that cannot withstand exposure to a nuclear explosion—including one caused by a crude device developed by a Third World nation.

Mr. President, today we are faced with two options:

The Hatfield amendment, which allows 15 tests between July 1993 and September 1996 and then imposes a total ban on nuclear testing; and,

The Johnston position, endorsed by the committee, which permits safety testing provided the President certifies that it is in the national interest.

Mr. President, I am opposed to any absolute nuclear testing moratorium and will vote against the Hatfield, Mitchell, Exon amendment. The 1996 total test ban will not guarantee the achievement of a comprehensive test ban treaty, nor will it guarantee the safety or reliability of our nuclear deterrent forces.

Mr. President, in closing, I want to urge my colleagues to vote against the Hatfield amendment. The nuclear arms race will not stop because we are not testing; it will end through negotiations. Meanwhile, the Nation must be assured that its aging nuclear weapons are safe and reliable in the hands of our forces.

I wish to thank the distinguished Senator for yielding me this time.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. Mr. President, I yield 5 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, will the Chair notify me when there is 1½ minutes remaining.

Mr. President, first of all, I commend Senator HATFIELD, Senator EXON, and Senator MITCHELL for again raising this issue in a way which I am very hopeful the majority of the Members of the Senate can support.

I ask unanimous consent to be a cosponsor of the amendment.

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

Mr. KENNEDY. Mr. President, the Berlin Wall is down. The Soviet Union has collapsed. The cold war is over. The time has come for the United States to halt nuclear testing.

We no longer need such tests, because we no longer need to develop more powerful or more accurate weapons to deter the Soviet Union. In the post-cold war world, the greater danger comes from the continuation of the arms race and the proliferation of nuclear weapons.

We need to take all the steps we can to reduce these basic threats to our future security.

The danger was demonstrated vividly 2 months ago, when China conducted its largest underground nuclear test ever. What right does the United States have to criticize China's test, when we insist on continuing our own tests? The best way to restrain China and other nations is to halt our own testing.

With the Nonproliferation Treaty up for renewal in 1995, it is crucial that we act now to ban nuclear testing. We have been preaching nonproliferation to other nations for years.

But the signers of the Nonproliferation Treaty deserve to know that we are prepared to practice what we preach or else our preaching will be to no avail.

Negotiation of a comprehensive test ban treaty is the single most effective step that the United States can take to halt the nuclear arms race and restrain the spread of nuclear weapons.

Until we end our own testing, other nations will have a credible "everybody does it" excuse to test their own nuclear weapons and defy international antiproliferation efforts.

Only six nations have ever admitted to testing nuclear devices—the United States, Russia, Britain, France, China, and India. A handful of other countries are known to be at various stages in the development of nuclear weapons, but none of them has ever announced nuclear tests.

Time is critical. The end of the cold war gives us the opportunity to take an effective and immediate step toward halting the arms race. A worldwide ban on nuclear tests would create an additional barrier to any nation, including any terrorist nation, contemplating a nuclear capability, but a worldwide ban can be achieved only if the United States leads the way.

The amendment before us establishes a logical step-by-step program to establish a permanent ban on nuclear weapons testing after a short moratorium and a handful of safety-related tests.

A mortatorium is needed to demonstrate a renewed U.S. commitment to seeking an end to nuclear testing. Russia and France have already announced moratoriums on nuclear testing through the end of the year. By joining this moratorium, the United States will give new momentum to the worldwide drive for a comprehensive test ban.

It is necessary for Congress to initiate this moratorium because the administration has not carried out its promises to begin negotiations to achieve a comprehensive test ban.

In 1986, President Reagan wrote to the Congress pledging to begin negotiation to limit and ultimately end nuclear testing, once the verification protocols to the two 1970's nuclear testing treaties were achieved and the treaties were ratified.

This commitment was made in exchange for an agreement by the House of Representatives to drop a provision in the 1987 Defense authorization bill that would have mandated negotiations of a comprehensive test ban.

In June 1990 President Bush and President Gorbachev signed the verification protocols to the two treaties—the Threshold Test Ban Treaty and Peaceful Nuclear Explosions Treaty—and the treaties went into effect in December 1990.

In testimony supporting ratification of these treaties, Ambassador Ronald Lehman, Director of the Arms Control and Disarmament Agency, specifically restated the administration's commitment to a step-by-step process to limit and ultimately end nuclear testing.

At that time, he indicated that the delay in the start of these talks would not be lengthy—specifically that the delay would not be measured in years.

Despite this commitment, it has now been more than 2 years since the verification protocols were signed. Yet the negotiations on a CTB still have not begun.

In fact, the administration has simply ignored an amendment that Senator SIMON and I sponsored on the 1992 Defense Authorization bill that directed the President to submit by February 1992 a report to Congress containing a proposed schedule for the negotiations and identifying the objectives.

Now it is up to Congress to take stronger measures. By enacting the pending amendment on nuclear testing, Congress can ensure that the administration initiates the long-promised negotiations for a comprehensive test ban.

Contrary to claims by the administration, a test ban will not undermine the reliability or the safety of our nuclear arsenal. Reliability is a concern that deals primarily with new weapons—warheads that are under development or have been recently introduced into the stockpile. But the United

States has no new nuclear warheads in development.

The reliability of the existing weapons in the U.S. stockpile can be maintained without nuclear weapons tests. According to the conclusion of an independent review of nuclear stockpile issues by Lawrence Livermore physicist Dr. Ray Kidder:

A high degree of confidence in the reliability of the existing stockpile is justified * * * in the absence of nuclear explosive tests.

This conclusion confirmed expert views previously expressed by Dr. Hans Bethe, Dr. Richard Garwin, Dr. Carons Mark, and Dr. Herbert York.

Nor are safety concerns an obstacle to a test ban. Pursuant to recent arms reduction initiatives, the accelerated retirement of older weapons has eliminated the least safe weapons designs.

With the remaining weapons in the stockpile, there are two types of safety concerns—avoiding an accidental nuclear detonation and averting any scattering of plutonium in the environment.

The first of these concerns—accidential detonation—can be resolved with safety tests with an explosive power equivalent to a few pounds or less of TNT. Such tests need not be limited under a comprehensive test ban, because they are extremely small and would be almost impossible to verify.

The second safety concern—avoiding the accidental release of plutonium—has already been addressed by installing modern safety and security features, such as insensitive high explosive and fire-resistant pits, on nuclear weapons.

It may be cost-effective to ensure that all of these features are incorporated on all nuclear warheads that will remain in the arsenal. But this would require only a handful of additional nuclear tests that could easily be accomplished before a CTB goes into effect.

The amendment thus specifically provides for a limited number of safety-related tests prior to negotiation of a CTB.

But, we must avoid allowing safety testing to be the Trojan horse that defeats a comprehensive test ban for 40 years, the Department of Energy and the Pentagon have assured the American people that U.S. nuclear weapons are safe. But now that all other reasons for conducting nuclear tests have been swept away by the end of the cold war, they suddenly want us to believe that our most modern weapons are not safe.

It is like running the marathon in the Olympics only to find in the final stretch a few more miles have been added to the race.

The bottom line is that a comprehensive test ban is essential to sustain progress in nonproliferation efforts, and it will not make our nuclear stockpile less reliable or less safe.

Given the administration's refusal to begin the long-promised CTB negotiations, Congress must press the issue by enacting a moratorium in nuclear testing to match those of the Russians and the French by limiting future tests to the handful needed to make the last safety improvement to the nuclear arsenal.

The nuclear weapons policy of the United States must change with the changing world. Cold war levels of military spending full-speed ahead on star wars, too many B–2 bombers, vast numbers of United States troops in Europe to defend against a nonexistent Soviet threat—too often we continue to act like a nuclear-armed ostrich with its head still buried in the cold war sand.

The amendment before the Senate is an important step toward the change we know must come. I urge its adoption.

The PRESIDING OFFICER [Mr. KERREY]. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I want to modify my amendment in an effort to continually seek consensus and to develop the broadest possible base of support.

Senator COHEN of Maine had raised two questions on the floor during the earlier period of the debate. One was what would happen at the end of 1996 in which the current wording of the amendment would bring to a halt the testing, without equivocation, without any contingency. And so I have proposed, in order to meet the concern expressed by not only Senator COHEN but other persons, that we would add a provision allowing for resumption of United States testing after September 30, 1996, if Russia conducts a nuclear test after that date, at which time the prohibition on the United States nuclear testing is lifted.

I think that should go a ways at least, if not completely, to satisfy that issue.

Senator COHEN, also on page 5, line 7, spoke of the wording of the bill, the fact that nuclear warheads are not used in testing—"Only those nuclear explosive devices" in lieu of the word "warhead," and instead of making it singular like "in which a modern safety feature," we would make that plural in case we wanted more than one safety feature test.

So Mr. President, I send that modification on those two points of the amendment to the desk and ask for their adoption.

The PRESIDING OFFICER. Is there objection to the modification?

If not, without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 82, strike out line 19 and all that follows through page 83, line 5, and insert in lieu thereof the following:

SEC. 507. (a) Hereafter, funds made available by this Act or any other Act for fiscal year 1993 or for any other fiscal year may be available for conducting a test of a nuclear explosive device only if the conduct of that test is permitted in accordance with the provisions of this section.

(b) No test of a nuclear weapon may be conducted before July 1, 1993.

(c) On and after July 1, 1993, a test of a nuclear weapon may be conducted—

(1) only if—

(A) the President has submitted the annual report required under subsection (d);

(B) 90 days have elapsed after the submittal of that report in accordance with that subsection; and

(C) Congress has not agreed to a joint resolution described in subsection (d)(3) within that 90-day period; and

(2) only if the test is conducted during the period covered by the report.

(d)(1) Not later than March 1 of each year beginning after 1992, the President shall submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, in classified and unclassified forms, a report containing the following matters:

(A) A schedule for resumption of the Nuclear Testing Talks with Russia.

(B) A plan for achieving a multilateral comprehensive ban on the testing of nuclear weapons on or before September 30, 1996.

(C) An assessment of the number and type of nuclear warheads that will remain in the United States stockpile of active nuclear weapons on September 30, 1996.

(D) For each fiscal year after fiscal year 1992, an assessment of the number and type of nuclear warheads that will remain in the United States stockpile of nuclear weapons and that—

(i) will not be in the United States stockpile of active nuclear weapons;

(ii) will remain under the control of the Department of Defense; and

(iii) will not be transferred to the Department of Energy for dismantlement.

(E) A description of the safety features of each warhead that is covered by an assessment referred to in subparagraph (C) or (D).

(F) A plan for installing one or more modern safety features in each warhead identified in the assessment referred to in subparagraph (C) that does not have any such feature and, as determined after an analysis of the costs and benefits of installing such feature or features in the warhead, should have one or more of such features.

(G) An assessment of the number and type of nuclear weapon tests, not to exceed 5 tests in any period covered by an annual report under this paragraph and a total of 15 tests in the 4-fiscal year period beginning with fiscal year 1993, that are necessary in order to ensure the safety of each nuclear warhead in which one or more modern safety features are installed pursuant to the plan referred to in subparagraph (F).

(H) A schedule, in accordance with subparagraph (G), for conducting at the Nevada test site, each of the tests enumerated in the assessment pursuant to subparagraph (G).

(2) The first annual report shall cover the period beginning on the date on which a resumption of testing of nuclear weapons is permitted under subsection (c) and ending on September 30, 1992. Each annual report thereafter shall cover the fiscal year following the fiscal year in which the report is submitted.

(3) For the purposes of paragraph (1), "joint resolution" means only a joint resolu-

tion introduced after the date on which the Committees referred to in that paragraph receive the report required by that paragraph the matter after the resolving clause of which is as follows: "The Congress disapproves the report of the President on nuclear weapons testing, dated ."
(the blank space being appropriately filled in.).

(4) No report is required under this subsection after 1996.

(e)(1) Except as provided in paragraphs (2) and (3), during a period covered by an annual report submitted pursuant to subsection (d), nuclear weapons may be tested only as follows:

(A) Only those nuclear explosive devices in which modern safety features have been installed pursuant to the plan referred to in subsection (d)(1)(F) may be tested.

(B) Only the number and types of tests specified in the report pursuant to subsection (d)(1)(G) may be conducted.

(2)(A) One test of the reliability of a nuclear weapon other than one referred to in paragraph (1)(A) may be conducted during any period covered by an annual report, but only if—

(i) within the first 60 days after the beginning of that period, the President certifies to Congress that it is vital to the national security interests of the United States to test the reliability of such a nuclear weapon; and

(ii) within the 60-day period beginning on the date that Congress receives the certification, Congress does not agree to a joint resolution described in subparagraph (B).

(B) For the purposes of subparagraph (A), "joint resolution" means only a joint resolution introduced after the date on which the Congress receives the certification referred to in that subparagraph the matter after the resolving clause of which is as follows: "The Congress disapproves the testing of a nuclear weapon covered by the certification of the President dated ——————." (the blank space being appropriately filled in).

(3) The President may authorize the United Kingdom to conduct in the United States, within a period covered by an annual report, one test of a nuclear weapon if the President determines that it is in the national interests of the United States to do so. Such a test shall be considered as one of the tests within the maximum number of tests that the United States is permitted to conduct during that period under paragraph (1)(B).

(f) No underground test of nuclear weapons may be conducted by the United States after September 30, 1996, unless Russia conducts a nuclear test after this date, at which time the prohibition on United States nuclear testing is lifted.

(g) In the computation of the 90-day period referred to in subsection (e)(1) and the 60-day period referred to in subsection (e)(2)(A)(ii), the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded.

(h) In this section, the term "modern safety feature" means any of the following features:

(1) An insensitive high explosive (IHE).

(2) Fire resistant pits (FRP).

(3) An enhanced detonation safety (ENDS) system.

Mr. HATFIELD. Mr. President, could I inquire as to the remaining time I have in my control?

The PRESIDING OFFICER. Sixteen minutes thirty-six seconds.

Mr. HATFIELD. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, may I inquire as to the amount of time under the control of the opponents?

The PRESIDING OFFICER. Twenty-three minutes and thirty seconds.

The Chair modifies that. The Senator has 11½ minutes remaining.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the time elapsing now be charged against Senator Johnston and Senator Bryan.

The PRESIDING OFFICER. Is there objection?

Mr. BRYAN. Will the Chair restate the proposal?

The PRESIDING OFFICER. The Senator from Oregon asked the time to be charged against the Senator from Nevada and the Senator from Louisiana.

Mr. BRYAN. I object.

Mr. JOHNSTON. Mr. President, as a substitute unanimous consent, I ask that it be charged equally.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll. The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. 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. JOHNSTON. Mr. President, the unanimous-consent agreement for the full bill reserves time for the distinguished Senator from North Dakota, and I now have an amendment which can obviate the need to consider that amendment.

So, while we have a little down time here, I ask unanimous consent that it be in order to present an amendment dealing with the North Dakota project which is called the Garrison diversion project.

I ask unanimous consent that it be in order for me at this time to offer and consider an amendment, and that it be taken out of my time.

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

AMENDMENT NO. 2834

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. BURDICK, proposes an amendment numbered 2834.

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

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

The amendment is as follows:

On page 62, after line 15, add the following:

"Sec. . Utilizing processes required under the National Environmental Policy Act, the Secretary of the Interior is directed to conduct a formal analysis, by no later than March 31, 1994, of alternatives for the design, construction, and operation of the Sykeston Canal as a functional replacement for Lonetree Reservoir, pursuant to section 8(a)(1) of Public Law 89-108, as amended by the Garrison Diversion Reformulation Act of 1986, Public Law 99-294. The resulting Definite Plan Report/Environmental Impact Statement shall be utilized by the Secretary for the development of a Record of Decision which is to contain the Secretary's recommendation for proceeding with the final design and construction of the Sykeston Canal, consistent with the provisions of the Garrison Diversion Reformulation Act, the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, and the Boundary Waters Treaty of 1909. For purposes of this section, the Secretary shall take into account the results of studies conducted by the Secretary of the Army with respect to the stabilization of Devils Lake, North Dakota.".

Mr. JOHNSTON. Mr. President, this is a very highly contentious subject, a subject of the Garrison Diversion Dam project. But this particular amendment had been worked out after a long time of negotiation between Senator BURDICK and environmental organizations, the Canadians, and others. And it will obviate the necessity of having to consider the Conrad amendment.

So I ask that we adopt it at this time.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is agreed to.

The amendment (No. 2834) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the unanimous-consent agreement governing this bill now delete the necessity for the amendment from Senator CONRAD.

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

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum, as under the previous agreement.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I yield to the Senator from Illinois 4 minutes.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

AMENDMENT NO. 2833, AS MODIFIED

Mr. SIMON. Mr. President, I am pleased to rise in support of the amendment offered by my colleague from Oregon. I think it is extremely important that we move in a responsible way here.

On the fiscal year 1992 defense authorization bill, I introduced an amendment cosponsored by Senators

PELL and KENNEDY that called for a return to the nuclear testing talks, a report detailing the goal for these talks, and a schedule for resuming the negotiations. They were to report in February.

In March, Senator GORE asked Robert Barker, the Assistant to the Secretary of Defense for Atomic Energy, about the report required by my amendment, and Mr. Barker said that the administration could not see "a next step which does not have adverse security implications."

I think it is very clear that there are security implications from escalating, testing, and continued arms multiplication. And I also believe there is a moral factor here. It is very difficult for the United States to say to other countries: You cannot be testing; you should not be testing. And then they say to us: Why are you testing?

That puts us in a very untenable situation. In 1987, Dr. Ray Kidder, a nuclear weapons scientist at the Lawrence Livermore lab, one of the two national nuclear weapons labs, reported in an unclassified report:

A detailed review of the problems encountered with the 14 weapon designs since 1958 that have been frequently and prominently cited as evidence that a low threshold or comprehensive test ban would preclude the possibility of maintaining a reliable stockpile shows that this experience has little, if any, relevance to the question of maintaining the reliability of the stockpile of nuclear weapons that exists in 1987.

Just recently, he was asked by the Foreign Relations Committee whether that is still valid. He said:

The conclusion stated is no less valid today than it was 5 years ago in 1987.

Why go testing if other nations are not testing? It is very difficult to come up with any reason for doing it. We have had testimony before the Foreign Relations Committee that China, which is the only other nation testing right now, would be willing to stop testing if we did.

Maybe that is not valid. But let us try this moratorium. Let us see if we can build a safer world for our children in generations to come.

Next, I believe that there are environmental factors here, even with underground testing. This is pure instinct. I am not a scientist. I am not an environmental scientist, as everybody knows. I have very little scientific knowledge. But my instinct tells me that there are environmental hazards that we do not know about here.

We do know one thing. When you have underground tests—and I respect my colleagues from Nevada, who are trying to protect some jobs in Nevada out there, but there are environmental factors for Nevada that have to be considered also; and one is that when you have these tests, there is a huge residue of nuclear radiation.

Second, while there is no evidence at this point that these huge explosions underground cause any damage elsewhere, my instinct tells me that for every cause, there is an effect; and that somewhere, some damage is taking place—maybe earthquakes elsewhere: I do not know. But I think the fact that we cannot prove environmental damage at this point should not lead us to conclude that there is no environmental damage.

Finally, we have to make priorities here. I see the Senator from Oregon here, and I see the Senator from Louisiana here. Both of them serve on the Appropriations Committee. At the request of the administration, we are going to spend $500 million this next fiscal year on nuclear tests; $500 million happens to be what we spend in education and health care for American Indians in a year. What if we spend $250 million on Indian education and health care, and another $250 million to reduce the deficit. Would we be a better country, a more secure country? I believe we would.

I believe the Hatfield amendment should be adopted.

I yield the floor.

Mr. JOHNSTON. Mr. President, How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 16 minutes, 56 seconds.

Mr. JOHNSTON. I yield myself 5 minutes.

Mr. President, I am very skeptical about this amendment. Let me make the basis of my skepticism clear at this point.

The basic difference between the underlying appropriations language, which prohibits all tests except for safety, in the language of the Senate from Oregon, is that he has a 9-month moratorium where no tests for any purpose may take place. And, thereafter, reports are submitted, which I think are a good idea. And some tests, which are limited—I think none—over a period of 3 years, are permitted for safety, and I believe one for reliability.

So the basic difference between the underlying appropriations language and the language of the Senator from Oregon is in the number of tests. He tells me it is 15 tests in 3 years, 5 per year: 1 for reliability; 1 for the British—and in any event, theirs is limited—and there is a 9-month moratorium.

In one sense, it is not a huge difference. But it is very clear. Every single expert and every single participant in this debate agrees, and says we need tests for safety. I made the case earlier about how dire that need for safety is; about how populations are threatened by possible explosions of nuclear bombs and warheads. I think everyone agrees to that.

If that is so, the question is: Why do we have a 9-month moratorium? There are, as I understand it, three tests planned for safety—one per quarter in the next three quarters—which would be affected by that. That is the information given to me by the White House. I could be wrong.

But if we have three tests for safety planned—one a quarter in the next three quarters during this period of time—why should we cancel those tests? Keep in mind that the budget provides, I believe, $475 million. I think the budget request was $475 million. Our bill provides $383 million. Obviously, this is considered by all to be a high priority.

Why do we pay $383 million for only one quarter of testing? You say: We ought to be able to save three-quarters of that $383 million. You cannot do it, Mr. President. In effect, what you have to do is have all of these employees out there in Nevada waiting for 9 months—maybe they can do some paper reports, or whatever before their first test is eligible to be done in the last quarter.

It seems to me that if safety is important, as I think it is, we ought to do it sooner rather than later, and we should not, in effect, waste three-quarters of the $383 million budget.

With respect to the moratorium in 1996, we simply do not have a basis to determine that. Everyone wants a nonproliferation treaty, I think. The Soviet Union surely is not the problem there. We are not trying to talk Boris Yeltsin into being less hostile to us.

The nations we are worried about with nonproliferation are those that are not likely to be affected, certainly, by the difference between the amendment of the Senator from Oregon and the underlying appropriations amendment.

For example, we do not want Pakistan to test. Are they going to say, well, you cannot test for the first 9 months and therefore we can sign a proliferation treaty? It seems to me they are not going to be affected by that. That is true as to the People's Republic of China or other countries that we are really concerned about.

If you are trying to talk people into a nuclear moratorium, it is not going to be affected by a 9-month delay or, indeed, by a 1996 final moratorium.

So, Mr. President, I very much appreciate the efforts of the Senator from Oregon in ameliorating the harsh effects of the total House moratorium and the effects of the amendment which he originally proposed. This is clearly better than that in the eyes of those of us who think that testing for safety is very vital. But I am very skeptical about why we have the 9-month moratorium.

Mr. President, there are a huge number of unanswered questions posed by this amendment. It is not my inclination at this time, even though I have a great deal of skepticism about this, to make an active opposition to the amendment. I say that because the distinguished Senator from Nebraska who is head of the Armed Services Sub-

committee on this matter, and the distinguished Senator from Michigan, who is a member of the Armed Services Committee, are cosponsors of this amendment.

I am inclined to be benign in my approach to this so that we may take this to conference, get the views of the administration, determine what the precise nature is of the three tests to be conducted in the next three quarters, and determine whether there is a meeting of the minds as to whether those three tests are important. I think we may well find out that the three tests would pass muster in the judgment of anyone as needing to be tested or, on the other hand, the administration may tell us that they can delay for 9 months and that that delay would do no harm to the program.

We have been trying to talk to the representatives of the White House in the few hours since this amendment has been pending and the answers we get from them are not definitive because it takes time to secure this information.

So, my inclination is at this point, Mr. President, to, in effect, take this to conference, not with a view to dropping it in conference, but with a view to finding out the answers to these questions, and in the meantime, working in good faith for those on both sides of this question, including the White House, to determine what we may prudently do in going in the direction of a moratorium. Indeed, the appropriations language went in the direction of a moratorium, more moratorium on everything but safety, and yet at the same time, preserve our flexibility for safety.

Mr. President, I see the distinguished Senator from Georgia is just coming in and the distinguished Senator from Maine is here. I wonder what the attitude of the Senator from Maine would be toward taking this matter to conference and working on these issues in the meantime.

Mr. COHEN. The Senator from Maine will yield to find out what the chairman of the Armed Services Committee thinks about this going to conference. I did want to take a couple of minutes to address several questions to the Senator from Oregon, but I would do that on the time of the Senator from Nevada if he would like.

The PRESIDING OFFICER. Who yields time?

The Senator from Maine.

Mr. BRYAN. I am pleased to yield 2 minutes to the Senator from Maine from time under my control.

Before yielding, if I might inquire and ask my friend and colleague, the Senator from Louisiana, one additional question with respect to this analysis of this amendment.

The Senator from Nevada would like to ask the Senator from Louisiana one additional question.

I agree with his analysis of the amendment and where he believes it is flawed. But I find one additional concern. I do not know whether the Senator shares that view as well. That is at page 3, subparagraph (F) of the amendment offered by Senator HATFIELD. I view that language from lines 16 to 22 as a limitation of the type of weapon that can be tested.

It would seem to me that is an abandonment or a retreat from developing the safest possible nuclear arsenal, one that would include all three of the modern safety features defined on page 7, namely, the sensitive high explosive, the fire-resistant pits, and the enhanced detonation safety system.

If I am reading that language correctly, the test plan could only contemplate test with respect to a weapons system that had no such feature. And if that is true, it seems to me that that is clearly not the kind of policy that we ought to pursue. I think he would agree with me that we ought to have the safest possible arsenal.

I would inquire of my friend as to whether he reads the language as I do.

Mr. JOHNSTON. Mr. President, I think the Senator points out what could be an ambiguity. That is one of the problems with trying to legislate on a very complicated issue with a floor amendment, and we must, of necessity, do that all the time. I know the Senator from Oregon has been working very diligently to bring the parties together on this matter.

Nevertheless, the meaning of that language in subparagraph (F) of page 3 is not entirely clear. I mean, it seems to talk about a plan. The President shall submit to the committee a report containing the following matters and then "A plan for installing one or more," and so forth.

The question is, is this something the President submits as a report, or is this a limitation on what the Nation may do?

It is not entirely clear at all to me, and the actual effect upon weapons in the inventory upon the safety devices that they may contain, is also not very clear. That is why I think my attitude at this point at least—and I wanted to hear from the distinguished chairman of the Armed Services Committee—is to, at this point, say let us take it to conference with a view to going over this language very carefully, to resolving the ambiguities, to maximizing safety, keeping in mind that everybody that I know anything about, wants more safety in our weapons as soon as we can get it and to determine, in light of that, whether or not this language matches up to those things and to modify it in such a way that it does match up to those requirements.

I am quite sure that this language ought to be very carefully studied to see if we can improve it.

Mr. BRYAN. I thank the Senator for his response. I yield 2 minutes to the distinguished Senator from Maine.

Mr. COHEN. I thank the Senator for yielding.

Let me respond quickly to the Senator from Louisiana. I think in view of the complexity of the amendment, it continues to evolve in these waning moments that the more appropriate course of conduct for us would be to defer the matter until next week when the Senate Armed Services Committee brings the DOD authorization bill to the floor. That way, at least, we would have a better grasp of the nuances involved. That would be my preference.

The Senator from Georgia has just arrived. He is in the cloakroom negotiating with the Senator from Oregon. Perhaps we will hear his opinion on this.

Mr. JOHNSTON. If the Senator will yield, we had to deal with the moratorium in the House bill.

Mr. COHEN. I understand. In terms of coming to grips with the issues, I think it would be preferable from my perspective to deal with this issue next week after having a chance to go through this.

Mr. JOHNSTON. I understand the Senator.

Mr. COHEN. Then, I say, second, the Senator from Illinois, who was briefly on the floor, indicated $500 million was going to be spent for safety tests that could be spent for education.

It struck me to be something of an irony. The Senator from Illinois may recall that there was a minor accident in the city of Chicago. As I recall, some local engineer apparently penetrated one of the underground tunnels in the water system and suddenly we had a major flood in Chicago which cost the Federal taxpayer millions of dollars to help rectify.

We have the experts saying that one nuclear accident of the magnitude of Chernobyl would take at least a half billion dollars, $500 million. We are going to have several thousand nuclear weapons in our arsenal for the foreseeable future. All we need is one catastrophe, and that eats up that $500 million.

I want to emphasize to my colleagues not to dismiss the notion of safety or deride how much money is being spent. As long as we have nuclear weapons, we have to spend the money to make sure they are safe, in order to protect the American people.

There is a third point I would like to raise—and he is not here now, but let me just raise it for the RECORD.

Under the amendment by the Senator from Oregon, under subsection (F) regarding the cutoff date of 1996, there is now an exception or exemption in the event that Russia resumes testing. It would seem to me a more comprehensive statement has to be given here. It should read that we cannot test after

that point unless the President certifies to the Congress that another country has conducted a nuclear test, and that such test is inimical to the security interests of the United States, or threatens the nonproliferation objectives of the United States, or unless the President certifies that additional nuclear explosive testing is required in order to install a modern safety feature in the weapons cited in subparagraph (d)(1)(c).

Could I have 1 additional minute?

Mr. JOHNSTON. I yield 1 minute to the Senator.

The PRESIDING OFFICER. The Senator is recognized for 1 additional minute.

Mr. COHEN. I thank the Senator for yielding me the 1 additional minute.

In addition, as I pointed out in my earlier remarks, the way in which the Senator from Oregon's amendment is constructed, all three safety devices could be precluded from being installed in these weapon systems. The way it is written, it would allow no further testing to add safety features to a weapon if it has one such safety system already.

There have been changes made by the Senator from Oregon, but they still leave a good deal of ambiguity. And I think one way to fix that is on page 3, lines 17 to 19, we should strike the words "that does not have any such feature." Deleting those words in lines 17 and 19 would make it clearer that in the weapons systems that we retain we want all three safety features that have been identified by the Drell Panel to be included.

Let me just reiterate my own feeling on this Mr. President. I believe that we need additional time in which to refine the amendment of the Senator from Oregon. I hope that we can achieve some kind of a compromise by the time the Armed Services Committee comes to the floor with the DOD authorization bill.

I know the Senator from Louisiana is compelled to go forward with some response, in view of the House's action. I think a better solution for us would be to take a bit more time to develop this.

Mr. JOHNSTON. Mr. President, I would point out that our bill does not deal with permanent legislation. It simply states no testing except for safety this year. That is what we ought to do on this appropriation bill, deal with this year and not permanent legislation, and let you all deal with permanent legislation when your bill comes up.

Mr. President, I yield 2 minutes to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. I thank the Chair and I thank Senator Johnston.

Mr. President, I ask unanimous consent that an article in the Washington Times on July 31, written by Paul Nitze and Siegfried Hecker, be printed in the RECORD.

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

[From the Washington Times, July 31, 1992]

WEAPONS TESTING WE CAN'T DO WITHOUT

(By Paul Nitze/Siegfried Hecker)

The issue of nuclear testing is once again being brought into the public spotlight with the U.S. Senate set to consider a moratorium on all such tests.

The need for nuclear testing remains controversial and not well understood, especially since the end of the Cold War. In the eyes of many people, nuclear testing is a powerful symbol of the evil of nuclear weapons. Since testing is often associated with the development of increasingly destructive bombs, a halt in testing is associated with a safer and better world.

However, from our combined experiences in arms control, as well as maintenance of the U.S. nuclear arsenal, we see a different side.

As if any other high-technology venture, testing is imperative to ensure safety and reliability. Underground nuclear testing offers the only opportunity to conduct realistic, relevant experiments that help to ensure the safety, security and reliability of nuclear weapons. Such experiments help preserve the competence and judgment of the scientists and engineers who must maintain our remaining nuclear arsenals, who will help dismantle weapons and whose skills will be required in case of accidental damage to a weapon or to evaluate or disable a terrorist bomb.

Arguments about preserving technical competence are not politically fashionable. But the tragic accidents of the Challenger, Chernobyl and Bhopal are stark reminders of inadequate testing and questionable technical judgment. Why give up nuclear tests when the consequences of a nuclear-weapons accident overshadow those of any other technology on Earth?

The fact that the arms race with the former Soviet Union is over does not alter the necessity of testing. Indeed, the decision by Russian President Boris Yeltsin at the recent U.S.-Russia summit to no longer seek parity when the two arsenals are dramatically reduced by the end of the decade reinforces the nuclear deterrent role of the United States as the global guarantor of peace.

That role makes the safety and reliability of U.S. weapons even more important. At the same time, Mr. Yeltsin's decision makes the notion that testing drives the arms race or upsets strategic stability as obsolete as the Cold War itself.

The end of the Cold War will speed up removal of some of the older weapons, those with few modern safety features. However, there will be a tendency to leave weapons in the stockpile still not fully modernized in safety terms.

Since it is now less important (because of less reliance on strategic missiles) to pack more explosive power into smaller packages, weapons designers can make weapons safer to prevent the unlikely event of an accident, or to make them more tamper-proof against terrorists. They may also be able to build them with greater longevity so they last for 50 years. But such weapons cannot be developed without nuclear testing.

Some nations such as Mexico have objected to U.S. nuclear testing in conjunction with the Non-Proliferation Treaty discussions. Their objections are obsolete now that the arms race with the former Soviet Union is over and the principal purpose of U.S. nuclear tests is to ensure the safety, security and reliability of weapons.

Realistically, the post-Cold War peace should not lure us into adopting some notion of the "end of history" and the end of conflict or threats in our national security strategy. U.S. nuclear weapons provide a hedge against the possible resurgence of a nuclear threat from Russia or other successor states to the former Soviet Union, which will retain thousands of strategic and tactical nuclear warheads. It is also important for the sake of international tranquility that neither Germany nor Japan are tempted to develop their own nuclear forces for self-protection—a temptation which might arise were the United States to withdraw its nuclear umbrella.

Further, U.S. nuclear weapons are needed to dissuade rogue leaders from using weapons of mass destruction and to prevent nuclear blackmail.

In the post-Cold War era, a smaller but safe and reliable U.S. nuclear arsenal will serve to discourage the proliferation of nuclear weapons. The nuclear ambitions of countries such as Iraq, Libya and Algeria are not driven by the U.S. arsenal, nor the fact that we test, but by strong political motives or regional security concerns.

As long as U.S. security interests are served by nuclear weapons, we should ensure their safety, security and reliability as well as maintain a competent scientific work force to oversee them. A small number of tests will be necessary to serve these continuing needs. As a matter of fact, the number of tests in recent years has already declined sharply to only six this year.

That seems a very small price to pay if it helps ensure that the end of the Cold War does indeed result in a safer world.

(Paul H. Nitze served as U.S. ambassador to Intermediate Range Nuclear Forces Treaty negotiations and as a special adviser to President Reagan on arms-control matters. Siegfried S. Hecker is director of the *Los Alamos National Laboratory*, which, along with the *Lawrence Livermore Laboratory in California*, is responsible for the design and testing of all weapons in the U.S. nuclear arsenal.)

Mr. DOMENICI. Mr. President, I am going to read one paragraph of it, which I think summarizes what the good Senator from Maine has said and what Senator JOHNSTON has been saying:

Arguments about preserving technical competence are not politically fashionable. But the tragic accidents of the Challenger, Chernobyl and Bhopal, are stark reminders of inadequate testing and questionable technical judgments. Why give up nuclear tests when the consequences of a nuclear-weapons accident overshadow those of any other technology on Earth?

I think that is the issue. And frankly, as we have been trying to say, why should we fashion, over the last 72 hours from a 1-year moratorium which Senator HATFIELD had in mind—we had a 1-year moratorium except for safety—why should we fashion a permanent 5-year program on testing with specific numbers of tests when we already know that we need to upgrade a number of weapons in our arsenal? And clearly you cannot upgrade them as to

safety on the tests provided in this long-term so-called complete testing program that is now offered on an appropriations bill.

I believe we ought to either table that or reduce it to a 1-year event and get on with letting the Armed Services Committee draw up legislation for the long-term needs in nuclear testing.

I thank the Senator for yielding and I yield the floor.

The PRESIDING OFFICER. Who yields time?

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

The PRESIDING OFFICER. Seven minutes, seventeen seconds for the Senator from Oregon; 4 minutes and 25 seconds for the Senator from Louisiana, and 1 minute for the Senators from Nevada.

Mr. JOHNSTON. One minute for the Senators from Nevada, 4 minutes for the Senator from Louisiana, and 7 minutes to the Senator from Oregon?

The PRESIDING OFFICER. The Senator is correct.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I do ask to modify my amendment on page 3. There has been a question raised as to the number of tests that might be made relating to numbers of safety features. And on page 3, line 18, following the capital C, cross out the words "that does not have any such feature and", delete those words, so then I think it would clarify that objection. I so modify my amendment.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is so modified.

The amendment (No. 2833), as further modified, is as follows:

(F) A plan for installing one or more modern safety features in each warhead identified in the assessment referred to in subparagraph (C), as determined after an analysis of the costs and benefits of installing such feature or features in the warhead, should have one or more of such features.

Mr. CRANSTON. Mr. President, I rise today to lend my strong support to the Hatfield amendment currently under consideration. A 9-month moratorium is the appropriate reply to the Russian moratorium. A plan to achieve a multilateral comprehensive ban on the testing of nuclear weapons before September 30, 1996, provides the necessary response to our new opportunities for peace.

Every American President from Eisenhower until Reagan supported the ultimate objective of a comprehensive test ban. The Reagan administration, though, in its frenzied arms buildup, abandoned this objective in the short term. Instead, it declared that "for the foreseeable future, nuclear testing will continue to be indispensible to our security."

The future has finally rounded beyond the foreseeable circumstances of the Reagan era. Events no one could have predicted just 10 years ago confounded and inspired us all. The cold war is over. The Soviet Union has disintegrated. The race to develop the most modern strategic nuclear weapons has ended, and we have won.

The Soviets declared two unilateral moratoria on nuclear testing in the last 5 years. In 1986, Soviet President Gorbachev halted nuclear testing for 18 months. On October 5, 1991, Mr. Gorbachev again initiated a 12 month moratorium on testing in the U.S.S.R. He challenged the United States to join in pursuing the complete cessation of all nuclear tests.

President Yeltsin of Russia has upheld that ban. President Nazarbayev of Kazakhstan has also issued a call for peace. He closed down the nuclear reactor in Semipalatinsk, and encouraged the United States to join the comprehensive test ban.

France, too, declared a moratorium on testing in April of this year.

The United States, however, continues to test as if this were 1982, and the Soviet Union and the United States were still trapped in the deadly race to develop new and improved warheads every 6 months. This is a cold war mentality. Testing is a step toward intensifying proliferation. Today, we are making great efforts to curb proliferation. In fact, we are creating no new weapons. We are downsizing our military. We are taking our missiles off alert. We no longer need to threaten our enemy with repeated nuclear tests to demonstrate we are ready to do nuclear battle at any moment.

The administration argues that the United States must test in order to maintain our strategic deterrent. Mr. President, the fact that our arsenal is loaded with hundreds of nuclear missiles is a deterrent in itself.

Take the Persian Gulf war as an example. Israel has never tested or even confirmed that it possesses a nuclear bomb. Throughout the Persian Gulf war, Sadaam Hussein threatened to attack Israel with chemical weapons. But, as we all now know, he has used chemical gas only on the Kurds in Iraq; he never lobbed any chemical missiles against Israel. I believe that the threat that Israel would retaliate with a nuclear attack—a threat never tested in an underground cavern—deterred him. I believe that Syria and Iran, two more of Israel's historic enemies, have been deterred by Israel's potential nuclear capability.

The administration has also claimed it must test for safety, reliability, and survivability of our nuclear stockpile. But Dr. Robert Barker, Assistant Secretary of Defense for Atomic Energy, testified before the House Armed Services Committee in March 1992, that the Air Force and the Navy, in conjunction with the Department of Defense and the Department of Energy, reviewed the safety of the ballistic missiles which carry the nuclear warheads. They concluded that no changes were needed for safety reasons.

If we don't need to change anything for safety reasons, then we don't need to test for safety reasons.

Mr. President, most of the brightest and experienced weapons designers in this country advocate a test ban. Two weeks ago at a hearing before the Senate Foreign Relations Committee, Rear Adm. Eugene J. Carroll of the Center for Defense Information; Dr. Ray Kidder of the Lawrence-Livermore Laboratory in California; and Dr. Frank Von Hippel of the Woodrow Wilson School of Public Affairs at Princeton University all testified that the United States possesses the best tested weapons in the world.

Rear Admiral Carroll reported that in safety that, nuclear material could not be detonated. Moreover, many of the warheads deemed unsafe will be retired under recent arms control agreements. Furthermore, as our weapons are placed off alert status, the risk of accident is greatly reduced, as is the consequential need for safety improvements.

Our thinking on arms control should be fundamentally different today than it was 5 years ago. The debate on a moratorium should no longer revolve around whether the United States will test six times a year, three times a year, or halt completely for all of 1 year. Rather, this is our chance to consider how a moratorium can serve the strategic, long-term American global aims.

While I compliment President Bush and Secretary of State Baker on their successful negotiations with Russia, Kazakhstan, Byelarus, and Ukraine on the START Treaty, its protocols, and the upcoming so-called START II Treaty, I am wondering how much further this administration is willing to go in the pursuit of peace. We have a window of opportunity today to restructure the world's security balance. Quite frankly, merely reducing the number of tests, is, at this point in history, a rather paltry and unimaginative offering.

I want to address the compelling reasons for why we should pursue, at the very least, a 9-month moratorium on nuclear testing.

A moratorium on testing by the United States would shift the concerns about nuclear proliferation in a more constructive direction. It would allow us to take the time to evaluate the purpose of testing in the new world.

At the same time, it would demonstrate our sincere effort to reduce global nuclear arsenals to the minimal necessary level of post-cold-war nuclear deterrence, and underscore our commitment to containing nuclear proliferation.

It would lend credibility to negotiations on a long-term extension of the

Nonproliferation Treaty, which expires in 1995.

It would signal U.S. cooperation toward advancing negotiations on the comprehensive test ban treaty we have thus far only dreamed of.

It would strengthen the positions of reformers in the newly independent republics of the former Soviet Union, such as Boris Yeltsin, who are struggling to turn their nations' focus from military defense to domestic restructuring.

A halt to nuclear testing would also reduce the environmental damage created by the uncontrolled high-level radioactive waste which tests produce.

And it would save American taxpayers just under half a billion dollars in fiscal year 1993 alone.

The United States House of Representatives passed a resolution by a margin of 236 to 167 calling for a 1-year United States testing moratorium, conditional on the continuation of the Russian moratorium. Fifty-two Senators have cosponsored S. 2064, which does the same. Thirty-two Nobel laureates, including Hans Bethe and Kenneth Arrow, as well as several of the most sophisticated and experienced weapons designers, have given their full support to the prompt cessation of nuclear weapons testing.

Mr. President, eventually, either every nation will stop testing, or no nation will. If the United States doesn't stop, no one else will either.

I urge my colleagues to make a sensible investment in peace. Support a short-term moratorium on nuclear testing. Support efforts to conclude a comprehensive test ban by 1996. It will give us an opportunity to reevaluate the advantages of testing, while at the same time witness the benefits of a moratorium. What do we have to lose?

Mr. HATFIELD. Mr. President, I ask unanimous consent that Senator CRANSTON be added as an original cosponsor.

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

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

The PRESIDING OFFICER. The Senator from Oregon has 5 minutes, 25 seconds, the Senator from Louisiana has 4 minutes, and the Senator from Nevada has 1 minute.

Mr. HATFIELD. Mr. President, I think we can wind this matter up with the few moments we have left. Let me just reiterate that the amendment which we have presented here today, the so-called Hatfield-Mitchell-Exon amendment, allows for safety testing after 9 months moratorium in order that the United States may pursue any changes necessary to include safety features in our arsenal.

Bear in mind, again, that there is no stated administration definitive position except the March 2, 1992, statement made by the Assistant Secretary of Defense before the House authorization committee.

Whatever the administration may have fed into the debate this afternoon, I still go back to that one point of reference. Again, I want to remind this body that our arsenal is safer than ever before, and every weapon in the arsenal has been tested with an A, B, C, D, E, F test judgment or measurement. Most of them averaged out A, B, or C, with C having the largest number.

Remember this, that some of these matters that have been raised today about possible accidents—again, I emphasized our arsenal is not constantly deployed on planes and ships and therefore we have another safety factor.

The science of this issue is complex, but the task before the Senate today is complex. This amendment requires the most comprehensive evaluation ever requested, to my knowledge, of the administration. The 9-month pause not only provides for urgent response to Boris Yeltsin's moratorium and the action of the French, but also support for this amendment's adoption comes from the most prominent people in our scientific community, six scientists who worked on the Manhattan project, who now believe a moratorium is vital, and 30 Nobel laureates who seek passage of a moratorium, and other groups such as the Federation of American Scientists, Natural Resources Defense Council, and the Union of Concerned Scientists.

Given these considerations, I urge the Senate not to lose this historic opportunity. This amendment offers cooperation between a great many interests, and I believe that cooperation is unprecedented here today. So, too, is this opportunity to change our nuclear testing policy for the good. I urge my colleagues to support this amendment and defeat any tabling motion that might be offered.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, I was just handed a copy of the letter from the Secretary of Defense to Senator MITCHELL, who says as follows:

The Department of Defense strongly opposes the Hatfield Amendment for the following reasons:

(1) It imposes a comprehensive test moratorium after 30 September 1996. However, all Administration studies and reviews have concluded that, as long as we will retain a nuclear deterrent—regardless of its size—we will need to test for safety and reliability. We will retain a nuclear deterrent past 30 September 1996.

(2) The amendment assumes that we will solve all safety problems by 30 September 1996, within a finite number of tests. This is irresponsible. Worse, it assumes that we will never have a safety—or a reliability problem—after 30 September 1996. No one can ensure this; indeed, as history has shown us, the odds are very much against it.

(3) The amendment requires that Congress review the President's certification on the need for testing. This creates yet another roadblock. In effect, given the reporting and certification requirements and the possibility of further Congressional blockage, the amendment is a de facto moratorium.

(4) Finally, a nine month moratorium in testing means that the staff at the Nevada Test Site will be paid for doing essentially nothing. This is a waste of taxpayers' funds and could lead to a loss of expertise.

Best regards,

DICK CHENEY.

And written in handwriting at the bottom is: "If a moratorium is passed, I will recommend the President veto the bill."

And then there is a further statement by the Secretary of Energy, essentially to the same effect, which I will not read because I think I would otherwise run out of time.

Mr. President, I ask unanimous consent that copies of these letters be printed in the RECORD at this point as if read in full.

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

THE SECRETARY OF DEFENSE,
Washington, DC, August 3, 1992.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: The Department of Defense strongly opposes the Hatfield Amendment for the following reasons:

(1) It imposes a comprehensive test moratorium after 30 September 1996. However, all Administration studies and reviews have concluded that, as long as we will retain a nuclear deterrent—regardless of its size—we will need to test for safety and reliability. We will retain a nuclear deterrent past 30 September 1996.

(2) The amendment assumes that we will solve all safety problems by 30 September 1996, within a finite number of tests. This is irresponsible. Worse, it assumes that we will never have a safety—or a reliability problem—after 30 September 1996. No one can ensure this; indeed, as history has shown us, the odds are very much against it.

(3) The amendment requires that Congress review the President's certification on the need for testing. This creates yet another roadblock. In effect, given the reporting and certification requirements and the possibility of further Congressional blockage, the amendment is a de facto moratorium.

(4) Finally, a *nine month moratorium* in testing means that the staff at the Nevada Test Site will be paid for doing essentially *nothing*. This is a waste of taxpayers' funds and could lead to a loss of expertise.

Best regards,

DICK CHENEY.

P.S.—If a moratorium is passed I will recommend the President veto the bill!

STATEMENT BY THE SECRETARY OF ENERGY

The Hatfield, Mitchell, and Exon amendment to H.R. 5373 is unacceptable, and I will recommend to the President that it be vetoed for the following reasons:

1. The restriction that no underground test of nuclear weapons may be conducted by the United States after September 30, 1996, is unacceptable because the testing cutoff would mean that new features could not be incorporated into our deterrent at a later date and that an unpredicted safety or reliability problem could not be resolved; in addition, this approach makes no allowance for testing activities in other countries;

2. The planned safety tests by the Department of Energy should not be postponed until a date later than June 1, 1993, as required by the amendment; this restriction will result in delays in planned safety tests which will provide us with vital information for potential modifications to stockpile weapons;

3. The disruption to the planned test program and reduction in scope of the program will result in loss of employees at the test site and thus make it difficult to resume testing; and

4. The restriction under paragraph (e)(1)(a), which limits testing to "only those nuclear warheads in which a modern safety feature has been installed," is unacceptably restrictive to our need to develop and install improved safety technologies in the stockpile. Also, this language is too restrictive in that it does not allow for testing should a safety problem be discovered in a stockpile weapon.

THE WHITE HOUSE,
Washington.

Hon. J. BENNETT JOHNSTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR JOHNSTON: The amendment to the Energy and Water Appropriations Bill proposed by Senators Hatfield, Mitchell, and Exon should be seen for what it is—a clear path to a comprehensive nuclear test ban. It would prevent us from conducting underground nuclear tests that are necessary to maintain a safe and reliable nuclear deterrent. Further, it would be an inefficient use of scarce fiscal resources, and includes the possibility of Congressional disapproval of the entire test program or of individual tests—seriously interfering with the President's powers as Commander-in-Chief. In total, this amendment could endanger the national security of the United States. For these reasons, the Secretary of Defense, the Secretary of Energy and I would recommend veto of the legislation.

The amendment does not envisage testing of special advanced technologies including:

The ability to incorporate entirely new safety technologies into the stockpile—technologies which will not be mature before the proposed testing cut off;

The effects of nuclear explosions on U.S. forces, including, importantly, the ability of space-based sensors and ground-based defensive interceptors to be tested in a nuclear environment;

The ability to evaluate techniques to destroy warheads of unknown or uncertain design (a proliferation problem).

The amendment imposes an absolute limit on the number of tests the U.S. could conduct over the next several years. The number proposed is not adequate to incorporate new safety features into the stockpile. As importantly, the testing cut off would mean that new features could not be incorporated into our deterrent at a later date and that an unpredicted safety or reliability problem could not be resolved.

The imposed nine-month moratorium is a waste of scarce resources. The costs of maintaining the nuclear testing infrastructure would have to be paid while we simply delayed needed tests (there are six nuclear tests scheduled from now through July 1993).

The planned end to testing would apply to the United Kingdom as well as to the United States.

The President has adopted a sound nuclear testing policy responding to the changed international security environment, the reduced threats, the need to reduce defense spending, and the need to maintain a safe and reliable, but much smaller, nuclear deterrent. The President's policy limits the number, yield and purpose of U.S. nuclear tests while allowing for the minimum necessary to meet his national security responsibilities.

Sincerely,

BRENT SCOWCROFT.

Mr. JOHNSTON. Mr. President, given my statement earlier about my skepticism—and I want to be in complete good faith with the Senator from Oregon—would the Senator from Oregon agree with me, in view of the unanswered questions, if we took this to conference we would have the ability to respond to these questions of safety and the nature of the tests to be completed in the next 9 months? In other words, I do not want to go into conference thinking if we accept the amendment we have no ability to respond to what I see as very important issues here.

Mr. HATFIELD. Mr. President, as I understand the situation the Senator poses, if we go to conference, there is a moratorium already on the House side, which is a 12-month moratorium, which we offered originally. We can go from the Senate side with no reference to this issue, with the language now in the bill, or with the amendment that I am proposing today. We still have a conferenceable item, and as far as saying today how it is going to turn out in that conference, I am not in a position to say. I do not know. I think certainly the whole issue would be reviewed carefully in that conference. If the Senator has new information or updated information, certainly the conference should consider the best information. I would see no problem.

Mr. JOHNSTON. Would we have the ability, in my colleague's judgment, in good faith—I know we have the technical ability under the rules to do virtually what we want—but to respond to some of these concerns of the Secretary of Defense?

Mr. HATFIELD. Mr. President, I will respond. I think the fact we have moved from a 12-month House version and attempted to include as many people as possible—the Senators from Nevada with great concerns, the Senator from Maine, and others who have participated in this—indicates we have demonstrated the best of good faith, trying to be sensitive to the best of information and to the problems. We have modified our language three times because the Senator from Maine pointed out technicalities—problems we certainly did not intend to present to this body.

So I say, obviously we are going to be openminded on all of these matters.

Mr. JOHNSTON. Frankly, the decision I have to make as the floor manager is whether to simply move to table at the appropriate time, have that vote, and put the matter off until tomorrow or days after that, or whether simply to—I cannot accept the amendment for the whole Senate, but I can recommend that and take the amendment to conference.

In the meantime, the armed services bill will be coming along, and they could accommodate. This is permanent legislation. If we have that flexibility in good faith to deal in conference, I would be inclined to do that and let the Armed Services Committee in their bill deal further with the matter.

I wonder if the Senator from Maine would have any advice?

Mr. COHEN. If the Senator will yield, what I intend to do is spend a little more time with this amendment—I believe a bargain was made, in fact a good-faith effort to meet the objections I have—and then when the defense authorization bill comes to the floor next week, offer an amendment quite similar but perhaps with a few changes that I would recommend.

So I intend to offer something similar to this but with changes that would reflect my own concerns about it next week when the defense bill comes to the floor.

Mr. HATFIELD. Mr. President I think it is fairly obvious——

Mr. JOHNSTON. Is the Senator saying he would offer that next week on the armed services bill?

Mr. COHEN. That is right. That is what I intend to do.

Mr. JOHNSTON. So, would the Senator concur that perhaps the best action right now would be, with some skepticism but with good faith, to take this amendment to conference and let the Armed Services Committee deal with the matter more fully when their bill comes up?

Mr. COHEN. I think that would be the better course.

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

The PRESIDING OFFICER. The time of the Senator from Louisiana has expired. The Senator from Oregon has 7 seconds.

Mr. HATFIELD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. The Senator from Nevada will yield to the Senator from Georgia, the chairman of the Armed Services Committee.

Mr. NUNN. Mr. President, I am not going to make a speech. I, unfortunately, could not be here and have not been part of the negotiations and have not yet decided how I will vote myself. But I would just point out to the authors, I think I would agree with the Senator from Maine in his statement that this amendment has come a long way and is much more, I think, practical now than it was in the original form.

The problem I have now is that we have a 9-month moratorium, as I un-

derstand it, and a 1996 date for a comprehensive test ban. One or the other of those, it seems to me, is out of place. If you are going to have a 1996 date, you need to get started right now, although you would have to have a plan first and that might take 4 months, 5 months. I do not know how long it would take the administration to have a plan.

If you want a 9-month moratorium for purposes which I know are important in terms of world perception, then it seems to me that the 1996 date ought to be slipped to 1997 or 1998, because what we have done with the combination of that is basically said we want a comprehensive test ban by 1996 and yet we are not going to start doing anything about the safety testing, which everyone now acknowledges is absolutely essential, for the next 9 months, or 9 months from the date of enactment.

Those would be my only observations. There are some technical language examinations that I think need to be made but that can be done in conference, relating to whether inadvertently—and having talked to the author, the Senator from Oregon, I know it would have been inadvertent—whether we have really corrected the language that appears to say if you have one safety feature on a weapon, another one cannot be added. That one needs to be looked at carefully.

Mr. President, I thank my colleagues for the time.

Mr. DOLE. Mr. President, the drafters of this amendment say that this is really not a moratorium. Sure there are steps the administration has to take and studies it has to provide. But, then after all that, the United States can test. Well, the drafters forgot to add a line in their amendment, wishing the administration good luck—since luck is exactly what it will take to maneuver through all these requirements while trying to conduct a responsible testing program—which, by the way, can only be done until September 1996.

What lies under the mounds and mounds of reporting requirements and preconditions is a moratorium, plain and simple. No amount of obfuscation—which the Congress is so good at—can hide that fact.

The bottom line is that when the cloaks and veils are lifted, this amendment is a nuclear testing ban.

Well, those who support this amendment point to the dramatic strides made in START and the followup agreement reached at the summit with Boris Yeltsin and say the United States should have gone further and halted all nuclear testing.

Mr. President, even when these agreements are fully implemented, 11 years from now—in the year 2003—the United States will still have 3,500 nuclear weapons.

Well, this is one Senator who wants to make sure these 3,500 nuclear weapons are safe and that they are reliable.

Mr. President, the basic problem with sponsoring this nuclear test ban amendment is that you have to make certain assumptions about the future:

First, you have to assume that there will not be any safety problems in our stockpile after 1996, or that if there are, we will be able to detect and correct potential safety problems without nuclear tests.

Second, you have to assume that the United States won't need to rely on its nuclear deterrent after 1996—because without a testing capability you can't be sure about the reliability of our nuclear forces.

Mr. President, I cannot predict the future—nor do I think, with all due respect, that my colleagues can.

Moreover, I am not a nuclear weapons design or testing expert, and neither are any of my colleagues.

Finally, I am not the commander in chief—and neither are Members of Congress. Not one of us here has the constitutional and moral responsibility for the safety of our nuclear weapons, the safety of those who handle our nuclear weapons, or the safety of the American people—which may one day rely on a credible nuclear deterrent.

Is there a Senator here prepared to face his or her constituents, some of whom may be working on nuclear stockpiles, and say, "Don't worry about safety—don't worry about reliability. Trust me."? We've all heard that line before.

Let's face it. Nuclear weapons are the most dangerous weapons we possess—and as long as they are an integral part of our defense, as long as we rely on them, the United States will need some capability to test for safety and reliability.

It's nice to think of a world without nuclear weapons and a United States without nuclear weapons. But, the fact is, we are not there yet. A nuclear free world is not a reality.

So, let's get back to reality and vote against the Hatfield amendment.

AN END TO NUCLEAR TESTING

Mr. DECONCINI. Mr. President, I am pleased to join with the Senator from Oregon [Mr. HATFIELD] and the distinguished majority leader, Mr. MITCHELL, in supporting their amendment to impose a 1-year moratorium on nuclear testing. As a cosponsor of the original bill from which this amendment is drawn, I firmly believe that the United States can afford to take a slight risk for peace.

Regrettably, we are not leading the world on this issue. We have lost the moral high ground to France and Russia which have already pledged to stop nuclear weapons testing. Maintenance of our moral leadership of the world requires us to do no less.

The Bush administration recently announced that it planned to reduce U.S. nuclear tests significantly by cutting them to no more than six per year. However, the administration is significantly behind the curve of United States and world public opinion when it comes to nuclear testing.

The reasons for a testing moratorium are numerous. Many people view the elimination of nuclear weapons testing as a moral obligation, but there are a number of technical reasons for a moratorium as well.

The first and most obvious reason is the disintegration of the Soviet Union. Any threat from what remains of the Soviet Union and the former Warsaw Pact has now been dramatically reduced. Indeed, the President would have this Nation provide foreign aid to the former Soviet behemoth. CIA Director Robert Gates has endorsed the view of the changed world environment. He stated on January 23, 1992, "The threat to the United States of deliberate attack from [the former Soviet Union] has all but disappeared for the foreseeable future."

We are now in the process of working together with the nations of the former Soviet Union on many issues. We are even providing aid and technical assistance to dismantle and destroy the nuclear weapons which were once trained upon U.S. cities. I believe that it is important that we step forward and demonstrate to our former enemy, as well as the rest of the world, that we are committed to peaceful cooperation with the fellow members of the nuclear fraternity. The United States remains one of the last nuclear-capable nations which continues to conduct nuclear weapons testing. What message are we sending to the world's nuclear haves and have nots when we continue to test in the face of Russian and French moratoria?

A second reason for banning nuclear testing is nuclear proliferation. The United States advocates a position of nuclear nonproliferation. We are a proud signatory of the Nuclear Nonproliferation Treaty [NPT] and our export policies against proliferation of any nuclear capability are among the strongest in the world. But how can we expect anyone to believe our words when our actions belie them. The continuing hypocrisy of the Bush administration threatens to undermine our principled position. If we continue to develop and test our nuclear weapons, I am concerned that the United States will lose its global leadership in the advocacy of nonproliferation. Many signatories to the NPT have threatened to reconsider their position at the NPT review conference in 1995 if the United States continues to stubbornly cling to its—testing as usual—position. Former President Carter stated recently that "the world is concerned about nuclear proliferation. Here again, the United States is the major obstacle to a worldwide comprehensive test ban. Our threats against Pakistan, North Korea, Iraq, and Libya have a somewhat hol-

low ring when our deserts still shake with nuclear explosions."

The Bush administration now states that it needs to continue testing because of national security and weapons safety. While this may be a perfectly legitimate issue, I have to ask if our weapons are unsafe. If they are unsafe, have we been conducting safety tests all along, or have we merely been conducting tests of new warheads and new weapons? Safety was not a concern of Secretary Cheney who stated earlier that the United States planned no safety upgrades in 1992. Now, however, he is chanting the safety mantra because that appears to be the only message that will sell with American public opinion.

Finally, a pause in testing will allow experts to determine the extent of the environmental impact of continued testing at our national test sites.

In closing, it is clear to this Senator that a nuclear testing moratorium is an idea whose time has come. We have endured and triumphed during an age of war and hostility in which arms testing was a necessary evil. That time, however, has passed. We must now lead the world toward the new era of peace.

I ask unanimous consent that a July 22, 1992, editorial from the Arizona Daily Star, entitled "Stop Blasting: Moratorium on Nuclear Tests Makes Sense" be printed in the RECORD at this point.

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

[From the Arizona Daily Star, July 22, 1992]

STOP BLASTING—MORATORIUM ON NUCLEAR TESTS MAKES SENSE

Congress is working faster than George Bush's brain again. This time lawmakers are pushing to formalize a nuclear issue that ought to be just a housekeeping item in the post-Cold War era—a moratorium on nuclear testing.

The House overwhelmingly passed a one-year stop on these expensive, dangerous underground explosions under the Nevada desert. Now 52 senators, including Arizona's DENNIS DECONCINI, are sponsoring a similar bill, but Bush is still holding out for a "modest nuclear testing program" despite all evidence that it's unneeded, unwise policy. The administration wants probably no more than six tests a year over the next five years, or more than three tests per year in excess of 35 kilotons.

That's only a token reduction. Experts say more than half of all U.S. tests already have an explosive force of less than 35 kilotons, or the equivalent of about 35,000 tons of TNT.

Even the Pentagon says "safety" upgrades of the existing arsenal, which is the usual excuse for nuclear testing now, is not necessary.

Each test costs $30 million to $60 million or more, much of it wasted on weapons that will never be deployed, such as a Star Wars X-ray laser-weapon program that has been canceled.

Those millions would buy a lot of drug-prevention efforts and recreation programs for troubled youths in urban centers.

As long as the United States keeps up this pretense of need for nuclear testing, the danger of proliferation grows. The U.S. lack of restraint leaves no incentive for other countries to refrain from testing deadly weapons.

With no superpower arms race anymore, there's obviously no need to develop new nuclear weapons in this country, especially since our current arsenal alone is enough to destroy most of the planet.

Whatever and whoever remains of communist hardline resistance in the former Soviet Union can exploit U.S. continued testing as a reason to continue an oversized military budget. Russia's two-year unilateral moratorium on testing will end in October, and Moscow officials say they'll be forced to start testing again if Washington doesn't stop.

Underground blasts are not without their side effects, either. High levels of radiation left in the soil could be absorbed by plants and animals.

If the administration can't understand the logic of a test-ban moratorium, Congress ought to drive the point home. Americans want something better for their money than expensive blasts under the Nevada desert.

Mr. SMITH. Mr. President, I rise in strong opposition to the amendment offered by the Senator from Oregon, as well as the underlying bill language regarding nuclear testing.

Mr. President, from the outset, let us be clear about what we are debating here today. This discussion is not just about modifying our nuclear test regime, or curtailing weapons development, it is about whether or not the United States will remain a nuclear power. It is that simple. Because without adequate testing, we simply cannot ensure the safety, reliability, or survivability of our nuclear forces.

Proponents of the Hatfield amendment argue that the world has changed and that the United States no longer needs to maintain a nuclear test regime. The Soviet threat has disappeared, further arms reductions are imminent, the world has become safe and benign. Well, Mr. President, this is a very optimistic viewpoint and it misses the point completely.

As long as we have any nuclear weapons, whether it is 3,000 or 300, it is essential that we test these weapons to ensure safety and credibility. In fact, as the size of our arsenal and number of weapons types decrease, it becomes increasingly important to ensure that the remaining weapons meet their performance specifications, and that our military forces, including satellites, communication systems, and weapons support systems, are capable of functioning in a nuclear environment. Nuclear testing is essential in this area.

From a safety standpoint, we test to gain absolute assurance that in the event of an accident, our nuclear weapons will not deliver a yield. Clearly, there can be no compromise in ensuring the safety of our nuclear weapons, and we must test to do so.

From a reliability standpoint, we test to ensure that our weapons will perform as they are designed to. This hardly seems unreasonable, since we have invested tens of billions of dollars on our nuclear deterrent force. At the very least, we should ensure that they are capable of doing what they are supposed to do. I would say to my colleagues who support testing only for safety; there is little consolation or security gained by knowing that a weapon won't detonate on our own territory if we cannot be sure that it would detonate, as designed, in time of war.

To better place this issue in perspective, I would ask my colleagues to consider some of the surprises which have resulted from nuclear testing. Since 1958, one-third of U.S. nuclear weapons have required postdevelopmental testing. Some problems were discovered in surveillance activities but others were only discovered during the conduct of nuclear tests. All these problems required subsequent testing to assure that fixes were effective. Additionally, nearly half of the nuclear weapon types introduced into the stockpile since 1970 have required postdevelopment nuclear testing to verify or fix problems, and to resolve questions of safety and reliability.

Mr. President, of the eight tests conducted in fiscal year 1991, several exhibited performance that differed significantly from that predicted. Two tests had yields in which the primary performance was approximately half of that expected. The total yield of another test was low by about 16 percent. Furthermore, of the 6 tests conducted so far in fiscal year 1992, 1 produced a yield of nearly a factor of 10 below the level predicted. The reasons for these deviations vary and, in some cases, remain unknown.

I would say to my colleagues, these deviations indicate an incomplete understanding of the detailed physics of nuclear weapon performance. And if design changes are needed to correct problems in future stockpile inspections or to make future safety improvements, we must test to retain confidence in the safety and reliability of such changes.

Mr. President, I have heard some of my colleagues who support this amendment argue that by halting our testing, the United States will be setting an example that will help prevent the spread of nuclear weapons to the developing nations. Again, this is an extremely optimistic yet, frankly, naive assertion. Let us be honest, Saddam Hussein and Kim il-Sung are not glued to their seats wondering whether the United States will continue to conduct nuclear tests. And does anyone in this chamber actually believe that either of these two barbarians, or their terrorist cohorts, would halt the quest to acquire nuclear weapons purely because the United States has stopped testing? Not a chance. They have done, and will continue to do, whatever it takes to satisfy their perverse appetites for power.

I have also heard my colleagues complain that the administration has failed to adapt our test regime to changes in the international security environment and in the size and nature of our nuclear deterrent. This is also untrue. The United States has already significantly reduced the number of nuclear tests that we conduct. In fact, we now conduct only about one third as many tests as we did in the early 1960's and about one quarter the average level of the 1970's.

The President's revised testing policy states that the purpose of all U.S. underground nuclear testing of its weapons is to evaluate and improve the safety of our smaller nuclear deterrent and to maintain the reliability of U.S. forces. In doing so, the United States will conduct only six tests per year over the next 5 years. Of these six annual tests, no more than three can exceed 35 kilotons. In my view, the President's testing initiative represents a legitimate and responsible approach given the ongoing changes in the world.

Mr. President, I urge my colleagues to carefully consider their vote on this issue. It is, perhaps, the most fundamental and far reaching which we will cast this year. At issue is whether nuclear weapons will continue to play a role in our national security or not. Because unless we continue to test our deterrent force, we simply cannot ensure its safety and reliability.

I would caution my colleagues not to be swayed by partisan political or idealistic arguments. Where the defense and security of our Nation is concerned, we must be resolute. If the Senate believes that the United States should continue to rely on nuclear weapons, whether it be 3,000 or 300, then the only responsible course of action is to continue testing. To do otherwise would be dangerous and destabilizing.

I urge my colleagues to vote against the Hatfield amendment, and I yield the floor.

Mr. DODD. Mr. President, I rise in strong support of this amendment. And I want to commend the distinguished majority leader, Senator HATFIELD and Senator EXON, for putting together this important provision. I hope this amendment will be supported by a large majority of my colleagues.

Mr. President, I am a cosponsor of S. 2064, first put forth by Senators HATFIELD and MITCHELL, that would impose a 1-year moratorium of United States nuclear testing unless Russia tests a nuclear weapon during that time. The amendment before us today represents a modified version of that provision.

This modification would impose a 9-month moratorium on nuclear testing, instead of the 1-year moratorium called for in S. 2064. However, the amendment would then go a step further to address what happens in the period after the moratorium.

The amendment would restrict nuclear tests to the purposes of safety or reliability only, and would place strict reporting requirements on the President should he wish to conduct reliability tests. It would require that no more then 5 tests be conducted in any given fiscal year, with a total of no more than 15 through fiscal year 1996.

The amendment would also require that for every fiscal year in which testing has been planned, the President must submit an annual report describing the precise need for safety testing, a cost/benefit analysis of that testing, a description of progress being made on the resumption of the nuclear testing talks with Russia and a plan for achieving a comprehensive testing ban by September 30, 1996. In addition, the amendment states that no test shall be conducted after 1996, unless Russia continues to test after that period.

Finally, Mr. President, and most important, the amendment includes a provision allowing Congress the opportunity to enact a joint resolution disapproving of any of the annual reports submitted by the President, and thereby prohibiting nuclear testing during the next fiscal year. This is an important assertion of the proper role of congressional oversight.

Mr. President, let me take a moment to expand on this provision. If there is one concern that I have over this bill, it is the fact that it could be construed to acknowledge the need for safety testing over the next few years. While I yield to no one in my concern for a safe and reliable nuclear arsenal, I share the belief of many in this body that the need for safety testing has been dramatically overstated by testing proponents.

And so I want to make clear my hope that Congress will not hesitate to use its authority under the joint resolution procedure to closely evaluate each proposed set of safety tests. And I hope there is nobody in the Chamber who believes that by voting for this amendment, we are in any way surrendering our right to use the joint resolution procedure to prohibit further tests of any kind.

Mr. President, over the next few years, there are few challenges that loom more important on the international sphere than the issue of nuclear proliferation. The examples throughout the world are numerous. Third world nations like Syria, Iran, Iraq, North Korea, Algeria, Pakistan, and numerous others, all have acquired or are attempting to acquire nuclear technology.

A comprehensive testing ban would help to limit proliferation by limiting the ability of a nation to develop and improve nuclear weapons. But the United States has refused to take the lead on this important issue—just when U.S. leadership has been needed the most.

The Soviet Union and its successor states have had a unilateral moratorium on nuclear testing since October 1990. France, too, has sworn off nuclear testing. Even China has said it would consider not testing if the other four permanent members of the Security Council were to make the same commitment.

But the United States still clings steadfastly to its nuclear tests, stubbornly refusing to budge. How can we ask other nations to adopt a testing moratorium if we refuse to consider one ourselves?

Mr. President, the U.S. refusal to give up its nuclear testing has simply not been worth the cost. Today we have a chance to do something about it. I hope we can pass this amendment by a large margin, and reassert U.S. leadership on this very important issue.

Mr. PELL. Mr. President, I am pleased to support the nuclear testing amendment to H.R. 5373 offered by the distinguished majority leader Mr. MITCHELL, the Senator from Oregon [Mr. HATFIELD], and the Senator from Nebraska [Mr. EXON].

This amendment has two very important and compelling benefits. First, it provides for a moratorium on nuclear testing. Second, it provides for a test cessation in 4 fiscal years. The combination of a moratorium and an end to testing at a certain date should at last demonstrate to other nations that we are serious about controlling ourselves and curbing the proliferation of nuclear weapons.

At present, the Russians and the French have imposed unilateral moritoria on their own testing. Approval of this legislation will encourage both nations to continue that moratorium. The British would be bound to us in a moratorium, since they test exclusively at our test site. The Chinese would thus be isolated if they were to continue to test.

Time and again the former Soviets have tried to interest the United States in a comprehensive test ban. President Gorbachev refrained from testing nuclear weapons for more than a year during 1987-88. On October 5, 1991, President Gorbachev stated that the Soviets would not test for 1 year, and asked the United States to join a comprehensive test ban. Because the United States was not responsive, President Yeltsin stated in February 1992 that he would begin preparation for testing at Novoya Zemlya if the United States did not stop testing. In May 1992, the Russian Minister of Atomic Energy, Victor Mikhailov put this in perspective by stating:

> Following our example, in April France declared a moratorium on nuclear tests until the end of 1992. The United States has the last word and the whole world awaits this step.

Mikhailov stated that Russia would begin testing in 1993 at the rate of two

to four times a year if the United States does not join in the testing moratorium.

On April 8, 1992, President Mitterrand of France suspended its 32-year-old testing program. President Mitterrand wrote the leaders of the other nuclear weapons states to encourage them to make the moratorium universal. He stated that France would retain its independent nuclear deterrent as "the keystone of our defense policy," but that he would press for global arms reductions. President Mitterrand suggested that France would continue its moratorium if the other nuclear weapons states joined the moratorium. Mitterrand stated: "In 1993, we will see if our example is followed, and if common sense has advanced."

This amendment could stop the Chinese from further testing. There have been recent reports that suggest that China may accede to ban nuclear testing if the other four nuclear weapons states stopped testing. Reportedly the Chinese officials have stated that China will not be the only outsiders in a test ban regime. It stands to reason that China's one test a year is not greatly significant to them, and they might be encouraged to join the moratorium. China acceded to the Nuclear Nonproliferation Treaty in March and is slowly trying to move away from its isolated position in the world.

Thus, this amendment gives us an almost certain opportunity to have four or five of the five nuclear weapons states refrain from testing for a period.

The approach taken in this amendment would also encourage progress on nuclear nonproliferation in the Indian subcontinent. It is well known that the Indian explosion of 1974 provoked Pakistan to follow India's lead and move toward nuclear weapons. The United States has proposed a five-nation conference of India, Pakistan, China, Russia, and the United States to address the proliferation problems of the subcontinent. India has stated that they will not participate in their process as long as Russia, China, and the United States test nuclear weapons, produce new nuclear weapons and refrain from a "no-first-use pledge."

This legislation would help control nuclear weapons in the rest of the world. The Nuclear Nonproliferation Treaty [NPT] creates two classes of nations: those who had manufactured and tested nuclear weapons prior to January 1, 1967, known as nuclear-weapon states and all others, the non-nuclear-weapon states. Of the five nuclear-weapon states, only France is not a state party to the NPT, while Britain, Russia, China, and the United States are states parties to the NPT. In the preamble to the NPT, the parties recall that the determination of the three nuclear-weapons states parties to the NPT in the Limited Test Ban Treaty "to achieve the discontinuance of all test explosions of nuclear weapons for all time and to continue negotiations to this end." In the ensuing years, the issue of continued nuclear testing by the superpowers has been a bone of contention for the nonnuclear weapons states and the non-NPT members.

The U.S. position on nuclear testing was the subject of controversy at the NPT Review Conference of 1990 and at the Limited Test Ban Amendment Conference of January, 1991. The 1990 NPT Review Conference did not move ahead on strengthening IAEA procedures in two areas because Mexico and other nations wanted to ban further nuclear tests. This deadlock stopped the adoption of first, "special IAEA inspections" of undeclared sites which would have been useful in Iraq prior to the 1991 gulf war; and second, the requirement of full scope safeguards for nuclear exports to nonnuclear weapons states. The Limited Test Ban Amendment Conference was called to consider amending the LTB to complete test ban. The amendment conference voted 75 to 2, with 19 abstentions, to continue to meet on this issue.

Mr. President, I must tell you that I am somewhat uncomfortable with the allowance for a relatively high number of safety tests, as well as reliability tests upon a presidential certification. In connection with its consideration of S. 2064, a bill providing for a nuclear moratorium, the Committee on Foreign Relations held a hearing in July 23 with representatives of the Department of Defense and Energy, as well as nongovernmental experts. At that hearing, we explored safety and reliability issues in some depth.

The reliability of a nuclear system depends on the reliability of the warhead, the reliability of guidance system, and the reliability of the missile or aircraft. Efforts to improve guidance and delivery systems would not be affected at all by limits on nuclear testing.

Reliability of nuclear warheads can be measured by various electrical and other nondestructive tests, as well as by actually exploding the nuclear weapon to see if it works and how well. Testimony before the committee indicated that nuclear weapons that have been deployed for several years remain reliable. It is only during the early years of new nuclear systems that reliability can be a problem. Now that our nuclear arsenal is not being redesigned, all of our systems should have the necessary maturity.

For a nuclear deterrent to be effective, the other party must perceive that the nuclear weapons of his adversary are reliable. If a nation wishes to attack the other side first, in a preemptive attack, it is clear that the entire nuclear system must be very reliable and that the first strike will be disabling. Reliability is less important for deterrence since it is only necessary to have sufficient survivable forces to deter or to impose unacceptable damage in a retaliatory strike. Since the United States will have about 8,000 strategic nuclear weapons under START, and some 3,500 nuclear weapons under the prospective de-MIRV'ing treaty, the United States clearly will have a surfeit of reliable weapons for deterrence.

The U.S. criteria for safety is to virtually eliminate the possibility of an accident releasing a nuclear yield of more than the equivalent of 4 pounds of high explosive. Over the years, the United States has added: First, special safety configurations to prevent detonations when warheads are dropped or bashed; second, insensitive high explosives to reduce the risk of accidental detonations of the nonnuclear explosives surrounding the nuclear heart of each device; third, fire-resistant pits to prevent detonations of nuclear weapons when bombers crash and burn or missiles catch fire; and fourth, enhanced nuclear detonation safety equipment.

After U.S. forces are adapted to the START and de-MIRV'ing treaties, all these safety features will be on most of the warheads, depending on whether the executive branch substitutes fully safe warheads for warheads that lack certain safety features because of earlier decisions. For example, Trident missile warheads lack insensitive high explosive because the Navy decided that the safety risk was so small that it did not justify burdening the Trident warheads and shortening their range through the installation of much heavier and more bulky insensitive high explosive.

Propelling these safety improvements were such incidents some years ago as the crash of a bomber carrying nuclear weapons at Thule, Greenland, and the mid-air crash of a bomber near Palomares, Spain, causing weapons to be dropped on land and sea. After that time, the bombers no longer took routine flights with nuclear weapons aboard. More recently, all U.S. bombers have been taken off alert. The Navy now loads the Trident SLBM's without warheads, and then places the warheads into the SLBM's. This two-step procedure reduces the risk of accidents involving these warheads.

In December 1990 a panel chaired by Prof. Sidney Drell, of the Stanford Linear Accelerator Center, released a report on "Nuclear Weapons Safety." The report cited a number of safety problems. Many of the problems cited in that report have been addressed by removing the older weapons systems. The main remaining issues raised by the Drell panel that could lead to further nuclear testing are: First, the absence of insensitive high explosive on the Trident W-76 and W-88 warheads. Second, the lack of fire-resistant pits on gravity bombs and cruise missiles on heavy bombers. The administration

has not chosen to rebuild these systems because of the expense and because the safety level of these systems has been thought acceptable.

The administration has testified that the present arsenal is safe. Dr. Robert Barker, Assistant to the Secretary of Defense—Atomic Energy stated in March 1992 before the House Armed Services Committee:

The Air Force and Navy, in cooperation with the Office of the Secretary of Defense and the Department of Energy, evaluated the safety of all ballistic missiles that carry nuclear warheads. It was determined that there is not now sufficient evidence to warrant our changing either warheads or propellants.

Mr. President, Dr. Raymond Kidder of the Lawrence Livermore National Laboratory described to the Committee on Foreign Relations a program involving changes in our systems that would eliminate any requirement for a large number of safety tests. Dr. Kidder told the committee:

If further investigation should indicate a need to upgrade these missiles to include all modern safety features (they lack Insensitive High Explosive (IHE), and Fire Resistant Pits (FRP)), this could be accomplished as follows:

The W78 warheads could be replaced with existing W87 MX warheads (no nuclear tests).

The W88 warheads could be replaced with W89 warheads whose development tests for use in the now-cancelled SRAM II have been completed. We estimate that not more than four nuclear tests would be needed to adapt the W89 for use in the W88 Mark 5 re-entry body, a different delivery vehicle than that used in the SRAM II.

The W76 warheads could be replaced with a smaller number of W89 warheads modified for use on the Trident II D5 missile. No nuclear tests would be required beyond those conducted to accomplish the W88 warhead replacement.

Some improvement in the safety of the Trident I, II C4 missile could be achieved by changing the missile design to accommodate four warheads instead of eight and replacing, with suitably designed blast/debris deflectors and barriers, the four alternate missile stations that would be removed. (No nuclear tests).

The numbers of tests listed above assume that the Rocky Flats plant in Colorado is not operating, requiring the use of pits salvaged from weapons being retired.

I would hope very much that the Congress and the executive branch will work closely together in deciding upon a program that will keep safety testing to a minimum. I agree with Dr. Kidder that the substitution of safer warheads already available in the existing arsenal, if deemed advisable, is preferable to a further reworking and testing of warheads.

Mr. President, I would hope very much that this amendment, if enacted into law, will spur the administration to reopen talks on a comprehensive test ban. There are many compelling reasons to have a comprehensive ban and no compelling reasons against such a ban.

The Reagan and Bush administrations were essentially unwilling to take steps toward a multilateral ban. We have paid a price for our failure to take a leadership role in this area. A correct decision today will put us solidly on the right path.

Thank you, Mr. President.

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

The Senator from Oregon has 35 seconds remaining.

Mr. HATFIELD. I yield back my time.

The PRESIDING OFFICER. The time for debate on the pending amendment has expired.

AMENDMENT NO. 2832

The PRESIDING OFFICER. Under the previous order, the Senate will rescue consideration of Amendment No. 2832 offered by the Senator from Arkansas [Mr. Bumpers] to the committee amendment on page 5 of the bill. Debate on the amendment is limited to 30 minutes equally divided and controlled between Senators BUMPERS and JOHNSTON.

Who yields time? The Senator from Arkansas is recognized.

Mr. BUMPERS. I yield the Senator from Minnesota 5 minutes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, sometimes when we are asked to vote on a particular project or funding for a particular project it is an easy vote. This has not been the case for me when it comes to the superconducting super collider.

I once had a conversation with the majority leader, Senator MITCHELL, in which I said to Senator MITCHELL—oh, it must have been a month ago—"Sometimes it is just difficult to know how to vote." He turned to me and quoted Lyndon Baines Johnson who once said, "Doing the right thing is easy, knowing the right thing is hard." On this particular question, knowing the right thing is very difficult.

Mr. President, over the past month or so, many people have called me and have talked with me; Nobel laureates, project scientists, physicists from the University of Minnesota, many good friends. And they have told me that the super collider represents real frontier science and research. Mr. President, I am quite convinced that they have said that in good faith. But the question before us tonight on this vote is not whether the super collider is a project with scientific merit. I think we all agree. The question is as follows: Many meritorious projects come before us. Many people ask us for help. There are competing claims, and that is what makes this such a difficult decision.

Last week, Mr. President, the Senate Appropriations Committee marked up the Interior appropriations bill. The committee cut funding for low-income weatherization. For thousands of families who will not receive this funding for low-income weatherization, this is the difference between having housing and maybe being homeless. Or it is the difference between being able to have heat or being able to eat.

Mr. President, if we cannot find funds for low-income weatherization, how can we justify spending $550 million for the super collider?

I was a teacher before I came to the Senate. I insist on the floor of the Senate tonight that the most important education program is to make sure every woman expecting a child has a diet rich in vitamins, minerals, and protein. But, Mr. President, we do not fully fund prenatal programs, we have cut Medicaid Programs. Is not an investment in prenatal care an investment in our future? Is not investing in healthy children an investment in our future? When we cannot find the funds for prenatal care, how do we justify spending $550 million for the super collider?

Mr. President, we talk about preventive health care, but our public health care system is in shambles in our country. Just look at the state of childhood immunization. We are seeing diseases reappear: Measles, whooping cough, polio. Where are the funds for childhood immunization? How can we, when we say we do not have the funds for childhood immunization to protect our children in our own country, justify spending $550 million on the super collider?

For me, today's vote is a question of conscience. I cannot vote for the funding of the super collider when we do not meet basic human and community needs in our own country. And under the budget agreement that we labor under, this is the tradeoff.

Many times I voted to waive that budget agreement, but we have not done so. My vote tonight is not a vote against science funding. We have a significant amount of spending that goes to science funding, $20 billion or thereabout, and this is not a no-never vote on the super collider. I have had many close friends and many people convince me that this is important research. I hope that we will be able to fund this research in the future. But the choice tonight is not a choice for the future, it is our vote now, and in good conscience I am going to support the amendment offered by the Senator from Arkansas.

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

Mr. JOHNSTON. Mr. President, I yield 1 minute to the Senator from Idaho.

The PRESIDING OFFICER. One minute is yielded to the Senator from Idaho, [Mr. CRAIG].

Mr. CRAIG. Mr. President, let me suggest the vote tonight is in fact a vote for the future. If this country can only fund its day-to-day operations, its day-to-day concerns and it cannot look forward into the future, whether it is a

humanitarian future or a scientific future, if we do not have the wisdom to invest for tomorrow, we will not be able to provide tomorrow the kinds of jobs and a dynamic economy that spell a successful Nation. That is really the bottom line of the debate on the superconducting super collider.

I remember when I was in high school, it was the space program. This country was investing in a program, that spinoff is now in the hundreds of billions of dollars, not to science.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator's minute has expired.

Mr. CRAIG. Might I have 1 more minute?

Mr. JOHNSTON. I yield 1 more minute.

Mr. CRAIG. Mr. President, that investment in the space program was not just to science, it was to everyday work and application, from the household to the service station, of course, to military application. That is ultimately the debate on the superconducting super collider. It is again this Nation investing in its scientific future, building a base and understanding and pushing that envelope of knowledge that we have, as a Nation, led the world in decade after decade.

As we vote tonight, let us remember that is the primary issue which we are debating and why it is so fundamentally important for our Nation.

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

Mr. CRAIG. I thank my chairman for yielding.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. I yield 2 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, let me just address the whether-we-can-afford-this-or-not argument. One of the most disturbing things about America today, and it does not only apply to the way we budget things, but actually what is going on in our country, is that we have the kind of the idea that if we do not get everything today, the world is gone. It is a kind of a society of let us spend everything we can on what we need today and not worry about the future. That is catching on in America. We do not save anymore. We do not worry about the future. We just complain about it.

Let me suggest that we are not going to pay for this $8.3 billion super collider in 1 year. We are going to pay for it over 7 years. So let me just do some arithmetic with the Members of the Senate to see if we can afford the other things that are being indicated are of higher concern, including those that the occupant of the Chair has.

Let me just assume the budget of the United States does not go up one nickel. It is $1.5 trillion this year. I think it is fair to assume it will be that at least for the next 7 years. Do the arithmetic with me. That is $10.5 trillion, $10 trillion. $500 billion that we are going to spend on what everyone thinks we need.

Is anyone suggesting over that period of time we cannot afford $8.3 billion? $10.5 trillion is what we are spending for all the things that Senators like the occupant of the Chair and many others are concerned about. That is what we are spending. I do not believe the argument that we cannot afford it in the broad budget sense comes anywhere close to reality. If we cannot put that small amount on the real future of America, then what are we here for?

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, the distinguished Senator from Minnesota in his speech a moment ago said that he was strongly for this project but that we ought to do this sometime in the future; that we ought to scrub the project now and do it sometime in the future.

Mr. President, let us not kid ourselves. It is virtually now or never on this project. What we have done as a Nation is created a long-term plan. Based upon that plan, the State of Texas has floated bonds in the hundreds of millions of dollars. I think their total commitment is $1 billion. We have expropriated land. We have moved people out of homes. We have a team of thousands of the finest scientists in the United States who have been assembled for the purposes of building the superconducting super collider.

Mr. President, anyone who says that we can tell all those folks to go home, wait a few years, and do not call us, we will call you if we change our mind, it is not going to happen.

I listened, Mr. President, not only to the distinguished Senator from Minnesota but others talk about the state of anxiety and disquiet in this country, and nobody knows that more keenly than I, coming from a State that has been heavily impacted. But if there was ever a time in the history of this country when we cannot afford to abandon science, to abandon our quest for technology, it is today of all days.

When we are being outdistanced in so many fields by the Japanese, by the Swedes, by the Germans, by the French, by other competitors around the world, to take a field in which we are preeminent, high energy physics, when we are on the verge of breaking the code of the universe—breaking the code of the universe, that is what it is—to determine what are the elementary particles and forces and how they fit together and how they determine the whole cosmos down to the smallest thing, the smallest bits of matter, we cannot walk away from that and say go home, people on this team, scientists on this team, thousands of you, go home: we will do it another day.

Senator BUMPERS says the information will be there 50 years from now, 100 years from now. I wonder what would have happened if they said that to Einstein when he was on the edge of discovering the relativity theory, or if they had said that to Faraday as he was ready to discover the secrets of electricity and electromagneticism, or if they had said that to Maxwell when he was discovering the secrets of the atom, or Geiger or Madam Curie, or a whole host of people from the Greeks down to modern day. Mr. President, the quest for science, the quest for knowledge, the quest for breaking that code is here today.

We are told, Mr. President, we do not have the money to do it. I know money is tight. But this budget this year, Mr. President, the SSC contains Forty-three/one thousands of 1 percent of this budget. It contains six-tenths of 1 percent of the R&D budget.

Mr. President, I have used this chart before, but this is Federal R&D funding. Look at how it compares to NIH, which is 19.4 percent, $15 billion, or SDI, which is 6.2 percent, or on down with the space station, NASA research, National Science Foundation, basic energy research, and down here is the superconducting super collider at six-tenths of 1 percent of the R&D budget.

Mr. President, to say this is going to be the PacMan that ate up all this other budget research is simply absurd. Or to say that this is going to be the straw that broke the fiscal back of the United States is simply absurd.

If we are going to balance the budget, it has to be because we address the question of medical care and entitlements, and everybody knows that, Mr. President. That is the fast-growing part of the budget. Domestic discretionary, of which this is a part, or scientific research is not growing but contracting. And this small part for the superconducting super collider is not changing that.

Mr. President, I think the words of Dr. Lederman, distinguished Nobel Laureate, bear repeating. He says as follows:

> Now we have reached what many, a consensus, believe is the bottom line. We are looking at nature through a new and as yet hypothetical force field that in a sense makes a simple overarching symmetrical world look complicated.
>
> The synergy of inner space—particle physics—and outer space—cosmology—is one of the most dramatic events in the history of science, and so that is why physicists from Fermilab in Illinois and SLAC in California and Brookhaven and Cornell in New York, disgruntled as we all are at the loss of the SSC in our own State, and fearful as we are about the long-term funding of our own institutions, are nevertheless joining together to support this project.

I could not say it as well in 100 years, Mr. President. The distinguished Nobel

laureate says science has come together for this project.

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

Mr. JOHNSTON. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, there has never been a more compelling case before this body which gave us the opportunity to tell the American people we are going to take charge of our spending. I think every single Member of the Senate before he or she votes tonight ought to ask himself or herself this question: how high would the deficit have to be to make me vote no? Is there some figure out there—$400 billion is the deficit this year. If it went to $800 billion, a trillion, would I vote to cut spending?

The most intense lobbying I have ever seen in my life since the Panama Canal Treaty has just taken place in the last 2 weeks on this amendment. The physicists of the country have lobbied. Dr. Lederman, whom the distinguished Senator from Louisiana just quoted, a Nobel laureate, said, "We are not building this for spinoffs. It would be," to use his words, crazy to build it for spinoffs. We build it because we are curious."

This morning I quoted Dr. Trivelpiece, who in 1987 was Director of the Office of Energy Research, who said, "We believe that $4.4 billion is not only accurate, within 10 percent, it is conservative." And he goes on to say that "Never before has a projected cost figure been as accurately assessed and will never change." And this morning he said Senator BUMPERS misquotes me or something. "I am still hot for it. I still stand by what I said." What he said in 1987 was $4.4 billion, would be the cost. In 1989, Secretary Watkins comes before the Energy Committee and said: I am sorry, the cost is $5.9 billion.

But if it goes a dime higher, count me out. Two years later, they say it is $8.25 billion. We are already twice the original projection, and, the Secretary of Energy says if it goes any higher, we should not build it.

The Energy Department's internal audits say the cost is going to be $11.8 billion, and the lifetime cost even at today's figure is $20 billion.

I have never seen a project with as many broken promises. The people here who are relying on all of these physicists will come in here, soon and vote for the space station, which almost every single physicist in America opposes, and the people who favor the space station will come in here and renounce the very people that they are honoring so highly today, the American physicists, because they favor this.

Where are all the budget balancers? Less than 3 weeks ago on the floor of this body, I have never heard as many unctuous, pontificating statements in my life about excessive spending and a constitutional amendment to balance the budget. "Put a few words in the Constitution," they said. "That will solve the problem."

When the junior Senator from Texas said "I am going to make sure—I do not care if the House has killed it—I am going to make every Member of the U.S. Senate vote"—that was an obvious political threat.

Where are all the people who delivered all the lectures about constitutional amendments to balance the budget?

Where are the people who said why do we not cut all that spending out? We do not need a constitutional amendment. Let us cut the space station. Let us cut SDI. Let us cut the super collider.

I will tell you what happened. It has been 3 weeks, and memories are very short around here. You have all these broken promises. GAO says there are no cost controls, and no procedures in place to determine the cost controls according to performance as this contract goes forward.

Last year, the debate was that all the countries were going to kick in. We could count on the Japanese for at least $1 billion. The Japanese sent word, "Do not call us. We will call you."

Right now, we have a $10 million contribution from India on a $20 billion project; not forthcoming. The cost now is $11.8 billion, and headed north.

Mr. President, if every Senator would ask himself this question: What is the most honest threat to the future of this Nation? It is the deficit. There is absolutely no controversy about that.

Then ask yourself this question: Is going forward with a $20 billion project, every single penny of which must be borrowed—and with compounded interest, during the life of this thing it comes to $53 billion, not $20 billion—$53 billion, taking the interest rate on 30-year Treasury notes today; no inflation. Put inflation in it, it goes to $80 billion. You will have to borrow every dime.

Do you know what this reminds me of, Mr. President? It reminds me of a guy who just lost his job, his car has been repossessed, he is 3 months behind on his house payments, and he is about to be foreclosed.

And his daughter comes home from school and says, "Dad, I just found this beautiful $400 dress to wear to the senior prom."

He says, "Darling, you know I would do anything to buy that dress for you for the senior prom but here are the facts." And he lays the facts out for her.

She says, "But, daddy, it is such a pretty dress."

That is exactly what U.S. Senate is getting ready to say tonight, "It is just so pretty, I cannot resist it." The country is $4 trillion in debt. The Japanese are holding a $52 billion trade deficit against us, and if they thought there was one single thing in this program that would help them technologically, they would be in it with both feet.

Mr. President, I yield 1 minute to the Senator from Iowa.

Mr. HARKIN. Mr. President, I would like to inquire of the President. Earlier today I said I needed several more minutes. The chairman gave me 4 minutes. I hoped to get some time on the debate on the testing which the chairman said I might be able to do. That was all taken up.

I know that by unanimous consent agreement debate would be cut off at 6:30. It is a very important debate, Mr. President, I have about 7 or 8 minutes of remarks left that I would like to make here tonight. I would like to ask unanimous consent for about 8 more minutes.

Mr. JOHNSTON. Mr. President, my friend from Iowa knows of my high regard for him. But, Mr. President, we have had over 4 hours I think on this. Senators have been alerted to a 6:30 vote.

With reluctance, I would object, Mr. President, because this is not the last matter we have to tend to today. I am afraid if we get into extending time, we will do so for a number of Senators for whom we would have to cut off. I apologize.

Mr. HARKIN. I understand. I do not understand fully. This is a very important debate, but I will accept 1 minute if I can.

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

Mr. BUMPERS. I yield the Senator from Iowa 1 minute, Mr. President.

Mr. HARKIN. Mr. President, earlier the chairman talked about Madam Curie, Einstein, and everybody else. The Research Society in America asked where we should spend our money. No 1, in untargeted individual research awards; dead last, superconducting super collider. That is where we ought to be putting our money, in the Einsteins and the Madam Curies, into the individual awards, the small sciences, but not this.

I just want to end my remarks, Mr. President, by taking the Senators back to April 29, 1986. During that debate, a Senator on the floor argued against Federal investment in science and technology. Here is what that Senator said.

> The truth is, in the last 30 years, we have invested in science and technology. We have invested in resource development and in education and training. The result has been economic stagnation.

This Senator went on to say that American industry is in a much better position to make investments in science and technology, primarily be-

cause they invest in products and processes that are useful to society:

American business in investing in science and technology, in the development of new products and new techniques and in the development of new plant and equipment. How are we to assume that we in Congress know more about technology and science and resource development than all the hundreds of thousands of American corporations that are investing in these areas?

Who was this Senator who railed against the Federal Government investing in science and technology, who noted that investments in products and new techniques were preferred? None other than the Senator from Texas [Mr. GRAMM].

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield myself 3½ minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. JOHNSTON. Mr. President, my distinguished friend from Arkansas has build a series of inaccuracies to expand a project which is $5.4 billion to complete from this point on to one that is $53 billion in scope, which is absolutely absurd.

Mr. President, what this project is right now, when you take away sunk costs, the Texas contribution, termination costs, and outyear inflation, is $5.4 billion. It is not $20 billion.

How does the Senator from Arkansas use the figure of $20 billion? He takes the highest estimate, which is not the current estimate, for this project. He adds on to that all of the interest in the meantime. He adds on to that the operating costs, and all the other expenses. It is as if when you bought a house you would add on the cost of mowing the lawn, heating the house, painting the house, paying the insurance, all of those expenses that go on in the meantime.

The actual cost, Mr. President, is $5.4 billion, and that this is no longer an escalating project.

Have costs escalated in the past? Yes. Why? Because they had to redesign the magnet, redesign the circumference. That is done now. The magnets are redesigned. They are manufactured. They are tested in sufficient quantity to assure cost control. We can assure cost control on the contracts that are let for the excavating of the project, as well as the construction of the project.

Mr. President, there may be reasons to be against this. But escalating cost is not one of them. The basic question facing us, Mr. President, is whether or not this country believes it is important to go into the most basic science that there is, the science of determining what we are made of and what the basic forces of nature are.

As Dr. Lederman says: "It is one of the most dramatic events in the history of science."

Mr. President, we cannot afford to walk away from this project, being that far into it and being this close to a solution to the project. You cannot do it through the CERN super collider in Switzerland. It does not have—we are told by the scientists—the requisite powers to break apart the nucleus of the atom and determine what those forces and parts are.

Mr. President, I quoted earlier from Dr. Paul 'Froyne, the distinguished legal scholar and philosopher, who said that "the thing that unites civilized people everywhere is their profound ignorance about the most important questions of the universe—whither, whence, and why. This helps answer that question at least scientifically.

Mr. BUMPERS. Mr. President, I want all of the Members of the Senate to look at the names of all the people who voted for cloture on a constitutional amendment to balance the budget and said this is the only way to save this body. We are out of control. You are going to have to put words in the Constitution. Look at the names of all of those people who voted for cloture, and then before we adjourn, look and see how they voted on the super collider, the space station, SDI, intelligence, the Trident missile, those five things, to save $10 billion in 1993, over the life of them $350 billion, and with interest compounded, over the life of those, $900 billion, because every dime of it is borrowed.

I ask the Members of this body to do your duty, and start tonight exercising the responsibility you told the Chamber of Commerce and the Rotary Club you would.

Mr. DODD. Mr. President, I rise this evening in support of the amendment offered by the distinguished Senator from Arkansas [Mr. BUMPERS].

The Superconducting Super Collider Program has received national attention as a project clearly seeking a mission. The research has been touted as fundamental toward the understanding of the universe and critical in our search for the origins of matter.

Mr. President, I do not necessarily disagree with the ideals and aspirations of those who would seek to continue this program. In fact, I have supported the more modest funding levels approved last year. But the world has changed, Mr. President, and the priorities must change as well.

Like so many other issues before this body, this vote is a vote on priorities; and I cannot in good conscience vote to continue this program.

When first designed, the superconducting super collider promised to bring international funding and backing from a host of other nations. The list of contributors appeared long and the commitment firm. But since that time the contributions have not materialized and new commitments have been even harder to obtain.

Mr. President, tonight's difficult decision pits the desire to support research against the fiscal realities of our expanding Federal deficit. The research is desired, but we simply cannot afford it. This is a decision that really cuts to the heart of what is happening to this Nation—we are simply unable to fund all of our desired programs with the limited resources available to us.

As I studied this issue I carefully weighed the evidence on both sides of the argument. As I considered the facts, the merits of the project quickly faded in the light of fiscal reality. Perhaps the questions being asked and hopefully answered may someday provide insights into the origin of our very being. But on balance, Mr. President, this project does not have the funding nor the full support of the scientific community.

Mr. President, the superconducting super collider is not on budget and it is not on time. Documents provided from the Department of Energy clearly admit this fact. Additionally, the GAO as recently as last April concluded that the SSC project was badly managed and cost overruns could bring the total cost to well over $11 billion. The question quickly became, should we continue along on this program or cut our losses now and join with the other efforts already underway abroad.

Mr. President, this is also a question of responsibilities. As a body, we have a responsibility to weigh the facts and offer decisions on priorities for our Nation. As a Member, I have a responsibility to the constituents of Connecticut who stand to pay almost $117 million in taxes over the next few years to complete this program. Mr. President, I must fulfill my responsibility to those constituents and to this body by voting with the distinguished Senator from Arkansas to cut the funding for this project.

Mr. WARNER. Mr. President, I rise today in support of the amendment offered by my distinguished colleague from Arkansas, Senator BUMPERS to restrict funding for the superconducting super collider—the SSC.

My position on this matter has been arrived at with great reluctance because I have supported the SSC in the past, and recognize it has considerable scientific merit in broadening our understanding of matter and energy.

I have always been supportive of the mission of basic science research and other activities sponsored by the Federal Government that attempt to address fundamental scientific questions: What is the structure of matter? How did the universe begin and will it end?

But, Mr. President, Federal spending is out of control and we must take every opportunity to cut spending and restore fiscal responsibility.

The projections provided by the Department of Energy indicate that the cost to complete construction of the SSC will be $8.2 billion, but it certainly

may be closer to $10 billion. This construction cost is also only a partial investment in the SSC because there will be significant annual operating costs which the Federal Government must finance.

We simply cannot afford it. The most serious problem facing our Nation today is the Federal deficit, and we simply must tackle it.

Federal spending is out of control, and we must take every opportunity to cut spending and restore fiscal responsibility.

The projected Federal deficit for this fiscal year is $396 billion. the Federal debt for fiscal year 1992 is $425 billion compared to $59.2 billion when I was first elected to office.

Individuals are beginning to realize that a huge budget deficit is something that affects them and the future of their children. An ever growing amount of their tax dollars are being spent on servicing, paying interest, on the national debt. This is money that, in many ways, does not move America forward. It does not provide housing, cancer research funding, or better education for our youth.

Nobody can deny that we absolutely must come to grips with our Federal deficit, and make the extremely tough choices necessary to do so. We must cancel big dollar Federal projects such as the SSC.

Mr. President, no program can be safe from cuts. We must consider each program on its merits, and determine if it can be justified within our tight budget constraints.

I have reluctantly concluded that the SSC cannot be justified in this austere budget, and I support the BUMPERS amendment. I do so recognizing there are many interests in my State strongly supporting the SSC. I respect their view as I hope they do mine.

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

Mr. JOHNSTON. Mr. President, I move to table the Bumpers amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered, and the clerk will call the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Illinois [Mr. DIXON], the Senator from Tennessee [Mr. GORE], are necessarily absent.

I further announce that, if present and voting, the Senator from Illinois [Mr. DIXON] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH] and, the Senator from California [Mr. SEYMOUR], are necessarily absent.

I further announce that the Senator from North Carolina [Mr. HELMS], is absent due to illness.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] and the Senator from California [Mr. SEYMOUR], would each vote "yea."

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

The result was announced—yeas 62, nays 32, as follows:

[Rollcall Vote No. 166 Leg.]

YEAS—62

Adams	Garn	Nickles
Akaka	Glenn	Packwood
Baucus	Gorton	Pell
Bentsen	Graham	Pressler
Bingaman	Gramm	Reid
Boren	Grassley	Robb
Breaux	Hatfield	Rockefeller
Brown	Heflin	Roth
Burns	Inouye	Rudman
Byrd	Johnston	Sarbanes
Chafee	Kasten	Shelby
Cochran	Kerrey	Simon
Craig	Lieberman	Simpson
Cranston	Lott	Specter
D'Amato	Lugar	Stevens
Danforth	Mack	Symms
Daschle	McCain	Thurmond
DeConcini	McConnell	Wallop
Dole	Mikulski	Wirth
Domenici	Moynihan	Wofford
Ford	Murkowski	

NAYS—32

Biden	Fowler	Metzenbaum
Bond	Harkin	Mitchell
Bradley	Hollings	Nunn
Bryan	Jeffords	Pryor
Bumpers	Kassebaum	Riegle
Coats	Kennedy	Sanford
Cohen	Kerry	Sasser
Conrad	Kohl	Smith
Dodd	Lautenberg	Warner
Durenberger	Leahy	Wellstone
Exon	Levin	

NOT VOTING—6

Burdick	Gore	Helms
Dixon	Hatch	Seymour

So the motion to table the amendment (No. 2832) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, we now will move to the Hatfield amendment. Senator NUNN has only recently come in from a trip, and I ask unanimous consent that Senator NUNN be allowed 3 minutes within which to talk about the Hatfield amendment.

After that, I do not know whether we will need a record vote or not, but one has been ordered.

The PRESIDING OFFICER. There will be order in the Chamber. There will be order in the Chamber. The Senator may proceed.

Mr. JOHNSTON. Mr. President, before I put that unanimous-consent request, the only other matter in order, other than the Hatfield amendment—and if we take the Hatfield amendment, I think then that will be the last amendment on nuclear testing, I believe; certainly the last one that would require a vote—then the only other amendments in order are the Bumpers amendments. I wonder if the Senator from Arkansas intends to pursue other amendments.

Mr. BUMPERS. I do. I say to the Senator.

Mr. JOHNSTON. There may be other record votes after that.

So now I ask unanimous consent that Senator NUNN be allowed to proceed for 3 minutes.

The PRESIDING OFFICER. There will be order in the Chamber.

Is there objection to the unanimous-consent request? Without objection, the Senator from Georgia is recognized.

Mr. NUNN. Mr. President, could we have order? I cannot hear myself.

The PRESIDING OFFICER. Will Senators please take their discussions out of the Chamber? There will be order in the Chamber.

AMENDMENT NO. 2833, AS FURTHER MODIFIED

Mr. NUNN. Mr. President, I thank the Chair and I thank the Senator from Louisiana.

First, I want to congratulate the Senator from Oregon, the Senator from Louisiana, the Senator from Nebraska, the Senator from Maine, and others who worked so diligently for so many days on this testing matter, which is enormously important.

I plan to vote for this compromise that has been worked out, but I do want to put down a marker as to matters that need to be considered, certainly, before this conference is concluded on this bill, and I also anticipate this matter will be addressed on the armed services authorization bill.

I am concerned that we have a moratorium combined with a 1996 date for a comprehensive test ban. I understand the purpose of both of those. But those tend to be in tension and work against each other because, if we are going to have a 1996 test ban date, we need to get on with the safety testing, which now I think everyone agrees has to take place. So one or the other of those dates needs to be, I think, adjusted.

I am also concerned that there may not be enough tests here to complete the safety regime that has been advocated by the Drell Commission and others, and I think that number of tests needs another look.

I believe that we need to clarify what I believe to be the intent of the authors of this amendment that weapons reliability includes weapons effects, that is, effects on things like satellites and other important security measures.

I also believe we need to clarify that a weapon with one or more safety features can be modified to add additional safety features. Right now the language is not completely clear on that. We do not want to block additional safety features being put on weapons that already have a safety feature. And we also need, I believe, to look carefully at adding a provision that would abrogate the cessation of tests, which is 1996 under this amendment, if Russia resumes testing, or if China has not agreed to a moratorium by 1998.

Mr. President, I thank my colleagues for this additional time. I will vote for the amendment with these markers down for further work.

I thank the Chair.

The PRESIDING OFFICER (Mr. ROCKEFELLER). The question is on the amendment of the Senator from Oregon.

Mr. JOHNSTON. Mr. President, the committee is willing to take the amendment, considering the discussions we have had.

I think we may need a vote anyway, is that correct? Does anyone desire a vote on the matter?

I believe Senator HATFIELD does desire a vote. We urge all Senators to vote yes on this.

I think we will have one more vote that we know about on a Bumpers amendment after this.

Mr. COHEN. Will the Senator yield?

Mr. JOHNSTON. Yes.

Mr. COHEN. Will the Senator make clear that next week the Armed Services Committee does intend to bring a measure to the floor that will clarify many of the items that were outlined by Senator NUNN? Those of us that feel they have not been adequately addressed intend to bring a measure to the floor that will provide further clarification.

Mr. JOHNSTON. Indeed, Mr. President, that is the basis upon which we would take it; that and the fact that in our own conference we would be able to address these same concerns and draw upon the work of the Armed Services Committee, if you are able to get consensus by that time.

Mr. STEVENS. Mr. President, is there a time agreement on the next amendment of the Senator from Arkansas?

Mr. BUMPERS. I have two amendments, one of which I think the distinguished floor managers will accept and another one that we can dispose of in 10 minutes and then vote.

Mr. JOHNSTON. Mr. President, I have seen one which we are willing to take. The other one I had not seen.

My guess is the Senator from Arkansas is correct about his time estimates. But we do want to finish the bill tonight.

Mr. BUMPERS. It is so innocuous, I am sure you will accept it.

Mr. DECONCINI. Will the Senator yield? Mr. President?

The PRESIDING OFFICER. The Senator from Arizona.

If the Senator will suspend?

The previous Presiding Officer tried very hard to get the attention of the floor. We will wait until there is silence in the Senate.

The Senator from Arizona may proceed.

Mr. DECONCINI. Mr. President, is it possible to discuss a time agreement with the Senator from Arkansas for 10 minutes?

Mr. JOHNSTON. Mr. President, we are not ready for a time agreement at this time. I do not believe it will take a great amount of time. We will move to table. After that, if the tabling motion is not successful, and I believe it would be, it may take some additional time.

But I hope the time for the next vote would not be extremely long.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, may I suggest that we now have the vote on the Hatfield amendment; that during that vote we attempt to reach an agreement limiting the time for the amendment to 10 minutes, as the Senator from Arkansas has suggested, or as short a time as desired by the managers? And then, immediately after this vote we could get the agreement and then finish this bill, hopefully in very short time so we could complete action on it this evening.

Mr. COHEN. If the majority leader will yield, let me indicate to my colleagues that whatever the outcome of the vote on the Hatfield amendment, that I do not intend to offer any additional amendments to the bill, so there will be no further amendments by the Senator from Maine.

Mr. MITCHELL. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 2833), as further modified. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Illinois [Mr. DIXON], and the Senator from Tennessee [Mr. GORE] are necessarily absent.

I further announce that if present and voting the Senator from Illinois [Mr. DIXON] would vote "yea."

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH] and the Senator from California [Mr. SEYMOUR] are necessarily absent.

I further announce that the Senator from North Carolina [Mr. HELMS] is absent due to illness.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] would vote "nay."

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

The result was announced, yeas 68, nays 26, as follows:

[Rollcall Vote No. 167 Leg.]

YEAS—68

Adams	Byrd	Ford
Akaka	Chafee	Fowler
Baucus	Conrad	Glenn
Bentsen	Cranston	Gorton
Biden	D'Amato	Graham
Bingaman	Danforth	Grassley
Bond	Daschle	Harkin
Boren	DeConcini	Hatfield
Bradley	Dodd	Heflin
Breaux	Durenberger	Inouye
Bumpers	Exon	Jeffords
Johnston	Metzenbaum	Rockefeller
Kassebaum	Mikulski	Sanford
Kasten	Mitchell	Sarbanes
Kennedy	Moynihan	Sasser
Kerrey	Murkowski	Shelby
Kerry	Nunn	Simon
Kohl	Packwood	Specter
Lautenberg	Pell	Stevens
Leahy	Pressler	Wellstone
Levin	Pryor	Wirth
Lieberman	Riegle	Wofford
McConnell	Robb	

NAYS—26

Brown	Garn	Roth
Bryan	Gramm	Rudman
Burns	Hollings	Simpson
Coats	Lott	Smith
Cochran	Lugar	Symms
Cohen	Mack	Thurmond
Craig	McCain	Wallop
Dole	Nickles	Warner
Domenici	Reid	

NOT VOTING—6

Burdick	Gore	Helms
Dixon	Hatch	Seymour

So the amendment (No. 2833), as further modified, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment, as further modified, was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, I want to command the Senator from Oregon and the Senator from Nebraska and other Senators involved for their role in the truly historic vote which has just occurred. This is the first time in history that the Senate has ever voted in support of any limits on nuclear testing, let alone expressed an overwhelming desire to end all nuclear testing. The margin of 68 to 26 is overwhelming. It reflects the truly enormous scope of change that has occurred in the world in the past few years. The man who has done the most to lead the effort in this direction has been the Senator from Oregon, Senator HATFIELD. He deserves the gratitude of all Americans and people around the world and the recognition which this historic vote signifies. I congratulate the Senator.

Mr. President, I am now advised that Senator BUMPERS is prepared to accept a 10-minute time limitation equally divided on this amendment, and that Senator JOHNSTON will propound the agreement, and that he will move to table it so that there will possibly be just this one more vote on this measure.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, Senator BUMPERS has 2 amendments. The first provides that in the acquisition of necessary components that to the extent we purchase those that are manufactured outside of the United States, that contractors in this country be able to bid for those. And while we do not know all the details about what

the different collaborations are, the groups that might join together for this, we are willing to take it to conference and in good faith try to make it work.

And so if the Senator will send up his amendment at this time, we can accept that.

AMENDMENT NO. 2835

(Purpose: To prohibit the expenditure of Federal funds for the purchase of components for the superconducting super collider that are manufactured outside the United States unless American firms were allowed to compete for the contract)

Mr. BUMPERS. Mr. President, I have not offered the amendment. I do so at this time.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 2835.

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

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

The amendment is as follows:

At the appropriate place in the amendment, insert the following: "Except in the acquisition of components necessary for the Solenoidal Detector Collaboration (SDC) or the Gammas, Electrons, and Muons Detector Collaboration (GEM), no Federal funds appropriated to the Department of Energy for fiscal year 1993 or thereafter may be used, directly or indirectly, to purchase components for the superconducting super collider that are manufactured outside the United States, except pursuant to a contract that was open to competitive bidding.

Mr. BUMPERS. Mr. President, the amendment is very simple. It simply says that except in the acquisition of components necessary for certain technical aspects of this, no Federal funds appropriated in the Department of Energy for the year 1993 and thereafter may be used directly or indirectly to purchase components for the superconducting super collider that are *manufactured outside the United* States except pursuant to a contract that was open to competitive bidding.

Mr. President, I do not mind telling my colleagues there is some sole source contracting going on. It is costing American jobs. This amendment is designed to correct that.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Could I ask a question of the Senator?

If a foreign country is going to supply any of the components, the amendment says they will do so only if there are competitive bids and they win it. Is that essentially it?

Mr. BUMPERS. Yes.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. Is there further discussion on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2835) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that on the next Bumpers amendment, when offered, if offered, which provides for the $650 million foreign contributions, there be a limit of 10 minutes equally divided, with no second-degree amendment; that I then be recognized on a motion to table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I might tell my colleagues, if this matter is tabled, I understand we could then go directly to final passage and that a Record vote has not been requested on either side on final passage.

So if this is tabled, I believe I am safe to say this would be the last vote of the day.

Mr. BUMPERS. Can I ask the Senator a question?

Would it be fair to say if it is not tabled, it would still be the last vote of the evening?

Mr. JOHNSTON. That depends.

Mr. BUMPERS. The Senator is not suggesting to the people standing around this body if they vote to table, they can go home, and if they do not, they cannot?

Mr. JOHNSTON. Yes. In other words, we regard this as a killer amendment which would take some additional time and thought to explain. That is exactly what I am saying, yes. Absolutely.

Mr. BUMPERS. Mr. President, we already have a 10-minute time agreement. There is something that just does not sound quite right about that. We have a 10-minute agreement to that. I agreed to that so Senators can get home to their families, and now the *Senator is saying in sort of a threatening* way if they do not vote, they cannot go home?

Mr. JOHNSTON. No. It is up to the majority leader to do that tonight or do that tomorrow. What I am saying, we cannot accept this amendment based on the motion to table. This is a killer amendment. I am not trying to be cutesy about this. I am telling it like it is. I believe this would be a very bad amendment in all sincerity and, therefore, if we fail to table, we could not turn around then and accept the amendment.

Mr. BUMPERS. I do not understand for the life of me why this is a bad amendment. Last year this Senate was assured this collider was not going to *be built unless we had $1.7 billion in* foreign participation. I am saying there ought to be $650 million, and the Senator is saying it is a killer amendment.

Mr. JOHNSTON. If the Senator will introduce his amendment, I will tell the Senate why I believe that.

Mr. BUMPERS. Mr. President, I do not have any delusions about whether or not my amendment is going to be tabled. But I do think it is passing strange in two ways: Number one, that if you vote to table, you can go home and spend the evening with your family. If you do not, you cannot. Last year we were told there would certainly be $1.7 billion in foreign participation. I am only asking for a third of that to see this thing go forward and the Senator is calling it a killer amendment.

Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The parliamentary situation is that a 10-minute time limit has been agreed to if the Senator chooses to offer his amendment.

Mr. BUMPERS. Has the time agreement been agreed to?

Mr. JOHNSTON. Mr. President, I ask unanimous consent that this colloquy not count against the time agreement.

The PRESIDING OFFICER. Since the amendment has not been offered, there cannot be time running in any event.

Mr. JOHNSTON. If *my colleague* from Arkansas will permit——

Mr. BUMPERS. I do not want to hold on to this amendment all night. Do not make me stand here and hold it.

Mr. JOHNSTON. Mr. President, I want to clarify it. The Senator made it sound as if I was not being quite fair. The situation is this: If we have a 10-minute time agreement followed by a motion to table, if the matter is tabled, and we do not—this is the last matter that is eligible to be brought up on this bill, we would then go to final passage without a record vote, and so Senators are thereby released.

If it is not tabled, then we would need to discuss it further and perhaps amend it in the second degree.

I am not sure about that. I did not mean to threaten Senators if they would stay here all night. I did mean to say I know we could go home at the end of 10 minutes if a matter cuts off debate and then you go to final passage without a record vote. That is all I was saying, and I hope that does not sound unfair, but it is factual.

Mr. BUMPERS. There is a second part of this amendment which I think is also very important and a part which I think we would certainly agree to. If you were not opposed to the requirement that there be $650 million in foreign participation on this project, we also state in the amendment that no components for the collider purchased with U.S. tax dollars manufactured *outside the United States shall be* counted as a contribution from international sources toward that goal.

The Senator would agree with that part of it, would he not?

Mr. JOHNSTON. Mr. President, in the first place, the Appropriations Committee has long believed that if this project was worth doing, it is worth doing with American dollars.

If I can read to the Senator, as far back as 1990, our report said this:

The committee believes that the benefits to be gained by magnet industrialization, especially manufacturing technology in the U.S. industry, outweigh the budgetary requirements that appear to require foreign participation.

So, Mr. President, we do not believe we ought to make this requirement, and particularly we do not believe we ought to make the requirement in such a way as to give foreigners a veto, because the amendment says you cannot go forward after June 1, 1993, unless you have foreign participation in place.

What this would mean is that if the Japanese came to see us on May 1, 1993, and you do not otherwise have the foreign participation in place, they could say, "Here is $650 million, and we want the cream of your technology." And we would either have to say yea, in which event they get the cream of our technology, or say nay, in which event you stop the super conductor in place.

We should not give foreigners a veto on this project. That is all it is.

Mr. BUMPERS. I am not so concerned about giving foreigners a veto as I am about the representation that has been made to the United States Senate time and time again about foreign participation.

Mr. JOHNSTON. Not by this Senator.

Mr. BUMPERS. Maybe not by that Senator, maybe not by the committee report language, but I can show you. Look at the debate last year in the CONGRESSIONAL RECORD. You will see time after time a Senator got up and said our foreign partners will think we are reneging on them if we do not go forward with this. They are in. They are committed.

Mr. JOHNSTON. I think the Senator is referring to the House debate. I think I am correct——

Mr. BUMPERS. I want to correct it to this extent. The Senator from Louisiana did not do that. But there were other Senators in his position who did.

Mr. JOHNSTON. Maybe, maybe not. Let us look at that RECORD.

Mr. BUMPERS. I read the RECORD this weekend.

Mr. DOLE. Can we offer the amendment? Can we start the clock?

Mr. BUMPERS. I am having a lot of fun. This is a good amendment. I do not want anybody to vote willy-nilly on it without knowing what they are voting on. That would be a terrible thing to happen around here.

Mr. President, since we only had 10 minutes, I thought we ought to clarify what we are talking about here; that is, there ought to be some foreign participation but, on these sole source contracts, which the project is now busily engaged in with foreign companies, sole sources, no competition, they ought not be doing that, and we provided in the other amendment that they not do it. In this one I am saying that any contracts they give to foreigners shall not be counted as a foreign participation. Nobody can disagree with that, can they?

AMENDMENT NO. 2836

(Purpose: To limit Federal appropriations for the superconducting super collider)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 2836.

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

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

The amendment is as follows:

At the appropriate place in the amendment, insert the following: "None of the funds made available by this Act shall be obligated for the superconducting super collider after June 1, 1993, unless the President has certified to the Congress that commitments for contributions from international sources meet or exceed a total of $650,000,000 for fiscal years 1993, 1994, and 1995. No components for the superconducting super collider purchased with United States tax dollars and manufactured outside the United States shall be counted as a contribution from international sources for the purpose of meeting the $650 million foreign contribution requirement.

Mr. BUMPERS. Mr. President, to the distinguished floor manager, I would also like to make an additional point to carry out the colloquy a little further.

I remember very well in 1989 when Secretary Watkins came before the Energy Committee and said "I am sorry about that $4 billion projection. It is now at $5.9. But I want to tell you for sure, that if it is a dime more than that, it should not be built." I am quoting the Secretary of Energy who is today the cheerleader for this project at $11.8 billion, just twice what it was when he told the committee in 1989 that it ought not to be built if it exceeded $5.9 billion. But he says the cushion of this is $5.9. Texas is going to contribute $900 million and, in addition to that, we feel certain that the Japanese, who are very enthusiastic about this project, will come in for somewhere between $500 million and $1 billion.

Mr. President, I am offering this amendment not to needle the proponents of this project, not to be an obstructionist, but to say at some point people ought to be held accountable for their representations. If you want to say come in here and lie to us, tell us anything you want to, we do not care, we are going to spend the money anyway, that is one thing. But if you expect the Secretary of Energy, for example, to be a man of integrity, and a man of good representation, a man whom you want to rely on, if you want to rely on him, then you ought to vote for this amendment.

I did not suggest that Japan was coming in for a half a billion to $1 billion. I did not even know they were anticipating $1.7 billion in foreign participation. Nobody suggested that this was a good project, whether they came in or not. The suggestion was it was so good they could not resist it. We now know that it "ain't" good enough for anybody.

Japan has said that if you wait for the year 2000 there is a technology that may make this obsolete, that would be much less expensive. The Congressional Research Service says the British think it is utter waste of money because they know the technology will change by the year 2000 and be much less expensive.

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

Mr. BUMPERS. I am happy to yield.

Mr. HARKIN. I have here a Chronicle of Higher Education, March 1992, a report that says the Department of Energy said that much of the overseas work will be done by contracting work to foreign countries, without receiving competitive bids from American companies, and also that the contributions will come mainly in the savings achieved by constructing sophisticated magnets and other technical hardware with low-cost overseas labor. The Department's plans was revealed here in the scientific meeting on the super collider by the project manager, and other agency officials. They estimated that the agency would receive about $400 million in assistance from the four countries in this way.

I wonder if the Senator could elaborate. Is he telling me they are going to have sole source contracting for some of these components in low-wage countries from overseas and the difference between what they would charge for that and what we would have to pay for it here would——

Mr. BUMPERS. As a contribution. The Senator answered his own question.

Mr. HARKIN. That would be a contribution.

Mr. BUMPERS. Absolutely.

Mr. HARKIN. I do not think that is right.

Mr. BUMPERS. I reserve the remainder of my time.

Mr. JOHNSTON. Mr. President, as I said earlier, the Appropriations Committee of the Senate has long believed and has put in our report each year that we believe that if the super conductor is worth doing, it is worth doing in the United States. Frankly, we have discouraged the penchant of some of those in the Department of Energy to

get foreign participation on the ground, that if foreigners participate they want the best of the manufacturing technology. The Japanese are ahead of us now in automobiles, not because they invented these devices for automobiles but because of their manufacturing technology; or at least they have been ahead of us, and I understand now that we are moving right on ahead and turning that around.

In any event, I would hope that we would keep the cream of this technology for ourselves.

But beyond that, Mr. President, to put us in the position where we must get $650 million before June 1, 1993, or else the cutoff ax falls—I mean what this says is on June 1, 1993, if you do not have the $650 million in place, you cannot proceed to spend another dollar; you have to fire all of your employees. And what does that mean for contracting? It means that any contract you let between now and then must be subject to the provision that all funding may stop on June 1, 1993. What is that going to do to a contract? They have a built in termination cost in the contract which is going to up the cost of the contracts.

It effectively gives a veto to the Japanese or anybody else who can submit whatever it is they want to submit, and we have to take it or leave it or not proceed with the project. I mean they can say here is $650 million, and we want all the rights to all of the manufacturing technology, right on down the list. So that they would get the cream of the project for $650 million, and it is put to us "Take it or leave it."

I know that is not what the Senator from Arkansas has in mind, but I think that is the inevitable result of this.

I hope we build it ourselves. Most of the cost is already sunk and is there. Let us develop this technology in America. The science is worth finding out. We ought to do it here. We clearly should not give a veto to a foreign power, and put our contracting provisions in limbo so that we do not know whether we are a reliable contracting party. That will only run up the cost.

So, Mr. President, while I understand what the Senator from Arkansas wants to do, I do not think this accomplishes it.

One final word: That is, the Senator from Iowa talked about these noncompetitive bids from foreigners with low wage scales.

I believe we have fixed that problem with a previous amendment, which we have accepted.

mr. BUMPERS. I just explained that.

Mr. HARKIN. That is what the Senator informed me of.

In reading this further it seems like Mr. Cipriani is going on saying they are going to discuss the possibility of awarding contracts to South Korea to build medium energy booster magnets, and to China for components on the accelerator. My question comes back to, are we going to be using taxpayer dollars to contract with low-wage countries like China and places like that to build components for this?

Mr. JOHNSTON. The answer is no.

Mr. HARKIN. How about buying the components here and spending the taxpayers' dollars here?

Mr. JOHNSTON. The Senator is right in his concern. Under the amendment accepted, that cannot be done.

Mr. HARKIN. What if China bids competitively on building a magnet, and they underbid us. then they can get the contract; is that not right?

Mr. JOHNSTON. Mr. President, as a practical matter that cannot be done. We are the only country in the world right now that can build these magnets. They have taken a long time to design.

Mr. BUMPERS. Louisiana is the only State where they can be built; is that correct?

Mr. JOHNSTON. No. They are actually being built at the Fermi Lab.

Mr. HARKIN. If these other countries put in bids that are lower than what they are here, then obviously the contracts can be awarded overseas; is that true?

Mr. JOHNSTON. Well, with the magnets, which is the biggest component part, only Westinghouse and General Dynamics are capable of doing this anyway. We are way down the road on that.

Mr. HARKIN. Can they sub-contract——

Mr. JOHNSTON. I understand the Senator's concern. I do not think it is a real one.

Mr. HARKIN. My concern is a real one

The PRESIDING OFFICER. The time of the proponent has expired. The Senator from Arkansas has 1 minute 9 seconds remaining.

Mr. BUMPERS. Would the Senator from Louisiana agree with me, so that the record is painfully clear on this, that if we enter into a competitive contract, and South Korea and the United States each bid on the contract and the South Koreans bid $100 million, and the United States company bids $150 million, the contract goes to South Korea, because they are $50 million under the American company? Would the Senator agree with me that under no circumstances should that difference of $50 million be counted as a foreign participation by Korea?

Mr. JOHNSTON. That is correct.

Mr. BUMPERS. The Senator from Louisiana would not tolerate that?

Mr. JOHNSTON. That is correct.

Mr. BUMPERS. Mr. President, this amendment simply says that the foreign participation ought to be $650 million, and it also says—I want to be clear so that everybody understands it—no components purchased with U.S. tax dollars and manufactured out of the United States shall be counted as a contribution for purposes of meeting this limit.

The PRESIDING OFFICER. All time has expired.

Mr. JOHNSTON. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. BURDICK], the Senator from Illinois [Mr. DIXON], and the Senator from Tennessee [Mr. GORE] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. HATCH], the Senator from New Hampshire [Mr. RUDMAN], and the Senator from California [Mr. SEYMOUR] are necessarily absent.

I further announce that the Senator from North Carolina [Mr. HELMS] is absent due to illness.

I further announce that, if present and voting, the Senator from Utah [Mr. HATCH] would vote "yea."

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

The result was announced—yeas 62, nays 31, as follows:

[Rollcall Vote No. 168 Leg.]

YEAS—62

Adams	Domenici	Nickles
Akaka	Ford	Packwood
Baucus	Garn	Pell
Bentsen	Glenn	Reid
Biden	Gorton	Robb
Bingaman	Graham	Rockefeller
Boren	Gramm	Roth
Breaux	Hatfield	Sanford
Brown	Heflin	Sarbanes
Burns	Inouye	Shelby
Byrd	Johnston	Simon
Chafee	Kerrey	Simpson
Coats	Lieberman	Specter
Cochran	Lott	Stevens
Craig	Lugar	Symms
Cranston	Mack	Thurmond
D'Amato	McCain	Wallop
Danforth	McConnell	Warner
Daschle	Mikulski	Wirth
DeConcini	Moynihan	Wofford
Dole	Murkowski	

NAYS—31

Bond	Harkin	Metzenbaum
Bradley	Hollings	Mitchell
Bryan	Jeffords	Nunn
Bumpers	Kassebaum	Pressler
Cohen	Kasten	Pryor
Conrad	Kennedy	Riegle
Dodd	Kerry	Sasser
Durenberger	Kohl	Smith
Exon	Lautenberg	Wellstone
Fowler	Leahy	
Grassley	Levin	

NOT VOTING—7

Burdick	Hatch	Seymour
Dixon	Helms	
Gore	Rudman	

So the motion to table the amendment (No. 2836) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, what is the pending business?

EXCEPTED COMMITTEE AMENDMENT ON PAGE 55, LINES 6 AND 7

The PRESIDING OFFICER. The pending business is the first excepted committee amendment.

The question is on agreeing to the first excepted committee amendment.

The first excepted committee amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

EXCEPTED COMMITTEE AMENDMENT ON PAGE 82, LINE 11 TO LINE 5 ON PAGE 83

The PRESIDING OFFICER. The question is now on the second committee amendment, as amended.

The second committee amendment, as amended, was agreed to.

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

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

The motion to lay on the table was agreed to.

COMMENDING THE DEFENSE TRANSITION PROPOSALS

Mr. PRYOR. Mr. President, I would like to make a brief statement in support of a provision in the 1993 Energy and Water Development Appropriations bill which will assist our country as it makes the difficult economic transition brought on by lower defense spending. The provision I am speaking of is an appropriation of $141 million to fund technology cooperation and technology transfer activities between the Department of Energy weapons labs and industry.

The appropriation contained in this bill represents a $91 million increase in funding for this purpose over fiscal year 1992 levels. As reported out of committee, the bill originally appropriated $116 million for this purpose, and on Friday an amendment increasing the appropriation to $141 million was offered to the bill by the distinguished chairman of the subcommittee, Senator BENNETT JOHNSTON, on behalf of Senators JEFF BINGAMAN and PETE DOMENICI of New Mexico.

As most of my colleagues know by now, the Senate Democratic Task Force on Defense/Economic Transition made recommendations to the majority leader on May 21 of ways the Federal Government can help workers, communities, and industry make the adjustment to a lower defense spending environment. Senator BINGAMAN was one of the members of the task force and he contributed mightily and unselfishly to its work. One of the recommendations the task force made was a proposal that the country's defense labs reorient themselves to perform more cooperative work with the private sector. Primary among these labs are the DOE's large weapons labs which represent one of the greatest resources in our Nation's entire R&D infrastructure.

With the end of the cold war and the concurrent decline in our defense expenditures, weapons development will fade in importance. These labs can continue to serve a valuable purpose, however, by turning their tremendous technical resources toward the challenges faced by U.S. manufacturers trying to compete in the world market.

One of the primary mechanisms for promoting greater lab industry cooperation is the DOE's cooperative research and development agreements, or CRADA's. Under the CRADA process, individual companies submit competitive proposals for cooperative research projects to the labs. Once a proposal is selected, the industry participant must put up some of its own money to match the Government contribution to the project. In this way, only the highest quality projects with true market potential are funded.

There is a substantial body of opinion which believes we need to do more to promote greater cooperation between the labs and industry. The DOE should cut down on the red tape and bureaucracy which currently slows the CRADA approval process. The labs should use their regular programmatic funds for cooperative projects with industry and not limit this type of work just to CRADA's. Alternatively, the Congress and the DOE should investigate the possibility of giving the individual labs direct control over an amount of money in their budgets for cooperative project with industry, in addition to the CRADA money which is currently controlled by DOE headquarters.

We must try new ways to unlock the tremendous potential offered by these labs. According to reports I have heard, industry interest in working cooperatively with the labs is at an all time high, and the competitive pressures U.S. industry is facing is at or near an all time high as well. Now that their importance in the cold war is fading, these labs can be a potent weapon in the economic war we are embroiled in, and the Energy and Water appropriations bill before us provides the ammunition the labs need.

Mr. President, in closing, I want to mention that in addition to the Senate Democratic Task Force on Defense/Economic Transition, President Bush also recommended an increase in funding for CRADA's. I believe this recommendation displayed some of the greatest initiative of all the defense transition recommendations made by President Bush, and I commend him for it.

I urge my colleagues to support this provision of the bill.

CHILDREN'S HOSPITAL OF MICHIGAN

Mr. RIEGLE. Mr President, I rise today in support of Children's Hospital of Michigan's positron emission tomography [PET] scanner project. Completion of this project is of great importance to Michigan and the pediatric community nationwide.

The PET scan is state-of-the-art imaging technology which enables clinicians to detect and treat diseases such as epilepsy, brain tumors, and AIDS by assessing the biochemical and physiological functioning of vital organs which cannot be detected by traditional forms of imaging. While the Department of Energy played a pivotal role in the development of this technology, and contributed to the establishment of many of the PET scanners operating in an adult setting there is no PET scan machine in the Nation dedicated solely to the treatment of children. Yet, children under 15 years of age comprise 25 percent of the U.S. population.

Children's Hospital of Michigan's demonstration pediatric PET scanner project will, for the first time, make this advanced energy-related medical technology available to children. In addition, this demonstration project will contribute significantly to the transfer of this technology throughout the entire pediatric medical community.

Children's Hospital of Michigan needs an additional $8 million to complete this project. Children's Hospital has already provided $29 million, more than 60 percent of the total cost associated with the project. The funds we are seeking will allow the hospital to complete implementation of this innovative project.

Last year, the PET scanner project, with the support of the distinguished chairman and ranking member, Senators JOHNSTON and HATFIELD, as well as Senator LEVIN and myself, received $8 million in the fiscal year 1991 Energy and Water appropriations bill. These funds were used for construction and renovation of the facility that will house the PET scanner. I believe this initiative, which will demonstrate the benefit of this technology while serving a new population of patients, deserves continued Federal assistance.

Mr. President, it is my understanding that, while there are no demonstration projects in the House Energy and Water appropriations measure, the Senate version of the bill does make some funding available for demonstration projects. On behalf of the entire Michigan House delegation, which has expressed its support for this project and Senator LEVIN who shares my commitment to the PET scanner initiative, I urge the members of the Senate Appropriations Committee to provide

funding the PET scanner project when the bill is taken up in a conference so that Children's Hospital of Michigan can complete this important project.

Mr. President, I commend Senators JOHNSTON and HATFIELD for their commitment to this project in the past and for their leadership in the Energy and Water Appropriations Subcommittee.

TECHNOLOGY TRANSFER

Mr. DOMENICI. Mr. President, our national laboratories and U.S. industries have enthusiastically welcomed the opportunity to team together to pursue research in areas critical to our national competitiveness. For the Department of Energy's Defense Laboratories, technology transfer is a relatively new endeavor. However, industry has recognized the scientific and engineering resources within the laboratories and is participating in cooperative research and development agreements [CRADA's] with the labs as quickly as the CRADA's can be approved by the Department.

I am pleased with the recent progress the Department has made toward streamlining the CRADA approval process and look forward to continued improvements.

Technology transfer is now benefiting all levels of U.S. industry; from small entrepreneurial businesses to corporate giants such as General Motors. I would like to include in the RECORD a brief listing of some of the most recent CRADA's that labs in my State of New Mexico have signed; the first list from Sandia National Laboratories, and the second from Los Alamos National Laboratories. These lists clearly demonstrate our labs are proving to be a valuable resource to industry interested in pursuing cutting-edge technologies.

The appropriations bill before us today includes $141 million for technology transfer programs at the Department of Energy. I am very pleased the Senate has seen fit to provide the full amount of the President's request.

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

SANDIA NATIONAL LABORATORIES CRADAS

CRADA No. and company name	Technology title	Signed
1010—Vindicator Corp ...	Physical Security Technology.	Yes.
1011—BPLW Architects and Engineers, Inc.	....do	Yes.
1014—Stellar Systems ...	....do	Yes.
1018—United Technologies/Pratt & Whitney.	Intelligent Processing thin Section Welded Assemblies.	Yes.
1020—LSI Logic	Microelectronics Quality Reliability Center (MQRC).	Yes.
1021—Signetics Company.	....do	Yes.
1023—National Semiconductor.	....do	Yes.
1026—Motorola, Inc.	Solvent Reduction Through Use of Self-Cleaning Soldering Process.	Yes.
1027—Permacharge, Inc	Microcellular Foam Filtration Media Fabrication and Evaluation.	Yes.

SANDIA NATIONAL LABORATORIES CRADAS—Continued

CRADA No and company name	Technology title	Signed
1028—Dow Corning Corp	Microengineered Materials Development Project.	Yes.
1029—Watkins Johnson	Chemical Vapor Deposition of Copper for Integrated Circuits.	Yes.
1029B—Schumacher Inc	....do	Yes.
1030B—NCMS	Printed Wiring Board—Interconnect Systems Program.	Yes (ceremonial signing)
1032—Rocketdyne	Intelligent Process Control for Automated Welding, Machining, and Assembly.	Yes.
1033—United Technologies/Pratt & Whitney.	Intelligent Machining of Castings	Yes.
1034—City of Albuquerque.	Volatile organic monitor for industrial effluents.	Yes.
1035B—AT&T	Projection X-ray Lithography using a Laser Plasma Source.	Yes (ceremonial signing).
1042—Carpenter Technology.	Joining Technology for Advanced Borated Stainless Steel	Yes.
1044—General Electric ...	Synthetic Diamond Substrates for Electronic Multi-Chip Packaging.	Yes.
1045—Oregon Cutting Systems.	Diamond Chainsaw Rock Cutting System Technology Development.	Yes.
1046B—Fluid Dynamics International, Inc.	Sandia MESH Generation Computer Software.	Yes.
1046C—MacNeal-Schwendler Corp.	....do	Yes.
1047—Olin-Hunt Corp	Microelectronics Quality Reliability Center (MQRC).	Yes.
1053—Shell Development Company.	Reduction of Energy Consumption & Water Streams with Hydrous Metal Oxide Catalysts for the Synthesis of Oxygenate Product.	Yes.
1055—Schlumberger Technologies.	Development of a Structured Failure Analysis Expert System.	Yes.
1057—Cray Research Inc	Cleaning Related Processes for Printed Wiring Boards.	Yes.
1058—Sematech	Microelectronics Technology Phase 1.	Yes.
1063—Kocher Plating	Electroplating Process Control.	Yes.
1072—Mechanical Technology Inc.	Robotic Sensor End Effector.	Yes.
1075—Radiant Technologies.	Nonvolatile Ferroelectric Random Access Memories.	Yes.
1077—Sematech	Semiconductor Equipment Reliability Modeling and Design.	Yes.
1078—BIOSYM Technologies, Inc.	Molecular Design of Polymer Alloys.	No, not until after Aug. 24, 1992.
1085—Conductus, Inc	Confocal Resonator Imaging Systems.	No, not until after Aug. 16, 1992.
1091A—Digital Instruments, Inc.	Non-contact Atomic Level Interface Force Microscope.	No, not signed by Participant.
1092—AT&T Bell Laboratories.	Fabrication of Microelectronic Structuring Using Gold-Subtitle Electroplating.	No, not until Aug. 29, 1992.
1108—NCMS	NCMS Umbrella CRADA	Yes (ceremonial signing).

Note.—119 total initiated to date, 45 Approved, 18 WC's Pending DOE action, 2 J's pending DOE action, 56 in Negotiations.

LOS ALAMOS NATIONAL LABORATORY

[Cooperative research and development agreements (CRADA) executed as of July 31, 1992]

CRADA No. and company	Technology description	Effective date/duration
LC910003—United Technologies Corp, Pratt & Whitney, Manufacturing Science Corp.	Advanced Beryllium Processing	Apr. 30, 1992—3 yr.
LC910006—Motorola, Inc.	Dataflow Computer	Apr. 8, 1992—1 yr.
LC110007—Hughes Aircraft Co.	SCCO2 Cleaning of Particulates.	Mar. 27, 1992—25 mo.
LC10009—DICO Corp	FB-CVD of Diamond	Jan. 29, 1992—30 mo.
LC910010—Schlumberger-Doll Research.	Downhole Oilwell Tool Modeling.	Mar. 30, 1992—3 yr.
LC910011—Life Technologies, Inc.	DNA Sequencing	Mar. 21, 1991—3 yr.
LC910012—Canberra Industries, Inc.	Continuous Air Monitor	June 5, 1991—2 yr.

LOS ALAMOS NATIONAL LABORATORY—Continued

[Cooperative research and development agreements (CRADA) executed as of July 31, 1992]

CRADA No. and company	Technology description	Effective date/duration
LC910014—Cray Research, Inc.	Computational Electromagnetics.	Mar. 30, 1992—18 mo.
LC910016—Cray Research, Inc	Global Climate Modeling	Mar. 30, 1992—12 mo.
LC910017—Cray Research Inc.	Computational Chemistry.	Mar. 30, 1992—3 yr.
LC910020—AWC/Lockheed Corp.	Soil Remediation	Feb. 18, 1992—2 yr.
LC910028—Neocera, Inc.	Pulsed Laser Deposition—High Temperature Superconducting Films.	June 30, 1992—2 yr.

Note.—The following CRADAs have been approved and are in the process of being signed: LA92C10049—Amoco Oil Co., Supercomputer Simulation Model for Residual Oil Hydroprocessing, 3 years; LA92C10042—Rhomed, Inc., Radiolabeling of Proteins-Peptides With Isotopes of Copper 2 years; LA92C10036—Tekltronx, Inc., Thermoacoustic Cryocooler, 5 years.

MOREHEAD CITY HARBOR DREDGING

Mr. SANFORD. I would like to discuss with the distinguished Senator from Louisiana a project of extreme importance to me and to the economic well-being of my State of North Carolina. Would the Senator allow me to speak for a moment on the need for the Corps of Engineers to remain engaged in the project to deepen and widen the harbor at Morehead City, NC?

Mr. JOHNSTON. I would be glad to entertain any remarks by my good friend from North Carolina.

Mr. SANFORD. Congress began action on the proposal to deepen Morehead City Harbor in 1984, and you know how slow the preliminary stages of these projects can be, Mr. President. The corps is, however, now preparing to put the dredges in the water. Unfortunately, it looks like I may have to tell my friends in eastern North Carolina that the project will have to wait a little longer.

I do understand the severe constraints placed upon the chairman this year, and I am grateful for his support of that funding which will ensure that the project does not die. While the corps will almost certainly not be able to remain on schedule for the Morehead City dredging program, the $100,000 which the committee has recommended for this initiative in the corps general construction account is absolutely essential to ensure that the corps does not fall hopelessly behind.

Mr. JOHNSTON. I respect the Senator's remarks and I understand the importance of the Morehead City Harbor to North Carolina. I pledge to the Senator from North Carolina that I will do my best to maintain at least the modest appropriation of $100,000 for deepening this port as the Energy appropriations bill is reviewed by the conferees. The committee recommendation is the full amount requested in the President's fiscal year 1993 budget by the Corps of Engineers.

Mr. SANFORD. I am grateful to the distinguished chairman of the Energy and Water Subcommittee for his words of support. I would, however, like to let the Senator from Louisiana know of the commitments made by State legis-

lators in North Carolina to fund their portion of the cost-share for the Morehead City dredging project. After much debate, and in the midst of very tough financial times for our State government, North Carolina lawmakers recently approved the expenditure of more than $3.5 million for Morehead City dredging this year. Unfortunately, these funds may be lost without a sufficient Federal commitment.

Mr. JOHNSTON. Again, I want the Senator from North Carolina to know that I will make every effort to retain the $100,000 in conference, thereby ensuring that Congress can consider further funding of this program again next year. I am sure the Senator is aware that the Morehead City project is among those waiting to be authorized by the Water Resources Development Act of 1992.

Mr. SANFORD. I thank the Senator for mentioning this additional relevant piece of legislation. I am acutely aware of the status of S. 2734, the Water Resources Development Act of 1992, and of the fact that the Morehead City project, and a worthy storm damage reduction project benefitting Topsail Beach, NC, are among those initiatives that the act would authorize. As I have indicated to the chairman personally and in a recent letter, I am disappointed that S. 2734 has been obstructed from coming to the floor, and I am hopeful that many of the corps' priority programs, which will certainly strengthen this Nation's economic security, will soon receive full Senate consideration in this bill.

Mr. JOHNSTON. I am glad that the senator from North Carolina has taken this opportunity to discuss these issues with me, and I am certainly aware of the role that the Corps of Engineers must play in meeting the needs of his state.

Mr. SANFORD. I am grateful to the senior Senator from Louisiana for his indulgence.

Mr. DOMENICI. Mr. President, I rise in support of the energy and water development appropriations bill reported by the Senate Appropriations Committee.

By CBO's scoring, this bill provides $22.1 billion in new budget authority and $12.4 billion in new outlays for the Department of Energy, the Corps of Engineers, the Bureau of Reclamation, and for other selected independent agencies. By CBO's scoring the bill is within its section 602(b) allocation and the discretionary spending caps.

Mr. President, the committee would restore funding for the superconducting super collider [SSC]. This project represents an investment in our future, an investment that will allow us to maintain and strengthen our lead in science and technology development.

The committee also imposes a responsible moratorium on nuclear weapons testing—one that prohibits any tests except those needed for safety purposes.

I want to thank the distinguished chairman and ranking member for including funding for a number of projects and programs important to my home State of New Mexico.

In particular, I want to thank the managers for maintaining funding for the core research and development programs of the Nation's defense laboratories and providing funding for technology transfer initiatives.

The bill also includes funding for the Los Alamos Meson physics facility [LAMPF]. This facility and other dependent operations provide increasingly valuable educational, technology transfer, health, and environmental benefits.

I am concerned by the bill's funding of LAMPF and the Office of Nuclear Safety with defense funds. The administration's preliminary assessment is that these transfers should be scored against the domestic discretionary cap.

During the committee's consideration of the bill, I stated my hope that in conference a portion of the LAMPF funding will be continued through DOE's civilian energy budget.

There are several other matters in this bill that I will address as we proceed with the bill.

I commend the subcommittee chairman, the Senator from Louisiana, and the ranking minority member, the Senator from Oregon, for their hard work to meet continuing program requirements and important priorities and their efforts to keep the bill within its section 602(b) allocation.

Mr. SEYMOUR. I would like to engage in a colloquy with Chairman JOHNSTON and the ranking Republican member, Senator HATFIELD regarding appropriations for several projects important to California.

Senator JOHNSTON, as the chairman of the Senate Energy and Natural Resources Committee, and Senator HATFIELD, also a member of that committee, are aware that I have been working with them for the past year to resolve critical fish and wildlife problems in the State of California.

While I realize Chairman JOHNSTON and Senator HATFIELD have had to make some difficult decisions this year regarding appropriations levels, I would like to bring to their attention several worthy projects which would provide for the restoration of sensitive fish and wildlife habitat, and begin the process of resolving some of these problems.

The House bill provides $300,000 for a conjunctive use study to determine the viability of using private Sacramento Valley rice fields as seasonal wetlands. This funding would allow the U.S. Bureau of Reclamation to participate with the U.S. Fish and Wildlife Service, appropriate State agencies and private organizations to work together on this study.

California's Sacramento Valley has perhaps the best soil and climate for rice production in the United States. While California's almost 400,000 acres of rice land ranks third in acreage, our farmers rank second in yields due to the excellent climate. In addition to the tremendous economic benefits provided by the rice industry to the Sacramento Valley and to the State, these fields provide additional benefits not known to many people outside the rice industry and the conservation community.

Rice fields, flooded with several inches of water for part of the year are actually seasonal wetlands, providing excellent habitat for hundreds of species of wildlife. Each year after harvest approximately 400 pounds of rice per acre is leftover in the fields. This grain is a remarkably rich food source for ducks, geese, and other waterfowl migrating through the Pacific flyway. In fact, California's rice fields are one of the North America's largest, most significant wildlife habitats.

This study would provide the necessary research to determine how to better utilize Sacramento Valley rice fields for seasonal wetlands and for offstream water storage.

Additionally, the House bill provides $300,000 to provide for the completion of feasibility reports and documentation to determine the necessary measures to provide reliable water supplies to Central Valley wetlands and wildlife refuges. Currently, there are 15 National Wildlife Refuges and Management areas in the Central Valley. Unfortunately, it has only recently become clear that additional facilities will be necessary in order to provide them with the water requirements outlined in the Bureau of Reclamations 1989 Report on Refuge Water Supply Investigations. This funding will allow the Bureau of Reclamation to complete the necessary reports required to determine what facilities are needed.

Finally, the House bill provides $800,000 for the Bureau of Reclamation to continue design work on the temperature control device at Shasta dam. This device will allow the bureau to provide cold water for outmigrating and spawning salmon, including the winter-run salmon now listed as an endangered species, when it is most needed during the hot summer months. I would like to thank both Chairman JOHNSTON and Senator HATFIELD for their assistance last year to include in the drought bill, signed by the President in March, a provision to begin design and specification work on this device.

I ask Chairman JOHNSTON and Senator HATFIELD if there will be an opportunity to recede to the House position on these projects during conference?

Mr. JOHNSTON. I appreciate Senator SEYMOUR's bringing these issues to the subcommittee's attention. Having

worked with the Senator in the Energy and Natural Resources Committee on these matters, I am familiar with them. I assure the Senator I will give these matters careful consideration.

Mr. HATFIELD. Senator SEYMOUR has worked diligently during the past year to resolve these issues he has brought to our attention today. As the Senator from the State bordering California, I am very aware of the conflict that has emerged in California during the ongoing water debate. The projects Senator SEYMOUR has supported are important, particularly because they are creative, rather than divisive solutions to restore fish and wildlife habitat. There is no question these are worthy projects, and I will work with my colleagues in conference to insure they are thoroughly considered and evaluated on their merits and benefits.

ROBOTICS PROGRAM

Mr. SASSER. I would like to discuss with the manager of the bill an issue of vital importance regarding the appropriation for advanced reactor research and development. For several years now, I have supported and the Senator from Louisiana has recommended funding in the energy and water appropriations bill for the university research program in robotics for advanced reactors. Unfortunately, because of the severe budgetary constraints faced by the committee this year, the bill and report before us do not include the $3.5 million in funding earmarked in the House report for the Robotics Program.

The Robotics Program is conducted by teams of graduate students and faculty members at the Universities of Tennessee, Texas, Florida, and Michigan, along with the Oak Ridge National Laboratory. They have worked tirelessly with the money appropriated in prior years to establish a comprehensive research agenda for developing advanced robotic technology. These efforts have resulted in important accomplishments in a broad variety of technical areas such as sensor based robotics, advanced manipulators and mobile robots.

For these reasons, I strongly support continued congressional support for the university research program in robotics for advanced reactors. I know that the Senator from Louisiana has done his best to balance the many demands placed on the committee during this difficult fiscal year, but I am hopeful that in conference negotiations he will give strong consideration to adopting the House position on funding for the Robotics Program.

Mr. JOHNSTON. The Senator from Tennessee is correct in stating that our committee has supported funding for the Robotics Program for several years. Our inability to make the same recommendation this year was based on budgetary constraints, not doubts about the effectiveness of the program. I can assure the Senator from Tennessee that I will give careful consideration in conference negotiations to adopting the House position on funding for the Robotics Program.

TRANSMISSION PROJECT AND H.R. 5373

Mr. DOMENICI. Mr. President, during the Senate's consideration of H.R. 5373, the energy and water development appropriations bill for fiscal year 1993, I would like to bring to my colleagues' attention a major energy initiative by the Navajo Nation in New Mexico and Arizona. That initiative is the proposed Navajo transmission project that would install a 500,000 volt transmission line that could move much needed electricity to the Southwestern and Western United States.

The Congress has spent a significant part of this session debating a national energy strategy for the United States. I am proud to say that the State of New Mexico has done its share in providing abundant, competitively priced electrical energy to the growing Southwest. The majority of this electrical energy is produced from clean, economical powerplants that utilize regional coal as a fuel, and many of these plants are located on reservation lands belonging to the Navajo people in New Mexico and Arizona. It is the growing interdependence of the electrical energy supply in the Southwest, and a recent major energy initiative of the Navajo Nation that I would like to discuss today.

Mr. President, the report accompanying the fiscal year 1993 energy and water development appropriations bill, discusses the Navajo transmission project as part of the funding recommendations of the Western Area Power Administration [WAPA]. Although the Appropriations Committee was unable to accommodate the request I made on behalf of the Navajo Nation for and fiscal year 1993 appropriation of $6.2 million to allow the tribe to proceed with an environmental impact statement on the proposed transmission project, the committee does request that WAPA work with the Navajo Nation in the development of this project and that it provide such assistance as is possible. In fact, the Navajo Nation is working on an agreement with WAPA for $1.2 million to be provided for preliminary work on the Navajo transmission project within its fiscal year 1992 and fiscal year 1993 budgets.

Last January, the Navajo Nation, under the leadership of Navajo president Peterson Zah and vice president Marshall Plummer, issued an important policy statement on energy development on Navajo lands. The President's energy policy for the Navajo Nation provides a comprehensive strategy for future energy development for the tribe, while setting out important goals that support the implementation of the strategy. The Navajo Nation is to be commended for this initiative to establish a formal energy policy for the tribe.

A major underpinning of the strategy is Navajo ownership in energy projects constructed and operated on and over Navajo reservation lands. The Navajo Nation no longer wants to limit its role in these projects to that of a lessor of land, water and other resources. Rather, through cooperative efforts with entities seeking the opportunity to develop energy projects on Navajo lands, this ownership objective can be met. Indeed, with over 40 percent of Navajo general fund revenues coming from energy production, this next step seems all the more fair and reasonable.

As a measure of the tribe's commitment, over the past 2 years it has pursued the development of a strategic regional power transmission project that would substantially improve the deliverability of existing electrical generation in the four corners area of New Mexico, Arizona, Colorado, and Utah to various Western electricity markets. The proposed Navajo transmission project is planned as a 500,000 volt transmission line that would be capable of moving up to 1,200 million watts of electrical energy and capacity from "source to sink." As long ago as the mid-1960's, a power transmission capacity deficit has been growing in this region of our national electrical grid. It is through the single initiative of the Navajo Nation in this project that our Nation's resources can be more efficiently and effectively utilized.

As such, I believe the Navajo transmission project to be of a national interest.

This 400-mile long line will originate in the four corners area of northwestern New Mexico and span the breadth of Arizona, terminating at a station in southern Nevada. Construction is expected to begin after an approximately 24-month licensing and permitting period, with the transmission facility going into commercial operation in late 1996.

The Navajo Nation, through its tribal energy enterprise, the Dine' Power Authority, has recently entered into an agreement with the Western Area Power Administration of the Department of Energy, that will create a partnership to make this needed project a reality. Western has had a need for additional transmission capacity over the Navajo reservation in this region for years. Indeed, Western has received congressional approval in past budgets to construct a very similar facility over the reservation. This new cooperative approach, while serving the needs of Western and its customers, preserves an ownership in the finished project that is vital to the long-term energy interests of the Navajo Nation. Western's efforts in working closely with the Navajo Nation on the project have not gone unnoticed by the Senate, and Western Administrator Clagett de-

serves our appreciation for his leadership.

The preconstruction costs of the project have been estimated at $13.7 million. The vast majority of this cost is for an environmental impact statement that will be required of the Navajo Nation and Western; this, in spite of the fact that over 75 percent of the project will be restricted to lands of the Navajo Nation. These costs do not include several million dollars already expended by the Navajo Tribe to bring the Navajo transmission project to its current level of planning and development.

I am pleased to acknowledge that the Western Area Power Administration has already agreed to commit $1.2 million from its fiscal year 1992 and fiscal year 1993 budgets toward these preconstruction costs. The Navajo Nation approached Congress for assistance with the balance of this necessary preconstruction funding during fiscal year 1993 and fiscal year 1994. The construction cost for the project attributable to Navajo ownership is planned to be raised in the financial markets. Western's pro rata share of construction costs is anticipated to be appropriated by Congress, as is the case with all projects.

Because additional transmission capacity out of the Four Corners areas is a precondition to moving existing resources to market, and because of the potential for clean, inexpensive electrical generation using abundant supplies of natural gas in New Mexico, the support for the Navajo project is widespread among my Senate and House colleagues from the West.

The Navajo Transmission Project is an important energy initiative by a native American tribe. It will allow much better utilization of existing energy resources throughout the West, creating both a transmission capability that will be needed in the future as existing facilities reach their useful life, and a supply of power as demand grows in the Southwest. I will join my colleagues from the West in urging the Western Area Power Administration to provide the maximum support possible to the Navajo Nation on the proposed Navajo transmission project in fiscal year 1993. I ask my Senate colleagues to join me in supporting the Navajo Nation in its strategic energy initiative and in this most important Navajo transmission project.

NAVAJO TRANSMISSION PROJECT

Mr. DECONCINI. Mr. President, as many of my colleagues know, it is becoming increasingly difficult to move electricity around existing transmission grids to meet growing energy demands. In many ways, our inability to do so creates conditions of both surplus and shortages which results in an inefficient use of our Nation's resources. There are few areas of the country in which this transmission deficit is more acute than in the four corners area in the Southwest.

Since the 1960's, several large powerplants have been built in this area of the country. These generating stations provide electricity to millions of people in California, Arizona, New Mexico, Colorado, Utah, and Nevada. Fueled mainly by abundant supplies of competitively priced coal, the pace of construction of these large-scale power plants has far exceeded the construction of adequate transmission facilities. Consequently, since the early sixties, the transmission deficit has grown to the point where there is a bottleneck in this critical power production region of the country.

Many of these powerplants and transmission lines exist on the Navajo Nation's Reservation in northwestern New Mexico and northern Arizona. Since these facilities were first constructed, the Navajo Nation has failed to enjoy the privilege of ownership, remaining instead of the role of lessor of their lands. In every case, compensation for use of Navajo lands came in the form of small one-time payments for lease durations that in some instances are perpetual. These terms were then, and remain today, commercially unfair to the Navajo People.

Over the last 2 years, at the tribe's own expense, the Navajo Nation has investigated the feasibility of constructing a large power transmission line from four corners, across Arizona, to southern Nevada, that would go far toward alleviating the transmission bottleneck of which I spoke earlier. Called the Navajo transmission project, this 400 mile, 500,000-volt line would transfer about 1,200 million watts of power from existing and potential generation sources to growing electrical load centers in the Western United States. By virtue of its strategic power interconnection in southern Nevada to a number of existing and planned transmission lines, the Navajo transmission project will allow for the seasonal exchange of energy between hydroelectric resources in the Pacific Northwest, and coal-based resources in the Southwest.

Such diversity encourages the strategic management of our existing electric generation resources in the West, avoiding the overbuilding of hydro or thermal generation in any one region. Such overbuilding often results from the absence of power transmission facilities necessary to move power around on our Nation's utility grid. Thus, the Navajo transmission project will contribute to a more efficient utilization of resources in America.

The Navajo Nation has been working closely with the Western Area Power Administration to pursue joint development and ownership of this project. Doing so will assist WAPA in meeting some of its transmission capacity needs in this region of the West for WAPA's customers. With WAPA participating in the project with the Navajos, an estimated saving of up to $79 million will be realized over an alternate transmission project, the Northern Arizona Project, that has been pursued by WAPA for the last 5 years at a cost of over $14 million.

Preconstruction costs necessary to bring this strategic energy project to construction has been estimated at $13.7 million, with over half these funds going to the environmental impact statement required under the National Environmental Policy Act. This requirement exists despite the fact that up to 75 percent of the right-of-way for the project is through Navajo-controlled lands.

The Navajo Nation has approached Congress for assistance with this needed preconstruction funding. WAPA and the tribe have negotiated the underlying joint development agreement necessary for describing the ultimate coownership structure for the project.

For too many years the Federal Government's policies toward Native Americans have discouraged entrepreneurship and encouraged dependence. In the case of the Navajo transmission project, Congress has been presented an opportunity to reverse this trend. Once this project is at the point of construction, the Navajos intend to raise the approximately $200 million in construction funds in the private financial markets. All that is being requested of Congress is the startup funding to allow for Navajo ownership in a major energy project. This will be a grand and glorious step toward self-determination and enhance credibility for the Navajo People. Congress should reward their initiative with its enthusiastic support and encouragement for success.

Mr. President, I appreciate the committee chairman and ranking member for their efforts in including language in the committee report accompanying the fiscal year 1993 Energy and Water appropriations bill indicating the committee's support for the Navajo transmission project. I intend to continue working with them to secure adequate funding to ensure that this worthy project becomes a reality.

Mr. President, I ask that a number of letters I have received in support of this project be included in the RECORD.

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

SALT RIVER PROJECT,
Phoenix, AZ, July 20, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate, Washington, DC.

DEAR SENATOR DECONCINI: A power transmission project across our state is being developed jointly by the Navajo Nation and the Western Area Power Administration. Called the "Navajo Transmission Project" (NTP), as proposed, it could provide a beneficial electrical link between the Four Corners and both Southern Arizona and Nevada and,

therefore, relieve a power transmission constraint west and south of the Four Corners.

We understand you are sponsoring an appropriation for FY '93 in the Energy and Water Appropriations Subcommittee for preconstruction activity for the NTP, Salt River Project supports your efforts on this appropriation.

Sincerely,

JOHN R. LASSEN,
President.

THE NAVAJO NATION,
Window Rock, AZ, June 5, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate, Washington, DC.

DEAR SENATOR DECONCINI: On behalf of the Navajo Nation, thank you for including the Navajo Transmission Project preconstruction costs ($6,195,000), in your appropriation's request to the Subcommittee on Energy and Water Development. We are heartened by your personal intervention on our behalf. I am pleased to share with you a copy of a letter I received from William H. Clagett, Administrator of the Western Area Power Administration (WAPA). WAPA states that it is willing to explore with the Navajo Nation a joint participation project to alleviate the bottleneck in the Four Corners area.

Although WAPA still has on its books the Northern Arizona Project, WAPA states if Congress decides to spend appropriated funds for the Navajo Transmission Project it will spend it on "planning, design, and environmental activities to develop a viable project that is economically competitive with other transmission projects in the Southwest". The Navajo Transmission Project is much more commercially attractive to the Navajo Nation than the Northern Arizona Project. Further, WAPA is open to redirecting FY '92 funds and their FY '93 budget request "for a project across Navajo lands without further congressional approval". The Navajo Nation is encouraged that WAPA is willing to redirect such funds but asks that Congress state expressly that such funds will go to the Navajo Transmission Project to avoid any ambiguity.

Currently, the Navajo Nation is working with WAPA on a participation agreement that we hope will be completed this summer. All that remains is securing the essential preconstruction funding, as initiated by you, to move the Navajo Transmission Project toward reality. As we have described to you previously, the Navajo Nation proposes that the FY '93 funds will go to the Dine' Power Authority, that will fund preconstruction activities, notably the Environmental Impact Statement, project management, engineering, and other required development efforts. Of the total request ($6,195,000), $2,060,000 would be appropriated to WAPA to be made available to the Dine' Power Authority in return for a credit toward one-third ownership in the Project by WAPA, and $4,135,000 to the Dine' Power Authority on behalf of the Navajo Nation.

The development of this Project marks a major departure from the way the Navajo Nation has looked at energy development in the past. We have come to realize that it is to our benefit, economically and environmentally, that we become owners in the projects developed on or over our lands. It is time that we take a leadership role for our people in this regard.

Again, we appreciate all your work on our behalf. Please contact me or our Washington Office if you have any need for further information or assistance.

Sincerely,

MARSHALL PLUMMER,
Vice President.

DEPARTMENT OF ENERGY,
WESTERN AREA POWER ADMINISTRATION,
Golden, CO, May 28, 1992.

MR. MARSHALL PLUMMER,
Vice President, Navajo Nation, Window Rock, AZ.

DEAR MR. PLUMMER: Mr. Lloyd Greiner (of my staff) and Mr. Tom Wray (of Groves Wray Associates) have had several discussions concerning the FY 1993 appropriations process and the Navajo Transmission Project. This letter summarizes the Western Area Power Administration's (Western) position on this topic. You may use the content of this letter in any way that you wish to facilitate the Project.

Western is willing to explore with Navajo Nation (Nation), and others, a joint participation transmission project to provide additional capacity to alleviate a bottleneck in transmitting hydro and coal-fired generation from the Rocky Mountain region to Southwest load centers. Either the Navajo Transmission Project or the Northern Arizona Project (formulated by Western) can be configured to meet the needs of the Nation, Western, and other participants.

Western supports the Nation in its effort to solicit other utilities' participation in a project which will alleviate the bottleneck in the Four Corners area. In FY 1992, Western has $527,000 available; and Western's FY 1993 budget request includes $633,000 for the Northern Arizona Project. These funds can be utilized for planning and preconstruction activities for a project across Navajo lands without further congressional approval. Western needs to have a signed letter agreement with the Nation in place before funds can be spent.

It is our understanding that the Nation is attempting to obtain a $6.2 million add-on to Western's FY 1993 Construction, Rehabilitation, Operation, and Maintenance appropriation. If Congress decides to appropriate additional funds to Western for the Navajo Transmission Project, Western could spend these funds on planning, design, and environmental activities to develop a viable project that is economically competitive with other transmission projects in the Southwest. Western anticipates recovering through power rates only those costs related to the portion of the project that it owns.

Please contact me if I can be of further assistance in this matter.

Sincerely,

WILLIAM H. CLAGETT,
Administrator.

BHP WORLD MINERALS,
WESTERN U.S. MINING,
Farmington, NM, June 17, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DECONCINI: BHP Minerals operates the Navajo, San Juan and La Plata Mines in New Mexico and is the exclusive fuel supplier to the Four Corners Power Plant (operated by Arizona Public Service Company) and the San Juan Generating Station (operated by Public Service Company of New Mexico). BHP's New Mexico mines produce approximately 14 million tons of coal annually and employ about 900 workers. Members of the Navajo Tribe of Indians account for over 70% of the work force. The $45 million annual payroll and approximately $105 million in taxes and royalties provide a substantial economic base for the Navajo Nation, the State of New Mexico and the Four Corners region.

Representatives of the Dine' Power Authority, a Navajo Tribal Enterprise, have recently advised our company that they have contacted your office seeking legislative support and financial appropriations for the Navajo Transmission Project. This project could address future energy development transmission requirements in addition to providing immediate capacity for current electric generation facilities and production.

For the past several years, BHP Minerals has examined the feasibility of developing large uncommitted coal reserves which are leased from the Navajo Nation. The Navajo South Project contemplates the establishment of a mine-mouth electric generating station together with the necessary transmission facilities. A project of this magnitude would provide substantial economic benefits for the Navajo Nation.

The Navajo South Project, if viable, would require the meaningful participation and involvement of the Navajo Nation. Specifically, the Navajo Nation would be asked to provide the necessary transmission corridors to transmit the electricity to market as well as other natural resource project components.

The Navajo Transmission Project could very well accommodate much of the transmission capacity requirements of BHP Minerals' Navajo South Project if structured appropriately. We believe that coal development on the Navajo Reservation represents a significant economic development alternative for the Navajo Nation. For these reasons, BHP Minerals supports the development of the Navajo Transmission Project and your efforts to assist the Navajo Nation in this regard.

Very truly yours,

JAMES R. ROTHWELL,
Vice President and General Manager, Western U.S. Mining.

PACIFICORP.,
Portland, OR, July 17, 1992.

Hon. DENNIS DECONCINI,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DECONCINI: PacifiCorp is a major electric utility with significant operations in seven western states. Recent business arrangements have brought us into contact with the Navajo Nation, with whom we hope to establish a long-term, mutually beneficial commercial relationship.

The Navajo Nation has taken major strides in the development of a sound economy, and we are aware of the continuing efforts of the Navajo Nation to expand opportunities through active participation at all levels of development of their energy resorces. In furtherance of its economic efforts, the Navajo Nation has conducted preliminary planning and feasibility studies of the Navajo Transmission Project, a proposed electric transmission project that would connect electric generation facilities on the Navajo Reservation. Whether the Navajo Transmission Project is feasible, both from an environmental and economic perspective, cannot be finally determined by the Navajo Nation and others without further study and review.

It is our understanding that the Navajo Nation has requested federal appropriations for preconstruction development activities and continued planning of the Navajo Transmission Project. Although our organization

does not currently intend to participate in the Navajo Transmission Project, we nonetheless request that you give favorable consideration to the Navajo Nation's request.

Sincerely,

AL GLEASON.

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:

• Mr. SEYMOUR. Mr. President, I would like to commend the distinguished managers of the Energy and Water appropriations bill, Chairman JOHNSTON and Senator HATFIELD, for their efforts to work with me to provide funding for two projects, critical to California.

We all know that California, in its sixth consecutive year of drought, is confronted with very serious water supply and conservation decisions. Undoubtedly, the 1990's promise to be a challenging decade for California as it attempts to manage its water resource to meet a growing population which will soon surpass 30 million. I appreciate the thoughtful attention members of the Energy and Water Appropriations Subcommittee have given to the needs and concerns of Californians.

Specifically, two projects included in the Senate Energy and Water appropriations bill will help meet the future protection and assistance needs of Californians.

In February of this year, we all witnessed the devastation of flooding when unusually heavy rains hit Southern California. Currently under construction is the Santa Ana River mainstem project. This project, which consists of seven interdependent features, is designed to protect over 2 million residents in San Bernardino, Riverside, and Orange Counties, who live in the Santa Ana River flood plain. In fact, the Corps of Engineers has determined flooding of this river could result in significant loss of life and an estimated $12 billion in property damage. The Santa Ana River mainstem project will provide needed flood protection through the construction and enlargement of dams, levees, and channels. This funding is vitally needed to protect residents in the flood plain as well as protect against future costs associated with a devastating flood. I am truly pleased the committee was able to provide $90.8 million for this critical project.

Also authorized by this bill is the Southern California comprehensive water reclamation and reuse study. This authorization allows the Secretary of the Interior to undertake a comprehensive study to determine the feasibility of a reclamation and reuse program in Southern California. As Californians endure continued drought, the importance of conservation and reclamation programs becomes increasingly important. Alternative methods of conservation are needed to meet increasing water demands for both environmental and urban uses. This is an important first step toward increasing awareness as well as beginning much needed research into alternative modes of water conservation.

I again thank the chairman and Senator HATFIELD for their leadership and assistance with this bill and urge the adoption of this important legislation.

I yield the floor.•

Mr. BYRD. Mr. President, I want to take this opportunity to thank the distinguished chairman of the subcommittee, the Senator from Louisiana, Senator JOHNSTON, and the distinguished Senator from Oregon, the ranking member, Senator HATFIELD, for their good work in managing this very complex piece of legislation.

As we all know, this bill has many contentious issues but the fact that these two Senators work so well together and have such intimate knowledge of each and every detail of the bill is invaluable to shepherding this bill through in a timely manner. In addition, the bill as reported by the Senate is within its 602(b) subcommittee allocation.

Both Senators should be congratulated for their outstanding efforts.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The question is, Shall the bill pass?

So the bill (H.R. 5373), as amended, was passed.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the bill passed.

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

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees on behalf of the Senate.

The motion was agreed to and the Presiding Officer [Mr. CONRAD] appointed Mr. JOHNSTON, Mr. BYRD, Mr. HOLLINGS, Mr. BURDICK, Mr. SASSER, Mr. DECONCINI, Mr. REID, Mr. HATFIELD, Mr. GARN, Mr. COCHRAN, Mr. DOMENICI, Mr. SPECTER, and Mr. NICKLES conferees on behalf of the Senate.

Mr. JOHNSTON. Mr. President, I want to reiterate my thanks to the distinguished Senator from Oregon. He is a pleasure to work with. He is competent and courteous and effective. It is a pleasure to work with him.

I would like to thank my staff, Proctor Jones and David Gwaltney. We are especially mindful about the loss within our staff of Gloria Butland, the loss of her husband. She worked very hard on this bill.

With thanks to all Senators, I yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would like to respond to the chairman of our committee, Senator JOHNSTON, in acknowledging the excellent cooperation that has existed for many years now between the ranking member and the chairman of the committee.

Mr. President, this bill is within the 602(b). I think it is a good bill. We can go to the conference with great pride to represent the Senate's interest.

I too would like to make my appreciation known to our staff, both the majority staff, who have been enumerated, as well as to Mark Walker, Keith Kennedy, and Dorothy Pastis. And on the amendment relating to the test treaty, I would like to especially thank Julie McGregor of my staff, who is a real extraordinary young lady who has helped a great deal to bring this to pass.

So I am grateful to be working with Senator JOHNSTON on this question.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

MORNING BUSINESS

Mr. JOHNSTON. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein.

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

SECTION 9 OF THE CONCURRENT RESOLUTION ON THE BUDGET

Mr. SASSER. Mr. President, on Wednesday, July 29, upon the modification of the Finance Committee amendment to the energy bill, H.R. 776, I submitted revised budget authority and outlay allocations to the Finance Committee and aggregates under section 9 of the concurrent resolution on the budget for fiscal year 1992, House Concurrent Resolution 121, and section 9 of the concurrent resolution on the budget for fiscal year 1993, House Concurrent Resolution 287. Those revised allocations and aggregates appear at pages S10,742 through S10,744 of the CONGRESSIONAL RECORD for July 29, 1992.

Later, July 29, the Senate adopted an amendment offered by the Senator from West Virginia [Mr. ROCKEFELLER] that further modified the subject of those revised allocations and aggregates, creating new entities to replace coal industry health funds that are experiencing financial difficulties. These provisions will ensure that retired coal miners, their widows, and their dependents continue to receive the health benefits for which they contracted. In the words of section 9(c) of both the

1992 and 1993 budget resolutions, these two provisions "increase funding to make continuing improvements in ongoing health care programs."

Just today, I have received the Congressional Budget Office's estimate of the costs of Senator ROCKEFELLER's amendment. That estimate indicates that Senator ROCKEFELLER's amendment would result in less budget authority and outlays than would the committee amendment. Consequently, lower budget authority, outlay, and revenue levels are appropriate for the legislation as passed by the Senate.

As H.R. 776 as amended complies with the conditions set forth in the budget resolutions, under the authority of section 9 of the 1992 and 1993 budget resolutions, I hereby file with the Senate appropriately revised budget authority and outlay allocations under sections 302(a) and 602(a) of the Congressional Budget Act of 1974, U.S.C. sections 633 and 655a (1988 and supplement II 1990), and revised functional levels and aggregates to carry out section 9 of the budget resolutions.

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

REVISED BUDGET RESOLUTION TOTALS PURSUANT TO SECTION 9 OF THE CONCURRENT RESOLUTIONS ON THE BUDGET FOR FISCAL YEARS 1992 AND 1993

[In millions of dollars]

	1992	1993	1993-97
Spending allocations and revenue totals:			
Resolution Revenue totals	850,455	848,947	4,818,815
Reserve fund change	−45	−57	−196
Revised revenue totals	850,410	848,890	4,818,619
Finance Committee budget authority allocations	491,288	518,163	3,013,627
Reserve fund change	−45	−57	−196
Revised Finance Committee budget authority allocations	491,243	518,106	3,013,431
Finance Committee outlay allocations	487,381	515,787	2,999,864
Reserve fund change	−45	−57	−196
Revised Finance Committee outlay allocations	487,336	515,730	2,999,668

REVISED BUDGET RESOLUTION TOTALS PURSUANT TO SECTION 9 OF THE CONCURRENT RESOLUTIONS ON THE BUDGET FOR FISCAL YEARS 1992 AND 1993—Continued

[In millions of dollars]

REVISED BUDGET RESOLUTION TOTALS PURSUANT TO SECTION 9 OF THE CONCURRENT RESOLUTIONS ON THE BUDGET FOR FISCAL YEARS 1992 AND 1993

[In millions of dollars]

	1992	1993	1994	1995	1996	1997
Functional levels and aggregates:						
Resolution revenue aggregates	850,445	848,947	912,202	968,719	1,018,170	1,070,777
Reserve fund change	−45	−57	18	−39	−52	−66
Revised resolution revenue aggregates	850,400	848,890	912,220	968,680	1,018,118	1,070,711
Resolution budget authority totals	1,270,657	1,250,047	1,270,302	1,310,219	1,375,470	1,469,077
Reserve fund change	−45	−57	18	−39	−52	−66
Revised resolution budget authority totals	1,270,612	1,249,990	1,270,320	1,310,180	1,375,418	1,469,011
Resolution function 550 budget authority totals	83,145	105,475	116,582	129,289	143,695	159,502
Reserve fund change	−45	−57	18	−39	−52	−66
Revised resolution 550 budget authority totals	83,100	105,418	116,600	129,250	143,643	159,436
Resolution outlay totals	1,201,645	1,242,347	1,256,002	1,258,519	1,305,270	1,416,477
Reserve fund change	−45	−57	18	−39	−52	−66
Revised resolution outlay totals	1,201,600	1,242,290	1,256,020	1,258,480	1,305,218	1,416,411
Resolution function 550 outlay totals	83,345	104,775	115,882	128,089	142,395	157,802
Reserve fund change	−45	−57	18	−39	−52	−66
Revised resolution 550 outlay totals	83,300	104,718	115,900	128,050	142,343	157,736

THE IMPACT OF TELEVISION VIOLENCE

Mr. BYRD. Mr. President, for some time, I have been underlining the corrosive effects that much television programming is having in this country, particularly on the lives and values of our children and youth.

Recently, our distinguished colleague from Illinois, Senator PAUL SIMON, shared with me a copy of one of his regular weekly columns on this same subject. Senator SIMON's column, drawn from his own independent research, verifies and parallels my own objections to much current television programming and its effects on our children, our mores, and our society.

Mr. President, I ask that Senator SIMON's column entitled "The TV Violence Act at Its Midpoint" be printed in the RECORD.

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

THE TV VIOLENCE ACT AT ITS MID-POINT

Children imitate what they see and hear. I see that in my two-year-old granddaughter.

Teenagers come up with weird haircuts they have seen and copied.

Adults also imitate, whether it is buying a car as a result of a TV commercial or a political leader making the same gestures as John F. Kennedy.

The older we are, the less likely we are to imitate what we see and hear, but to some extent, the pattern (of imitation) follows us through life.

That becomes significant because of television. Violence on entertainment television is absorbed and imitated—particularly by children—into our lives and into our culture.

Because numerous studies show this conclusively, six years ago I asked representatives from the television industry to voluntarily establish standards on violence. They told me they could not do that, working together as an industry, because of antitrust laws.

I pushed through Congress the TV Violence Act, a three-year exemption to the McCarran-Ferguson Antitrust Act, so the industry could get together and establish standards. That finally became law.

Two things have happened to make that law significant now: One is that we are at the half-way point in terms of the exemption. Second, The Journal of the American Medical Association has published a powerful new article underscoring how violence on television is adding to violence in our society.

We are at half time and I'm pleased to say the cable industry shows signs it may yet treat the subject seriously, though we have to wait for results. The television networks have met on the issue, and only time will tell if they will begin to regard this as anything more than a public relations problem with Congress.

Cable has hired one of the nation's experts, Professor George Gerbner of the University of Pennsylvania, to do a fairly in-depth look at the cable industry's products, and there is every indication they are serious although the study is not as wide-ranging as is desired.

In the past I've had little hope that we will get anything more than pious words from the networks. I hope I am wrong.

What underscores the importance of this is an article in the June issue of The Journal of the American Medical Association by Dr. Brandon S. Centerwall, of the Department of Psychiatry and Behavioral Sciences of the University of Washington.

His study of murder rates among whites in several countries, including the United States, shows that the murder rate doubled 10 to 15 years after the introduction of television into a nation's culture.

He concludes: "Long-term childhood exposure to television is a causal factor behind approximately one-half of the homicides committed in the United States, or approximately 10,000 homicides annually. * * * If, hypothetically, television technology had never been developed, there would today be 10,000 fewer homicides each year in the United States, 70,000 fewer rapes and 700,000 fewer injurious assaults."

Those conclusions are so powerful they are hard to believe—Just as it was hard to be-

lieve the harm that cigarettes cause when medical researchers first came out with those studies.

Suppose the article is 50 percent off target. That still suggests that by changing our television programming we could eventually prevent 5,000 murders a year, 35,000 rapes and 350,000 assaults.

Or let us assume the article is 90 percent wrong, only 10 percent accurate. That still means we could improve television and each year save 1,000 of those murdered and prevent 7,000 rapes and 70,000 assaults.

Our friends in the television industry have our lives—and their lives—in their hands as they mull over what to do. If they use the balance of this three-year period just to spin their wheels and do nothing, it is unlikely they public will sit back and do nothing.

An aroused public may ask for government censorship.

A much better answer is for the industry to agree voluntarily—that it is worth forgoing a few dollars in profits (violence on television makes money) to have a society that is less violent.

TODAY'S "BOXSCORE" OF THE NATIONAL DEBT

Mr. CRAIG. Mr. President, Senator HELMS is in North Carolina recuperating following heart surgery, and he has asked me to submit for the RECORD each day the Senate is in session what the Senator calls the "Congressional Irresponsibility Boxscore."

The information is provided to me by the staff of Senator HELMS. The Senator from North Carolina instituted this daily report on February 26.

The Federal debt run up by the U.S. Congress stood at $3,999,118,165,854.01, as of the close of business on Thursday, July 30, 1992.

On a per capita basis, every man, woman, and child owes $15,569.31—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

RABBI MARC TANENBAUM: A LEADER IN CHRISTIAN-JEWISH RECONCILIATION AND LONGTIME SUPPORTER OF REFUGEES

Mr. PELL. Mr. President, I was saddened to learn of the death earlier this month of Rabbi Marc H. Tanenbaum, a longtime leader of efforts to bring about Christian-Jewish dialog, and for many years a board member of the International Rescue Committee.

Although Rabbi Tanenbaum was best known for his pioneering work in strengthening relations between Christians and Jews, he will also be remembered for his devoted efforts to aid the world's refugees.

In the early 1980's Rabbi Tanenbaum served on the Citizen's Commission on Indochinese Refugees organized by the IRC that made several trips to southeast Asia to visit camps for Vietnamese boat people and refugees from Cambodia. With other members of the Commission he participated in a march for survival to the Cambodian border in 1980. At the border Rabbi Tanenbaum led the group in the recitation of Kaddish, the Jewish prayer for the dead, for the millions of Cambodians who has died under the Khmer Rouge.

I have the honor of having served on the IRC's board with Rabbi Tanenbaum, and I have long admired and supported his work, so it was with personal sadness that I learned of his passing on July 3.

I ask that his obituary from the July 4 New York Times be printed at this point in the RECORD.

There being no objection, the order to be printed in the RECORD, as follows:

[The New York Times, July 4, 1992]

RABBI MARC TANENBAUM, 66, Is Dead

(By Ari L. Goldman)

Rabbi Marc H. Tanenbaum, a father of modern Christian-Jewish dialogue and, through 25 years of radio commentary, one of the best-known rabbis in America, died early yesterday at Lenox Hill Hospital. He was 66 years old and lived in Manhattan.

He died of heart failure after undergoing heart surgery last month, said his wife, Georgette Bennett.

With charisma and passion, Rabbi Tanenbaum preached better understanding between the faiths everywhere from the Vatican to the headquarters of the World Council of churches in Geneva to the Christian Bible colleges of America's South.

The son of Orthodox Jewish immigrants from Russia who owned a grocery store in Baltimore, Rabbi Tanenbaum brought Jews and Christians together for dialogue in the wake of the Nazi Holocaust and the creation of the modern state of Israel. He worked to heal nearly 2,000 years of mutual suspicion and animosity by helping both sides better understand one another.

A CONFRONTATIONAL FRIEND

His biography reads like a history of Christian-Jewish relations in the second half of the 20th century. Rabbi Tanenbaum developed friendships with Roman Catholic, Protestant and Eastern Orthodox Christian leaders, but he was not afraid of challenging them when he felt Jewish interests were threatened.

He often found himself negotiating between Jews who felt that Christian leaders deserved more deference and others who believed that confrontation was the best approach. His efforts sometimes incurred the wrath of Orthodox Jewish leaders who believed that to engage in interfaith dialogue was to diminish Judaism.

In his files, the rabbi kept a cartoon from the Yiddish press of the 1960's that showed Pope Paul VI holding Rabbi Tanenbaum on a leash.

Over the years, Rabbi Tanenbaum found himself at the center of all the major Jewish-Christian controversies, everything from the Catholic convent at the death camp at Auschwitz to the claim of one Southern Baptist leader that "God Almighty does not hear the prayer of a Jew" to the position of mainline Protestants on the rights of Palestinians in Israel.

John Cardinal O'Connor, the Roman Catholic Archbishop of New York, said yesterday that Rabbi Tanenbaum's passing was "the end of an era." He called the rabbi "a pioneer in Christian-Jewish relations and Catholic-Jewish relations in particular.

From Rome, Edward Cardinal Cassidy, the president of the Vatican Commission for Religious Relations With the Jews, said that Rabbi Tanenbaum was "a great source of reconciliation and strength during moments of deep difficulty between our communities."

CAUTION TO A CRUSADER

Rabbi Tanenbaum also had a long friendship with the Rev. Billy Graham. Before Mr. Graham held a crusade in Central Park last summer, Rabbi Tanenbaum set up a meeting between the Christian evangelist and the New York Board of Rabbis to assure the rabbis that Mr. Graham was not interested in converting Jews but only in bringing Christians to their faith.

The Rev. Jerry Falwell, who publicly debated Rabbi Tanenbaum before a rapt audience of conservative rabbis in 1985, said yesterday, "Rabbi Tanenbaum spent his life attempting to strengthen healthy relations between Christians and Jews. He was brilliant and committed."

Marc Herman Tanenbaum was born in Baltimore on Oct. 13, 1925, and got his early education at the Talmudical Academy of Baltimore and at City High School. He entered Yeshiva University in Manhattan at the age of 15.

After graduating from college, he began his rabbinical studies at the Jewish Theological Seminary, also in Manhattan. While a student, he became an aide to Rabbi Abraham Joshua Heschel, professor of Jewish ethics and mysticism at the seminary.

Rabbi Tanenbaum edited several volumes of Rabbi Heschel's books.

RECONCILING LOVE AND HATE

While at the seminary, Rabbi Tanenbaum began to delve into the roots of anti-Semitism among Christians. He said that he was driven to reconcile how "a church that preached a gospel of love could have turned it into a gospel of hatred and destruction when is came to the Jews."

Rabbi Tanenbaum was ordained in 1950 and, after a brief period in publishing and public relations, became one of the first Jewish professionals to devote himself virtually full-time to improve relations between Christians and Jews.

He served as the executive vice president of the Synagogue Council of America and, beginning in 1960, as director of interreligious affairs for the American Jewish Committee.

In the 1950's, much of the focus of the dialogue was between Protestants and Jews, but the spotlight shifted dramatically in the early 1960's when Pope John XXIII convened the Second Vatican Council. Rabbi Tanenbaum was an official observer to the council and, according to his recollection, the only rabbi to attend.

In terms of relations with the Jews, the council produced a landmark document, "Nostra Aetate," which rejected the idea that the Jewish people were accountable for the death of Jesus and repudiated anti-Semitism "by anyone at any time."

Catholic-Jewish relations became Rabbi Tanenbaum's primary concern, but he also worked to open avenues to Evangelicals, Orthodox Christians and Muslims in the years that followed.

In 1983, he became the director of international affairs at the Jewish Committee, which introduced him to a whole new set of issues dealing with refugee relief and human rights even as he maintained his involve-

ment in interfaith relations. He retired from the Committee in 1990 but remained as a consultant to the organization.

In the early 1980's, he was a member of a delegation of the International Rescue Committee that made three fact-finding trips to Southeast Asia to investigate the plight of Vietnamese boat people. At the Thai border with Cambodia, the rabbi joined Elie Wiesel, the Nobel laureate and chronicler of the Holocaust, in the recitation of Kaddish, the Jewish prayer for the dead, for the million Cambodians who died at the hands of the Khmer Rouge.

WHITE HOUSE COMMISSIONS

Rabbi Tanenbaum served on White House commissions on children, the elderly and the Holocaust. He was the member of the boards of directors of numerous institutions, including the American Jewish World Service and the International Rescue Committee. He was named to the board of Covenant House, a network of shelters for runaways, in an effort to restore confidence in the agency in the wake of scandals involving the founder, the Rev. Bruce Ritter.

He was the former chairman of the International Jewish Committee for Interreligious Consultations, which represents Judaism in talks with the Vatican and other world religious bodies.

He was the founder and a chairman of the National Interreligious Task Force on Soviet Jewry, which, until the collapse of the Soviet Union, worked on behalf of both Jews and Christians oppressed for their religious beliefs.

Starting in 1965, Rabbi Tanenbaum had a syndicated radio broadcast of religious commentary on WINS, an all news radio station in New York City.

He also served as a consultant to movie and television productions on religious and Jewish matters, including the NBC series "Holocaust."

Rabbi Tanenbaum received 15 honorary degrees from both religious and secular institutions, won the International Interfaith Achievement Award of the Conference of Christians and Jews and, in April, the Israel and Libby Mowshowitz Award of the New York Board of Rabbis.

Rabbi Tanenbaum is survived by his wife, who is expecting their child in September; three children by a previous marriage, Susan, of Queens, Michael, of Brooklyn, and Adena, of Oxford, England, and a sister, Sima Scherr, of Pikesville, Md.

TO EXTEND THE MEDICARE DEPENDENT HOSPITALS PROGRAM

Mr. GRASSLEY. Mr. President, I am pleased to be the lead cosponsor of legislation introduced last Friday by the Republican leader, Senator DOLE, to extend the Medicare Dependent Hospital Program.

Medicare-dependent hospitals are rural hospitals with less than 100 beds and a Medicare share of discharges or patient days of at least 60 percent. These hospitals are able to use the highest of three alternative methods of computing Medicare reimbursement.

There are 54 of these hospitals in my State of Iowa and 563 such hospitals around the country. Only two States—Texas and Kansas—have more of the them than does Iowa.

The Medicare-dependent hospital provision of Medicare law is worth around $7.5 million a year to these hospitals in Iowa. At least one of these hospitals gets a million dollars by virtue of its qualification for this status. Others get hundreds of thousands of dollars that they otherwise would not get were it not for this program.

Needless to say, this is money that it will be very difficult to replace should this program cease without some other positive development, such as the elimination of the rural-urban differential, scheduled for October 1, 1994.

A new report issued by the Iowa Hospital Association shows that 32 Iowa hospitals operated in the red at the end of 1991, a 33 percent increase over the previous year. Medicare is the major culprit, according to this report, in failing to cover the cost of the care that these hospitals provide.

Iowa can't afford to lose these hospitals, Mr. Chairman, if Iowa citizens living in rural communities are to have good access to health care.

Not all of these hospitals, it should be pointed out, take a rate different than the standard Medicare reimbursement rate for which they would be qualified. Approximately 30 of these hospital in Iowa take advantage of special rates under this classification.

The reason a special designation was permitted these hospitals is clear from the designation itself—Medicare-dependent. These are small hospitals which are extraordinarily dependent on Medicare reimbursement. There are few ways that these hospitals can make up for contractual adjustments—the difference between hospital charges and Medicare reimbursement.

This provision of Medicare law ends March 31, 1993, but hospitals lose eligibility at the end of their fiscal year. Thus, some hospitals dropped out in April of this year. Another large group dropped out in June 30, 1992, including in Iowa a very large group, 48 of the 54 eligible. Others will drop out in September and in December of this year.

What our bill does is extend this provision, currently due to expire on March 31, 1993, until March 31, 1994 under the same terms as in current law, and then until September 30, 1994, under terms that would provide eligible hospitals with 50 percent of the difference between their standard reimbursement and the highest rate permitted under terms of the Medicare-dependent hospital provisions. The bill would also be retroactive, permitting those hospitals which have already lost this status because of current law requirements to be reimbursed as though no interruption in that status had occurred.

Our bill carries the Medicare-dependent hospitals provision forward until September 30, 1994, because the difference between urban and rural payment rates end on that date and hospitals will be on a level playing field, at least as far as Medicare reimbursement is concerned.

Some had advocated a simple 1-year extension of the program on the grounds that the urban-rural differential would be being phased out, and that other changes would be occurring in the hospital part of the Medicare Program within the same general period of time.

However, a 1-year extension would have simply recreated next year the same problem we are now facing. Many hospitals would have been out of the Medicare-dependent hospital program for a year or more before final phasing out of the urban-rural differential. Thus, we felt that a longer extension was called for.

Some had advocated a full 2-year extension of the program. But, a full 2-year extension would not only be considerably more expensive than the bill we propose today, but the Medicare-dependent hospitals would be getting extra payment for some time after elimination of the urban-rural differential.

We have not included an offset in the bill, but under our budget rules, of course, the extension of this provision will have to be paid for when we act on it. I understand the concern within the hospital community that the cost of the bill would be paid for from funds now going to urban hospitals, or from funds now going to other rural, not Medicare-dependent, hospitals. Speaking for myself, I would like to find a way to pay for this legislation that does not come from within the hospital payment component of Medicare.

Mr. President, rural hospitals in my State are not doing well under the Medicare Program. The administrators of many of these hospitals in my State have been in touch with me about the even tighter fiscal crunch they will face if they lose this status.

Therefore, I will be working hard to pass and send this legislation to the President before the Congress adjourns later this year.

U.S. COMMITTEE FOR REFUGEES CALLS ATTENTION TO DRAMATIC GROWTH IN WORLD REFUGEE PROBLEMS

Mr. PELL. Mr. President, the 1992 World Refugee Survey published by the U.S. Committee for Refugees sets forth in a single volume the tragic dimensions of the world's refugee crises. While it had been hoped that 1992 might be a time of peaceful reconciliation and refugee repatriation, we have seen instead the new flood of refugees displaced by fighting in the former Yugoslavia, the plight of some 1.5 million persons in Somalia, the majority of them women and children, facing imminent death from starvation, the wide-ranging drought in the countries of southern Africa, and, closer to home, the continued flow of refugees from Haiti.

The World Refugee Survey each year provides the essential background information and statistics on refugees that are needed to comprehend the problems, as well as the solutions, being worked on by the United Nations High Commissioner for Refugees, the International Committee of the Red Cross, and the many other governmental and nongovernmental organizations that do so much to relieve the plight of refugees.

I ask that the analysis "The Year in Review" by Roger P. Winter, director of the U.S. Committee for Refugees, which introduces the World Refugee Survey for 1992 be printed in the RECORD at this point.

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

[From World Refugee Survey, 1992]

THE YEAR IN REVIEW

(By Roger P. Winter)

The year 1991 was one of mega-change; the concept of "transition" does not do it justice. It produced a total transformation in the world's framework for addressing political, human rights, and humanitarian matters. Many old relationships became invalid, but we remained unsure of the new. Generally the direction was positive, but the reemergence of violent European and Central Asian tribalism must give the entire world pause.

Consider this very selective and obviously incomplete list of developments in 1991 that bear directly on refugees and displaced people:

The Soviet Union is GONE, yet we have no confidence that what follows will bring less conflict in the world. The prospects, in fact, seem to be for higher numbers of refugees and displaced people.

The year saw the birth of a plethora of newly sovereign states—fifteen out of the ashes of the USSR; Croatia and Slovenia; probably Eritrea; possibly Somaliland, as well as a reunited Germany and Yemen.

The Gulf War spiked upwards the number of refugees in the world and laid new parameters on discussions of the meaning of national sovereignty.

Yugoslavia committed suicide, and killed a lot of people in the process, while Europe struggled to confront its own indecision as to its role in intervening.

A face-to-face peace process at least began in the Middle East.

South Africa reentered the world community, the UN High Commissioner for Refugees moved in, and refugees began to return.

The Horn of Africa saw the collapse of two entrenched dictatorships. In Ethiopia, the change produced some hope; in Somalia, the world's least understandable civil war degenerated into total anarchy in the capital, Mogadishu.

A UN-sponsored peace agreement was negotiated in Cambodia, ending more than a decade of civil war. The peace plan holds out both the promise of safe repatriation for 370,000 Cambodian refugees in Thailand and the threat of a return to power by the universally despised Khmer Rouge.

The entire world recognized the courage and moral authority of Nobel Peace Prize winner Aung San Suu Kyi, while at home in Burma, moral midgets with guns continued to hold democracy captive.

A peace accord for El Salvador became UN Secretary General Javier Perez de Cuellar's parting gift to the world and to Butros Butros-Ghali, his successor.

The world's only superpower stained its soul in its maltreatment of Haitian boat people, perhaps the Western Hemisphere's most brutalized population.

"American First" became the rallying cry behind which admirable and proper concern for the desperately needy in U.S. society was deformed into scapegoating of any and all available targets, tinged with racism and destructive isolation.

This list could go on. But no development, of course, matches in impact the demise of the Soviet Union. It holds massive implications, for regional conflicts in the developing world and elsewhere, world peace, the functioning of the United Nations, nuclear proliferation, and other utilization, democratization, and other overarching aspects of world society. How far the mighty have fallen! A superpower society of enormous infrastructure—monuments, buildings, subways, power plants, and military strength, blessed with a well-educated, unusually cultured population—now is incapable of feeding its people, keeping them warm, giving them a survivable present, a coherent future. And still the end of the plunge is not yet in sight.

The peripheral republics generally see little difference between Soviet imperialism and Russian imperialism. Russian President Boris Yeltsin framed their fear when he suggested that Russia might seek to reshape its borders to embrace ethnic Russian populations residing as minorities in other republics. Columnist William Safire has written that in moving "away from empire there is concern about healthy nationalism's flip side of ethnic repression and local war. . . ." Journalist Michael Dobbs suggests, "The nightmare scenario is Yugoslavia writ large, a bloody civil war accompanied by the mutation of communism into nationalism." And there are already wars a-plenty—including those in and around Nagorno-Karabakh in Azerbaijan, South Ossetia in Georgia, and Georgia's own civil war. All of these conflicts have produced refugees and displaced people. Ethnic Russians, often the agents of past imperialism, are also moving in significant numbers with the potential for much more. And they are not alone.

The Soviet Union's historic ethnic policy has produced a more bizarre map laden with "automomous" structures embedded within many republics. As each republic declared its independence from the old union, each autonomous area declared its independence from the republic. The potential for conflict is astounding. As Dobbs points out, "From President Mikhail Gorbachev down, virtually every Soviet citizen is descended from more than one nation, making a civilized divorce practically impossible."

For now, most nationality groups are scrambling for position in a bleak economy and confused political framework. But said Rashab Safin, a Tartar leader in Russia, "The big empire that was called the Soviet Union has already collapsed. Now it is the turn of the small empire (Russia). What is happening is historically inevitable. Not a single empire survives forever. They all collapse—and this one will as well."

Nevertheless, many throughout Russia and the other republics struggled valiantly towards democracy and peaceful resolution of conflict. And, too many outside the republics of the Commonwealth of Independent States (CIS) recognized the need to respond to the deteriorating humanitarian situation there, though predictably the initial focus in Europe was on the need for a new Iron Curtain to keep out all potential migrants from the east. Outside governments also too slowly began to realize the need to use their new diplomatic relations with each emerging republic to minimize compelled migration by avoiding actions such as the dismissing of Russians from their jobs or the consideration of parliamentary resolutions threatening to disenfranchise thousands of Russians or others (e.g. in Latvia and Lithuania).

Outside of the CIS, despite the list of critical developments cited above, the major issues that relate to refugees and displaced people were similar to those of 1990. Weapons were still being mass produced and massively and irresponsibly distributed, such as China's substantial sales to Sudan with Iranian financing. Globally, particularly in Africa, democratization did make progress, a trend that contributes to hope for the future, for, as James H. Billingham noted, ". . . out of the large and generally depressing literature on how wars actually start in the modern world, there is one encouraging fact: democracies in history do not fight one another." And the United Nations, despite its structural limitations, is increasingly showing that it can more nearly approximate what our world needs it to be.

So how did 1991 unfold in terms of the five point agenda set forth in this column last year and, now, proposed here again as an equally valid agenda for 1992?

1. Advance and institutionalize international protection and assistance for internally displaced people.

This is surely one agenda item on which a great deal materialized in 1991. The allied intervention into Iraq to benefit at-risk Kurds and Shi'ites was not necessarily precedential because of the unique conditions under which it occurred, but it certainly did charge the debate. The UN struggled mightily with the need to confront more directly its responsibilities for internally displaced people and in fact made progress with the creation of the Office of the Emergency Relief Coordinator, a high level "Supremo" with important new tools for improving the UN's ability to respond to a wide range of humanitarian emergencies. Still, the system clings to the concept of at least "minimal acquiescence" by a government before the UN will respond. It never really confronted the heart of the problem: to recognize that there is evil in the world and that, in isolated cases when a rogue government debauches its own people, the lines for international action on behalf of the people must both exist and be clear. It therefore did not resolve this most serious problem. Nevertheless, the days of Pol Pots hiding their horrors behind a deformed concept of "national sovereignty" must end. As professor Aristide Zolberg said, "States may assert that sovereignty is absolute, but we don't have to believe them."

Increasingly, people worldwide understand that a codified international system for approaching this type of situation, embracing both universal and regional mechanisms, is the best method for resolving the humanitarian problem while avoiding neocolonialistic abuse. Former UN Secretary General Perez de Cuellar noted, "We are clearly witnessing what is probably an irresistible shift in public attitudes toward the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents." The international community must make the choice Boris Yeltsin claims his government has made: "We have made an irrevocable choice in which the human being is the supreme

value and his interests constitute the basis of the foreign and domestic policies of the State. . . ." The international community needs to make that same commitment and proceed to put the practical mechanisms in place to achieve that end, regardless of the encroachment on "sovereign" governments.

2. Strengthen the multilateral humanitarian institutions.

Despite the theatrics regarding the "Supremo," there was not improvement in 1991 in terms of underlying commitment to increasing the diplomatic, operational, and financial strength of the office of the UN High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross, and other operational international entities that deal with refugees and displaced people. While huge sums of money were brought to bear on people displaced in connection with the Persian Gulf War, we continued to regress on basic care and maintenance for the rest of the refugees and displaced people worldwide. Despite the magnitude of potential displacement in the former Soviet Union, UNHCR was struggling to open a one-person office in Moscow as 1991 closed. It is in a resource and personnel ceiling straightjacket, caused consciously by donor governments. UNHCR's performance in Ethiopia/Eritrea again justifiably came in for muted criticism. Yet, hypocritically, major donors criticized its performance in the aftermath of the Gulf War while not accepting that they themselves were the greatest determinants of that performance.

In fact, the world community ought not to scapegoat UNHCR but rather commit to making it better, just as it must with the entire UN system. Yet as the year closed, member states were one billion dollars in arrears in payments to the UN (only 68 of 159 members had paid in full), and the balance due was "the highest level of unpaid member debt in history." The United States was the largest single debtor.

3. Promote successful repatriation and reintegration of refugees and internally displaced people.

It has often been said of late that 1992 will be a year of repatriation. My great fear, however, is that it will be a year of lost opportunity regarding repatriation. My colleague Anna Cecelia Escalante recently pointed out that "peace must be based on more than the mere laying down of arms." So too repatriation, to be maximally successful, must be more than physical movement back across a border or to a home area.

The opportunity is the chance to convert repatriation into reconciliation through wise planning and realistic investment of resources. The opportunities for repatriation—Angola, South Africa, Cambodia, Somalia, Ethiopia/Eritrea, Western Sahara, hopefully one day soon Afghanistan, Liberia, Mozambique—are many, and almost all will involve return to totally devastated home areas. Journalist Paul Lewis points out that UNHCR "as a rule of thumb reckons it costs twice as much to send refugees home and get them restarted as it does to keep them in a camp for a year." But repatriation is a solution, and a camp is not. The hope of investments in repatriation-related development and transitional aid is to capture the momentum of peace for the benefit of all, the diminution of future conflict and refugee flows, the enhancement of democratization.

Unfortunately, looking at what donor governments have been willing to invest in repatriation opportunities in 1991, there is no reason beyond their rhetoric to believe those governments value the opportunities available.

4. Ensure that victims of human conflict in the poorest, least strategically important countries of the world don't continue to be ignored.

We in the NGO and religious communities have essentially failed at this. There is increasing evidence that refugees, internally displaced people, and victims of violence in places like Somalia have lost whatever priority the Cold War competition for their hearts and minds might previously have afforded them. Developed societies, in some cases afflicted with serious recession, seem driven toward less engagement with these matters rather than more. The myth that victims elsewhere in the world are somehow in competition with victims at home is taking root more broadly when the truth is that both sets of victims get the crumbs of available resources.

NGOs and religious bodies have a massive job to do in helping the societies of the developed world humanize their priorities.

5. Fight off the attempts by the rich liberal democracies of the West to cut themselves off from asylum seekers from the second and third worlds.

If we all have learned anything from the environmental movement, it is that the world is ultimately interconnected. It is not possible to draw away from the rest of the world and somehow wall "them" out. It is certainly not possible while maintaining civilized democratic institutions, nor does it make sense economically to wall out newcomers while, as Sir Anthony Parsons has said, preserving "a mammoth old peoples' home" in a fortress Europe, for example. Interdiction policies, such as that of the United States in Mexico or off the coast of Florida, ultimately do not work either because they do not resolve the causes of the movement they seek to deter.

On balance, while the prospects for the world, especially the developed world, have improved in the past year because of the implications of the Cold War's passing, the prospects for refugees and displaced people specifically have not. It is unacceptable that all that struggle, all those resources, including billions of dollars to sustain conflict, and all those lives should have been consumed by geostrategic confrontation, yet when the time for healing arrives, the energy is spent, the cupboard is bare.

This is not the time for the United States or others in the developed world to withdraw from humanitarian commitments to the rest of the world, pursuing isolationism, which Congressman Stephen Solarz rightly calls "a long discredited delusion arisen from the graveyard of bad ideas." This is a time to lead with the very best of our principles—humanism, democratization, sustainable development to benefit all, at home and abroad. The quality of our future and that of our children depend on understanding this.

REMOVAL OF INJUNCTION OF SECRECY TREATY DOCUMENT NO. 102-36

Mr. JOHNSTON. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Treaty with Romania Concerning the Reciprocal Encouragement and Protection of Investment (Treaty Document No. 102-36), transmitted to the Senate today by the President; and ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty Between the Government of the United States of America and the Government of Romania Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and related exchange of letters, signed at Bucharest on May 28, 1992. I transmit also, for the information of the Senate, the report of the Department of State with respect to this treaty.

The treaty will help to encourage U.S. private sector involvement in the Romanian economy by establishing a favorable legal framework for U.S. investment in Romania. The treaty is fully consistent with U.S. policy toward international investment. A specific tenet, reflected in this treaty, is that U.S. investment abroad and foreign investment in the United States should receive fair, equitable, and nondiscriminatory treatment. Under this treaty, the Parties also agree to international law standards for expropriation and expropriation compensation; free transfers of funds associated with investments; and the option of the investor to resolve disputes with the host government through international arbitration.

I recommend that the Senate consider this treaty as soon as possible, and give its advice and consent to ratification of the treaty, with protocol and related exchange of letters, at an early date.

GEORGE BUSH.

The White House, *August 3, 1992.*

AUTHORIZING TESTIMONY AND PRODUCTION OF DOCUMENTS BY AN EMPLOYEE OF THE SENATE

Mr. JOHNSTON. Mr. President, on behalf of the majority leader and the distinguished Republican leader, I send to the desk a resolution on the authorization for testimony and document production by a Senate employee and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 328) to authorize testimony and production of documents by an employee of the Senate in Marian Mixon v. U.S. Department of the Treasury.

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

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

Mr. MITCHELL. Mr. President, an administrative appeal is pending before the Merit Systems Protection Board in which a former employee of the Internal Revenue Service is challenging her employment termination. The employee worked in an IRS office in Mississippi, and one of the events that bears upon her termination was a telephone call she placed to Senator THAD COCHRAN'S office.

Counsel for the Internal Revenue Service has requested that the receptionist in Senator COCHRAN'S office who received this telephone call, Anna Mayfield, testify at this administrative hearing. This resolution authorizes Ms. Mayfield to testify and to produce documents relevant to that telephone call.

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

The resolution (S. Res. 328) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 328

Whereas in the case of Marian Mixon v. U.S. Department of the Treasury, MSPB Docket No. AT-1221-92-0714-W-1, pending before the United States Merit Systems Protection Board, counsel for the Internal Revenue Service has requested the testimony of Anna Mayfield, an employee of the Senate on the staff of Senator Thad Cochran;

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

Whereas when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Anna Mayfield is authorized to testify and produce documents in Marian Mixon v. U.S. Department of the Treasury, except concerning matters for which a privilege should be asserted.

REGARDING THE DESPERATE HUMANITARIAN CRISIS IN SOMALIA

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of Senate Concurrent Resolution 132, regarding the desperate humanitarian crisis in Somalia, and that the Senate then proceed to its immediate consideration, that the concurrent resolution be agreed to and the motion to reconsider-ation laid upon the table, and the preamble agreed to.

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

So the concurrent resolution (S. Con. Res. 132) was agreed to, as follows:

S. CON. RES. 132

Whereas as a result of the civil conflict in Somalia, at least thirty thousand people have died, hundreds of innocent civilians, many of them children, continue to die each day, and an additional one million two hundred thousand lives are at risk;

Whereas the Somali political factions show no signs of ceasing their internecine war for power even as thousands of their own people perish;

Whereas international relief agencies have been unable to deliver adequate humanitarian assistance to those most in need due to increasingly difficult and dangerous conditions, including pervasive banditry and looting;

Whereas the United Nations Security Council, on July 27, 1992, adopted a resolution on the situation in Somalia, including an expansion of United Nations relief efforts and support for the deployment of United Nations security personnel to facilitate the delivery of relief supplies, and the President has expressed strong support for the United Nations proposals; and

Whereas although the Congress has expressed strong support for more active efforts to deliver humanitarian relief to the suffering people of Somalia, the situation has continued to deteriorate: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) condemns in the strongest possible terms the senseless killing and wanton destruction wrought by the political factions in Somalia;

(2) strongly urges these factions to abide by the United Nations ceasefire and to allow the deployment of security forces to protect humanitarian relief deliveries and workers;

(3) commends the dedicated and energetic efforts of United Nations Secretary-General Boutros Boutros Ghali, and his Special Envoy to Somalia, Ambassador Mohammed Sahnoun;

(4) pays tribute to the courageous and heroic actions of the relief agencies working in Somalia;

(5) calls upon the international community, through the United Nations, and in particular the United Nations specialized agencies, to immediately expand its relief efforts in Somalia;

(6) recognizes with appreciation the July 27, 1992, statement of the President urging the United Nations to deploy a sufficient number of security guards to permit relief supplies to move into and within Somalia, and committing funds for such an effort; and

(7) urges the President to work with the United Nations Security Council to deploy these security guards immediately, with or without the consent of the Somalia factions, in order to assure that humanitarian relief gets to those most in need, particularly the women, children and elderly of Somalia.

AUTHORITY FOR COMMITTEES TO REPORT

Mr. JOHNSTON. Mr. President, I ask unanimous consent that during the recess/adjournment of the Senate, that Senate Committees be permitted to file reported Legislative and Executive Calendar business on Thursday, August 27 from 11 a.m. to 3 p.m.

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

PROHIBITION OF USE OF CERTAIN TERMS

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 580, S. 2087, relating to the Visiting Nurse Association, that the committee substitute amendment be adopted, that the bill be read a third time and passed, that the motion to reconsider be laid upon the table and that any statements relating to this item be placed at the appropriate place in the RECORD.

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

So the bill (S. 2087) was read the third time and passed as follows:

SECTION 1. PROHIBITION OF CERTAIN USE OF TERMS "VISITING NURSE ASSOCIATION", "VISITING NURSE SERVICE" "VNA", AND "VNS".

The Attorney General may bring an action in district court to—

(1) impose on any person who is not a visiting nurse association or visiting nurse service, and knowingly commits any of the violations described in section 2, a civil penalty that does not exceed $1,000 for each such violation; and

(2) enjoin any such person from committing any such violation.

SEC. 2. VIOLATIONS FOR WHICH CIVIL PENALTY MAY BE IMPOSED.

For purposes of section 1, a violation shall be any of the following:

(1) Use of the term "visiting nurse association", "visiting nurse service", "VNA", "VNS", or any colorable imitation of any such term, by a person in commerce or in connection with any goods or services in a manner that falsely suggests, or causes any confusion, mistake, or deception, that the goods or services are produced or endorsed by a visiting nurse association or visiting nurse service.

(2) Use of the term "visiting nurse association", "visiting nurse service", "VNA", or any colorable imitation of any such term, by a person in commerce or in connection with any goods or services in a manner that falsely suggests, or causes any confusion, mistake, or deception, that the person is associated in any way with the visiting nurse association or visiting nurse service.

SEC. 3. AVAILABLE OF OTHER REMEDIES.

The remedies provided under this Act shall be in addition to the remedies provided by any other law.

SEC. 4. JURISDICTION.

The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this Act, without regard to the amount in controversy or lack of diversity of citizenship of the parties.

SEC. 5. DEFINITION.

For purposes of this Act, the term "visiting nurse association", "visiting nurse service", "VNA," or "VNS" means a community-based home health care provider comprised of at least a medicare-certified home health agency that is—

(1) controlled, either directly or at the corporate level, by an independent, self-perpetuating, and voluntary board of directors,

(2) exempt from Federal taxation under section 501(a) of the Internal Revenue Code of 1986; and

(3) described in section 501(c)(3) of such Code.

SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—That Act shall take effect on the expiration of the 6-month period beginning on the date of the enactment of this Act.

(b) EXCEPTION.—This Act shall not apply to any person referred to in section 1 who has used

the term "visiting nurse association", "visiting nurse service", "VNA", "VNS", or any colorable imitation of any such term continuously for at least 2 years prior to the date of the enactment of this Act.

FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION ACT OF 1992

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 568, S. 1569, the Federal Courts Study Committee Implementation Act of 1992.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1569) to implement the recommendations of the Federal Courts Study Committee, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment striking out all after the enacting clause and inserting in lieu thereof the following:

That this Act may be cited as the "Federal Courts Study Committee Implementation Act of 1992".

TITLE I—IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SEC. 101. ESTABLISHMENT OF BANKRUPTCY APPELLATE PANELS.

Section 158 of title 28, United States Code, is amended—

(1) in subsection (b)—

(A) by striking out paragraphs (1), (3), and (4);

(B) by redesignating paragraph (2) as paragraph (1); and

(C) by inserting after paragraph (1) (as redesignated by subparagraph (B) of this paragraph) the following:

"(2) The judicial council of each circuit shall establish a bankruptcy appellate panel unless the council certifies that the circuit has insufficient judicial resources to establish such a panel, taking account of bankruptcy judges' caseloads, the geographical dispersion of bankruptcy judges in the circuit, and the opportunity to establish a joint panel with another circuit. If a judicial council certifies that the circuit has insufficient judicial resources to establish a panel, it shall within 90 days thereafter file a report with the Administrative Office of United States Courts describing why the circuit's judicial resources are insufficient to permit establishment of a panel. Any panel established after the date of the enactment of the Federal Courts Study Implementation Act of 1992 shall be established for a period of three years or until a majority of the bankruptcy judges requests the council to discontinue the panel, whichever is earlier. Thereafter, the council may again establish a panel under the same procedures and standards under this paragraph. The council may reconsider its decision not to establish a panel at any time.

"(3) A bankruptcy appellate panel established under this section shall be comprised of three bankruptcy judges from districts within the circuit or circuits, to hear and determine, upon consent of all the parties, appeals under subsection (a). A bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title."; and

(2) by amending subsection (c) to read as follows:

"(c) All appeals under this section shall be heard by a bankruptcy appellate panel under subsection (b), unless the appellant elects to file an appeal under subsection (a) or any other party within 30 days after service of notice of appeal elects to have the appeal heard under subsection (a). An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by rule 8002 of the Bankruptcy Rules.".

SEC. 102. SUPREME COURT AUTHORITY TO PRESCRIBE RULES FOR APPEAL OF INTERLOCUTORY DECISIONS.

Section 1292 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) The Supreme Court may prescribe rules in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals, that is not otherwise provided for under subsection (a), (b), (c), or (d).".

SEC. 103. ABOLITION OF TEMPORARY EMERGENCY COURT OF APPEALS.

(a) APPEALS UNDER ECONOMIC STABILIZATION ACT.—Section 211 of the Economic Stabilization Act of 1970 (Public Law 91-379; 84 Stat. 799) is amended by striking out subsections (b) through (h) and inserting in lieu thereof the following:

"(b) Appeals from orders or judgments entered by a district court of the United States in cases and controversies arising under this title may be brought in the United States Court of Appeals for the Federal Circuit if the appeal is from a final decision of the district court or is an interlocutory appeal permitted under section 1292(c) of title 28, United States Code.".

(b) JUDICIAL REVIEW OF EMERGENCY ORDERS UNDER THE NATURAL GAS POLICY ACT.—Section 506(c) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3416(c)) is amended—

(1) in the first sentence, by striking out "the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended," and inserting in lieu thereof "the United States Court of Appeals for the Federal Circuit"; and

(2) by striking out "Temporary Emergency Court of Appeals" each place it appears and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit".

(c) CONFORMING AMENDMENTS.—Section 1295(a) of title 28, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (9);

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraphs:

"(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

"(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

"(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

"(14) of an appeal under section 523 of the Energy Policy and Conservation Act.".

(d) ABOLITION OF COURT.—The Temporary Emergency Court of Appeals created by section 211(b) of the Economic Stabilization Act of 1970 is abolished effective six months after the date of the enactment of this Act.

(e) PENDING CASES.—(1) Any appeal which, before the effective date of abolition described under subsection (d), is pending in the Temporary Emergency Court of Appeals but has not been submitted to a panel of such court as of that date shall be assigned to the United States Court of Appeals for the Federal Circuit as though the appeal had originally been filed in that court.

(2) Any case which, before the effective date of abolition described under subsection (d), has been submitted to a panel of the Temporary Emergency Court of Appeals and as to which the mandate has not been issued as of that date shall remain with that panel for all purposes and, notwithstanding the provisions of sections 291 and 292 of title 28, United States Code, that panel shall be assigned to the United States Court of Appeals for the Federal Circuit for the purpose of deciding such case.

SEC. 104. JURISDICTION FOR MAGISTRATE JUDGES FOR MODIFICATION OF CONDITIONS OR REVOCATION OF PROBATION OR SUPERVISED RELEASE AFTER IMPRISONMENT.

Section 3401 of title 18, United States Code, is amended—

(1) in subsection (d) by striking out "and to revoke or reinstate the probation of any person granted probation by him." and inserting in lieu thereof "and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge."; and

(2) by adding at the end thereof the following new subsections:

"(h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.

"(i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended sentence under the provisions of section 3583(e) of this title. The magistrate judge shall file his proposed findings and recommendations.".

SEC. 105. EXHAUSTION OF REMEDIES.

Section 7 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e) is amended to read as follows:

"§1997e. Exhaustion of remedies

"(a) CERTIFICATION.—(1) In any action brought pursuant to section 1979 of the Revised Statutes (42 U.S.C. 1983) by an adult confined in any jail, prison, or other correctional or detention facility, the court shall, if it finds that such a requirement would be appropriate and in the interests of justice, continue the case for 90 days in order to require exhaustion of administrative remedies if the defendant shows the court, or if the Attorney General certifies, under subsection (b), that plain, speedy, and effective remedies are available to the confined adult. Exhaustion of remedies shall not be required in any case in which the claimant alleges facts that show a risk of substantial or irreparable harm.

"(2) The failure of the Attorney General to certify an administrative remedy under subsection (b), or the decision of the Attorney General to suspend or withdraw the certification of an administrative remedy under subsection (c), shall not be binding on the courts.

"(b) PROCEDURE FOR CERTIFICATION.—The Attorney General shall develop a procedure for the prompt review and certification of administrative remedies, as voluntarily submitted by the various States and political subdivisions, for the resolution of grievances of adults confined in any jail, prison, or other correctional or detention facility, to determine if the administrative remedies provide plain, speedy, and effective remedies.

"(c) SUSPENSION OR WITHDRAWAL OF CERTIFICATION.—The Attorney General may suspend or withdraw the certification of an administrative remedy under subsection (b) if the Attorney General has reasonable cause to believe that the administrative remedy no longer provides a plain, speedy, and effective remedy.

"(d) FAILURE OF STATE TO ADOPT OR ADHERE TO ADMINISTRATIVE REMEDY.—The failure of a State or political subdivision of a State to adopt or adhere to an administrative remedy consistent with this section shall not constitute the basis for an action under section 3 or 5.".

SEC. 106. PARTIES' CONSENT TO DETERMINATION BY BANKRUPTCY COURT.

Section 157(c)(2) of title 28, United States Code, is amended by adding at the end thereof the following: "For purposes of this paragraph, a party shall be deemed to consent to a bankruptcy judge's findings becoming final unless the party objects within 10 days after entry of the bankruptcy judge's findings.".

SEC. 107. INTERCIRCUIT TRANSFERS.

Section 291(a) of title 28, United States Code, is amended to read as follows:

"(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.".

TITLE II—JUDICIAL SURVIVORS' ANNUITIES IMPROVEMENTS

SEC. 201. JUDICIAL SURVIVORS' ANNUITIES AMENDMENTS.

(a) ELECTION.—Section 376 of title 28, United States Code, is amended in the matter following subsection (a)(1)(G)—

(1) by striking out "or" at the end of clause (v); and

(2) by adding after clause (vi) "or (vii) the date of the enactment of the Federal Courts Study Committee Implementation Act of 1992;".

(b) CONTRIBUTIONS.—Section 376(b) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(b)";

(2) in the first sentence by striking out "including any 'retirement salary', a sum equal to 5 percent of that salary." and inserting in lieu thereof "a sum equal to 1.5 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary of a senior judge eligible to perform judicial services under this title or of a judicial official on recall under sections 155(b), 178, 371(b), 372(a), 373(c)(4), 375, or 636(h) of this title shall be an amount equal to 1.5 percent of retirement salary.";

(3) by redesignating all that follows the first sentence (as amended by paragraph (2) of this subsection) as paragraph (3) and inserting before such paragraph (3) the following new paragraph:

"(2) A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within ninety days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Director of the Administrative Office of the United States Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her retirement salary, a sum equal to 3.5 percent of the deferred 'retirement salary' which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have revoked his or her election under subsection (a) of this section."; and

(4) in paragraph (3), as redesignated by paragraph (3) of this subsection, by striking out "so deducted and withheld from the salary of each such judicial official" and inserting in lieu thereof: "deducted and withheld from the salary of each such judicial official under paragraphs (1) and (2) of this subsection".

(c) DEPOSITS.—Section 376(d) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "5 percent" and inserting in lieu thereof "3.5 percent"; and

(2) in paragraph (2) by striking out "5 percent" and inserting in lieu thereof "3.5 percent".

(d) REFUND OF DEPOSITS.—Section 376(g) of title 28, United States Code, is amended to read as follows:

"(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 1.5 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section a 'reasonable period of time' shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.".

(e) PAYMENT OF ANNUITIES.—Section 376(h)(1) of title 28, United States Code, is amended by striking out "or while receiving 'retirement salary'," and inserting in lieu thereof "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section".

(f) CREDITABLE SERVICE.—Section 376(k) of title 28, United States Code, is amended—

(1) in paragraph (3) by striking out "and" at the end thereof;

(2) in paragraph (4) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) those years during which such judicial official had deductions withheld from his or her 'retirement salary' in accordance with subsection (b) (1) or (2) of this section.".

(g) COMPUTATION OF ANNUITY.—Section 376(l) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "(i) during those three years of such service in which his or her annual salary" and inserting in lieu thereof "(i) during those three years of such service, or during those three years while receiving a retirement salary in which his or her annual salary or retirement salary"; and

(2) in paragraph (1) by redesignating subparagraph (D) as subparagraph (E) and inserting after subparagraph (C) the following:

"(D) the number of years during which the judicial official had deductions withheld from his or her retirement salary under subsection (b) (1) or (2) of this section; plus".

(h) TERMINATION.—Section 376 of title 28, United States Code, is amended by adding at the end of that section the following new subsection:

"(n) If any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Director of the Administrative Office of the United States Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulations prescribe. The Director may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official established to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.".

(i) CREDIT FOR PRIOR CONTRIBUTIONS AT HIGHER RATE.—Notwithstanding any other provision of law, the contribution under section 376(b) (1) or (2) of title 28, United States Code (as amended by this Act), of any judicial official who is within the purview of section 376 on the effective date of this Act shall be reduced by 0.5 percent for a period of time equal to the number of years of service for which the judicial official has made contributions or deposits before the enactment of this Act to the credit of the Judicial Survivors' Annuities Fund or for eighteen months, whichever is less, if such contributions or deposits were never returned to the judicial official. For purposes of this subsection, the term "years" shall mean full years and twelfth parts thereof.

(j) REDEPOSIT OF PRIOR CONTRIBUTIONS.—Any judicial official who makes an election under section 376(b) of title 28, United States Code, may make a redeposit to the credit of the Judicial Survivors' Annuities Fund in installments, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. If a judicial official elects to make a redeposit in installments—

(1) the Director shall require that the first installment payment made shall be in an amount no smaller than the last eighteen months of salary deductions or deposits previously returned to that judicial official in a lump-sum payment; and

(2) the election under section 376(b) of title 28, United States Code, shall be effective upon payment of the first such installment.

SEC. 202. LIFE INSURANCE COVERAGE.

(a) ELIGIBILITY.—Section 8701(a) of title 5, United States Code, is amended—

(1) in paragraph (9) by striking out "and" after the semicolon;

(2) in paragraph (10) by adding "and" after the semicolon; and

(3) by inserting after paragraph (10) and preceding the matter before subparagraph (A) the following new paragraph:

"(11) a judicial official, including a judge of the United States Claims Court (i) who is in regular active service, or (ii) who is retired from regular active service under section 178 of title 28, United States Code; a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands (i) who is in regular active service, or (ii) who is retired from regular active service under section 373 of title 28, United States Code; a bankruptcy judge or a magistrate judge (i) who is in regular active service, or (ii) who retired after attaining age 65 from regular active service under chapter 83 or 84 of this title, section 377 of title 28, or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (28 U.S.C. 377 note; Public Law 100-659);".

(b) ADDITIONAL OPTIONAL LIFE INSURANCE.—

(1)(A) Sections 8706(a) and 8714b(c)(1) of title 5, United States Code, are each amended in the second sentence by inserting "and judicial officials described under section 8701(a)(11)" after "section 8701(a)(5) (ii) and (iii)".

(B) Sections 8714a(c)(1) and 8714c(c)(1) of title 5, United States Code, are each amended by adding after the first sentence "Justices and judges described under section 8701(a)(5) (ii) and

(iii) and judicial officials described under section 8701(a)(11) of this chapter are deemed to continue in active employment for purposes of this chapter.".

(2) The amendments made under paragraph (1) shall apply to a judicial officer described in section 8701(a)(11) of title 5, United States Code (as amended by this Act) who—

(A) is retired under chapter 83 or 84 of title 5, United States Code, section 178, 373, or 377 of title 28, United States Code, or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (28 U.S.C. 377 note); and

(B) retire on or after August 1, 1987.".

(c) CONVERSION RIGHTS.—(1) Section 8714a(c)(3) of title 5, United States Code, is amended by inserting "or a judicial official as defined under section 8701(a)(11) who leaves office without an immediate annuity" after "for continuation of the judicial salary".

(2) Section 8714b(c)(1) of title 5, United States Code, is amended in the third sentence by inserting "or a judicial official as defined under section 8701(a)(11) who leaves office without an immediate annuity" after "for continuation of the judicial salary".

SEC. 203. HEALTH INSURANCE FOR SPOUSES.

Section 8901(3) of title 5, United States Code, is amended—

(1) in subparagraph (C) by striking out "and" at the end thereof;

(2) in subparagraph (D) by adding "and" at the end thereof; and

(3) by adding at the end thereof the following new subparagraph:

"(E) a member of a family who is a survivor of—

"(i) a Justice or judge of the United States, as defined under section 451 of title 28, United States Code;

"(ii) a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands;

"(iii) a judge of the United States Claims Court; or

"(iv) a United States bankruptcy judge or a full-time United States magistrate judge;".

SEC. 204. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this title.

TITLE III—JUDICIAL FINANCIAL ADMINISTRATION

SEC. 301. AWARD OF FILING FEES IN FAVOR OF THE UNITED STATES.

(a) ACTIONS COMMENCED BY THE UNITED STATES.—Section 2412(a) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.".

(b) DISPOSITION OF FILING FEES.—Section 1931 of title 28, United States Code, is amended by inserting "or pursuant to an award in favor of the United States under section 2412(a)(2) of this title" after "chapter".

SEC. 302. AMENDMENTS TO THE JUDICIARY AUTOMATION FUND.

Section 612 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) in the second sentence by striking out "equipment for" and inserting in lieu thereof "equipment, program activities included in the courts of appeals, district courts, and other judicial services account of"; and

(B) in the third sentence—

(i) by inserting ", support personnel in the courts and in the Administrative Office of the United States Courts," after "personal services"; and

(ii) by striking out "in the judicial branch" and inserting in lieu thereof "purchased from the Fund. In addition, all agencies of the judiciary may make deposits into the Fund to meet their automatic data processing needs in accordance with subsections (b) and (c)(2).";

(2) in subsection (b)(1), by striking out "judicial branch", and inserting in lieu thereof "activities funded in subsection (a) and shall include an annual estimate of any fees that may be collected under section 404 of the Judiciary Appropriations Act, 1991 (28 U.S.C. 1913 note; Public Law 101-515; 104 Stat. 2132)";

(3) in subsection (b)(2), by striking out "judicial branch of the United States" and inserting in lieu thereof, "activities funded under subsection (a)";

(4) in subsection (c)(1)(A), by inserting "all fees collected by the judiciary under section 404 of the Judiciary Appropriations Act, 1991 (28 U.S.C. 1913 note; Public Law 101-515; 104 Stat. 2132)" after "surplus property";

(5) in subsection (e)(1) by striking out "$75,000,000" and inserting in lieu thereof "amounts estimated to be collected under subsection (c) for that fiscal year";

(6) by amending subsection (i) to read as follows:

"(i) REPROGRAMMING.—The Director of the Administrative Office of the United States Courts, under the supervision of the Judicial Conference of the United States may transfer amounts not in excess of $1,000,000 from the Fund into the account to which the funds were originally appropriated. Any amounts in excess of $1,000,000 may be transferred only by following reprogramming procedures in compliance with provisions set forth in section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100-459; 102 Stat. 2227); and";

(7) in subsection (j) in the second sentence by inserting "in statute" after "not specified"; and

(8) in subsection (l) by striking "1994" and inserting in lieu thereof "1999", and by striking out "'Judicial Services Account'" and inserting in lieu thereof "fund established under section 1931".

SEC. 303. VICTIMS' RIGHTS FUNDING.

Section 1402(c) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(c)) is amended to read as follows:

"(c)(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

"(2) The Fund shall be available as follows:

"(A) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(B) Of the next $160,000,000 deposited in the Fund in a particular fiscal year—

"(i) 49.5 percent shall be available for grants under section 1403; and

"(ii) 45 percent shall be available for grants under section 1404(a);

"(C) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404A.

"(D) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(E) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under subparagraphs (A) through (D) shall be available as follows:

"(i) 47.5 percent shall be available for grants under section 1403.

"(ii) 47.5 percent shall be available for grants under section 1404(a).

"(iii) 5 percent shall be available for grants under section 1404(c)(1)(B).".

SEC. 304. FILING FEES.

Section 1931 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "The following"; and

(2) by adding at the end thereof the following new subsection:

"(b) If the court authorizes a fee of less than $120, the entire fee, up to $60, shall be deposited into the special fund provided in this section.".

TITLE IV—JURY MATTERS

SEC. 401. JURY SELECTION.

Section 1863(b)(2) of title 28, United States Code, is amended by adding at the end thereof the following: "The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.".

SEC. 402. EXPANDED WORKERS' COMPENSATION COVERAGE FOR JURORS.

(a) EXPANSION OF COVERAGE.— Section 1877(b)(2) of title 28, United States Code, is amended—

(1) by striking out "or" at the end of subparagraph (C); and

(2) by inserting before the period at the end of subparagraph (D) the following: ", or (E) traveling to or from the courthouse pursuant to a jury summons or sequestration order, or as otherwise necessitated by order of the court".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to jurors serving on or after December 1, 1991.

SEC. 403. COMPENSATION FOR LOSS OR DAMAGE TO PERSONAL PROPERTY OF JURORS.

Section 604 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(i)(1) The Director may compensate any person for the loss of, or damage to, personal effects of such person incurred incident to the performance of duties pursuant to a summons to serve as a grand or petit juror. Such compensation shall be consistent with sections 3721 and 3723 of title 31.

"(2) The Director shall prescribe guidelines for the allowance of claims for compensation under paragraph (1) of this subsection.".

SEC. 404. GRAND JURY TRAVEL.

Section 1871(c) of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines set by the Judicial Conference, the actual reasonable costs of travel by aircraft when weather conditions warrant and when certified by the chief judge of the district court in which the grand juror serves.".

SEC. 405. PERMANENT AUTHORIZATION FOR OPTIONAL USE OF NEW JURY SELECTION PROCESS.

(a) AUTHORITY TO USE ONE-STEP PROCEDURE.—Section 1878, title 28, United States Code, is amended to read as follows:

"§ 1878. Optional use of a one-step summoning and qualification procedure

"(a) At the option of each district court, jurors may be summoned and qualified in a single

procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

"(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure as authorized by this section.".

(b) CONFORMING AMENDMENT.—The item relating to section 1878 in the table of sections for chapter 121 is amended to read as follows:

"1878. Optional use of a one-step summoning and qualification procedure.".

(c) SAVINGS PROVISION.—For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section), the amendment made by subsection (a) of this section shall be effective on and after January 1, 1992.

TITLE V—MISCELLANEOUS

SEC. 501. PRETERMISSION OF REGULAR SESSIONS OF COURT OF APPEALS.

Section 48(c) of title 28, United States Code, is amended by striking out ", with the consent of the Judicial Conference of the United States,".

SEC. 502. REPORTS AND STATISTICS.

(a) ELIMINATION OF DUPLICATIVE REPORTING REQUIREMENT.—Section 1121(a) of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3421(a)) is amended by adding at the end thereof "No report is required under this section after January 1, 1992.".

(b) TRANSFER OF REPORTING DUTY TO ADMINISTERING AGENCY.—Section 2412(d)(5) of title 28, United States Code, is amended by striking out "The Director" and all that follows through "this title," and inserting in lieu thereof "The Attorney General shall report annually to the Congress on".

(c) EXTENSION FOR JUDICIAL CENTER REPORT.—Subsection 302(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 104 Stat. 5104) is amended by striking out "2 years" and inserting in lieu thereof "2 years and 9 months".

SEC. 503. RECYCLING AND REUSE OF RECYCLABLE MATERIALS.

Section 604(g) of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"(3)(A) In order to promote the recycling and reuse of recyclable materials, the Director may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

"(B) The sale or disposal of recyclable materials under subparagraph (A) of this paragraph shall be consistent with the procedures provided in section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) for the sale of surplus property.

"(C) Proceeds from the sale of recyclable materials under subparagraph (A) of this paragraph shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.".

SEC. 504. BANKRUPTCY RULEMAKING.

(a) METHODS OF PRESCRIBING BANKRUPTCY RULES.—Section 2073 of title 28, United States Code, is amended—

(1) in subsection (a) (2), by striking out "section 2072" and inserting in lieu thereof "sections 2072 and 2075";

(2) in subsection (d), by inserting "or 2075" after "2072"; and

(3) in subsection (e), by inserting "or 2075" after "2072".

(b) EFFECTIVE DATE OF BANKRUPTCY RULES.—Section 2074(a) of title 28, United States Code, is amended by inserting "or 2075" in the first sentence after "2072".

(c) CONFORMING AMENDMENT.—Section 2075 of title 28, United States Code, is amended by striking out the third undesignated paragraph.

SEC. 505. VENUE IN DIVERSITY AND FEDERAL QUESTION CASES.

Section 1391 of title 28, United States Code, is amended—

(1) in subsection (a)(3) by inserting before the period "if there is no district in which the action may otherwise be brought"; and

(2) in subsection (b), by striking out "in" before "(1)" and inserting in lieu thereof "if".

SEC. 506. SUMMARIES OF REPORTS TO CONGRESS.

Section 103(c)(4)(B) of the Civil Justice Reform Act of 1990 (Public Law 101–650) is amended by striking "the reports" and inserting in lieu thereof "summaries of the reports".

SEC. 507. BANKRUPTCY ADMINISTRATOR PROGRAM.

(a) PRESIDING OFFICER.—A bankruptcy administrator appointed under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat. 3123), as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101–650; 104 Stat. 5115), or the bankruptcy administrator's designee may preside at the meeting of creditors convened under section 341(a) of title 11, United States Code. The bankruptcy administrator or the bankruptcy administrator's designee may preside at any meeting of equity security holders convened under section 341(b) of title 11, United States Code.

(b) EXAMINATION OF THE DEBTOR.—The bankruptcy administrator or the bankruptcy administrator's designee may examine the debtor at the meeting of creditors and may administer the oath required under section 343 of title 11, United States Code.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of enactment of this Act.

SEC. 508. COSTS AND FEES IN THE UNITED STATES COURT OF VETERANS APPEALS.

(a) IN GENERAL.—Section 2412(d)(2)(F) of title 28, United States Code, is amended by inserting before the semicolon "and the United States Court of Veterans Appeals".

(b) APPLICATION TO PENDING CASES.—The amendment made by subsection (a) shall apply to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this Act.

SEC. 509. COURT TO BE HELD AT LANCASTER, PENNSYLVANIA.

Section 118(a) of title 28, United States Code, is amended by inserting "Lancaster," before "Reading".

TITLE VI—JUDICIARY PERSONNEL ADMINISTRATION, BENEFITS, AND PROTECTIONS

SEC. 601. JUDICIAL RETIREMENT MATTERS.

(a) CREDITABLE SERVICE FOR CERTAIN JUDICIAL ADMINISTRATIVE OFFICIALS.—(1) Section 611(d) and 627(e) of title 28, United States Code, are each amended by inserting "a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the minority of a committee or subcommittee of the Senate or House of Representatives," after "Congress,".

(2)(A) Sections 611(b) and 627(c) of such title are each amended—

(i) in paragraph (b), by striking out "who has served at least fifteen years and" and inserting in lieu thereof "who has at least fifteen years of service and has"; and

(ii) in the first undesignated paragraph, by striking out "who has served at least ten years," and inserting in lieu thereof "who has at least ten years of service,".

(B) Sections 611(c) and 627(d) of such title are each amended—

(i) by striking out "served at least fifteen years," and inserting in lieu thereof "at least fifteen years of service,"; and

(ii) by striking out "served less than fifteen years," and inserting in lieu thereof "less than fifteen years of service,".

(b) JUDICIAL RETIREMENT FUNDS.—Section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)) is amended by inserting after "Judicial survivors' annuities fund (10–8110–0–7–602);" the following:

"Judicial Officers' Retirement Fund (10–8122–0–7–602);

Claims Court Judges' Retirement Fund (10–8124–0–7–602);".

(c) JUDICIARY TRUST FUNDS.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after "Payment to civil service retirement and disability fund (24–0200–0–1–805);" the following:

"Payment to Judiciary Trust Funds (10–0941–0–1–752);".

SEC. 602. FULL-TIME STATUS OF COURT REPORTERS.

Section 753(e) of title 28, United States Code, is amended by inserting after the first sentence the following: "For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter pursuant to the preceding sentence.".

SEC. 603. FEDERAL JUDICIAL CENTER.

(a) FUNCTIONS.—Subsection 620(b) of title 28, United States Code, is amended—

(1) in paragraph (4) by striking out "and" at the end thereof;

(2) in paragraph (5) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(6) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with and assist agencies of the Federal Government and other appropriate organizations in providing information and advice to further improvement in the administration of justice in the courts of foreign countries and to acquire information about judicial administration in foreign countries that may contribute to performing the other functions set forth in this section.".

(b) COMPENSATION.—Subsection 625(b) of title 28, United States Code, is amended by inserting, after "section 5316, title 5, United States Code", and before the colon, the following language: ", except the Director may fix the compensation of no more than 5 percent of the authorized positions of the Center at a level not to exceed the annual rate of basic pay of level IV of such pay rates".

(c) CLERICAL COMPENSATION.—Subsection 625(c) of title 28, United States Code, is amended

by striking out "competitive service and" and inserting in lieu thereof "competitive service without regard to".

TITLE VII—CRIMINAL LAW

SEC. 701. AUTHORITY TO LIMIT COLLECTION OF PRETRIAL INFORMATION IN CLASS A MISDEMEANOR CASES.

Section 3154(1) of title 18, United States Code, is amended by inserting before the period "; except that a district court may direct that pretrial services not collect, verify, and report such information on individuals charged with Class A misdemeanors as defined in section 3559(a)(6) of this title".

SEC. 702. NEW AUTHORITY FOR PROBATION AND PRETRIAL SERVICES OFFICERS.

(a) Section 3603 of title 18, United States Code, is amended—

(1) in paragraph (7) by striking out "and" at the end thereof;

(2) by redesignating paragraph (8) as paragraph (10) and inserting after paragraph (7) the following new paragraphs:

"(8)(A) when directed by the court, and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of sections 4243 and 4246 of this title, and report such person's conduct and condition to the court ordering release and to the Attorney General or his designee; and

"(B) immediately report any violation of the conditions of release to the court and the Attorney General or his designee;

"(9) if approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe; and".

(b) Section 3154 of title 18, United States Code, is amended—

(1) by redesignating paragraph (12) as paragraph (14); and

(2) by inserting after paragraph (11) the following new paragraphs:

"(12)(A) As directed by the court and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and the Attorney General or his designee.

"(B) Any violation of the conditions of release shall immediately be reported to the court and the Attorney General or his designee.

"(13) If approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe.".

SEC. 703. GOVERNMENT RATES OF TRAVEL FOR CRIMINAL JUSTICE ACT ATTORNEYS AND EXPERTS.

The Administrator of General Services Administration, in entering into contracts providing for special rates to be charged by Federal Government sources of supply, including common carriers and hotels (or other commercial providers of lodging) for official travel and accommodation of Federal Government employees, shall provide for charging the same rates for attorneys, experts, and other persons traveling primarily in connection with carrying out responsibilities under section 3006A of title 18, United States Code, including community defender organizations established under subsection (g) of that section.

SEC. 704. TECHNICAL CORRECTION.

Section 3143(b)(1) of title 18, United States Code, is amended by striking out "paragraph (b)(2)(D)" and inserting in lieu thereof "subparagraph (B)(iv) of this paragraph".

TITLE VIII—FOREIGN RECORDS OF REGULARLY CONDUCTED ACTIVITY

SEC. 801. FOREIGN RECORDS OF REGULARLY CONDUCTED ACTIVITY.

(a) AMENDMENT TO TITLE 28, UNITED STATES CODE.—Chapter 115 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§1747. Foreign records of regularly conducted activity

"(a)(1) In a civil proceeding in a court of the United States, including the United States Claims Court and the United States Tax Court, a foreign record of regularly conducted activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests that—

"(A) such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

"(B) such record was kept in the course of a regularly conducted business activity;

"(C) the business activity made such a record as a regular practice; and

"(D) if such record is not the original, such record is a duplicate of the original;

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

"(2) A foreign certification under this section shall authenticate such record or duplicate.

"(b) As soon as practicable after a responsive pleading has been filed, a party intending to offer in evidence under this section a foreign record of regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

"(c) As used in this section, the term—

"(1) 'foreign record of regularly conducted activity' means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country;

"(2) 'foreign certification' means a written declaration made and signed in a foreign country by the custodian of a foreign record of regularly conducted activity or another qualified person, that if falsely made, would subject the maker to criminal penalty under the law of that country; and

"(3) 'business' includes business, institution, association, profession, occupation, and calling of every kind whether or not conducted for profit.".

(b) CONFORMING AMENDMENT.—The table of sections of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1746 the following item:

"1747. Foreign records of regularly conducted activity.".

(c) EFFECTIVE DATE.—The amendments made by this section are effective on the date of enactment of this Act.

TITLE IX—STATE JUSTICE INSTITUTE REAUTHORIZATION

SEC. 901. AUTHORIZATION OF APPROPRIATIONS.

Section 215 of the State Justice Institute Act of 1984 (Public Law 98-620; 42 U.S.C. 10713) is amended to read as follows:

"There are authorized to be appropriated to carry out the purposes of this title $20,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, $25,000,000 for fiscal year 1995, and $25,000,000 for fiscal year 1996. Amounts appropriated for each year are to remain available until expended.".

SEC. 902. INTERAGENCY AGREEMENTS.

Section 206(b) of the State Justice Institute Act of 1984 (42 U.S.C. 10705) is amended by—

(1) striking out paragraph (3) and inserting in lieu thereof the following:

"(3) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.";

(2) redesignating paragraph (4) as paragraph (5); and

(3) adding after paragraph (3) the following new paragraph:

"(4) The Institute shall have authority to enter into contracts with Federal agencies to carry out the purposes of this title.".

SEC. 903. EFFECTIVE DATE.

The provisions of this title shall take effect on the date of enactment of this Act.

TITLE X—TERRORISM CIVIL REMEDY

SEC. 1001. TERRORISM CIVIL REMEDY.

(a) REINSTATEMENT OF LAW.—The amendments made by section 132 of the Military Construction Appropriations Act, 1991 (104 Stat. 2250), are repealed effective as of April 10, 1991.

(b) TERRORISM.—Chapter 113A of title 18, United States Code, as amended by subsection (a), is amended—

(1) in section 2331 (as in effect prior to enactment of the Military Construction Appropriations Act, 1991) by striking subsection (d) and redesignating subsection (c) as subsection (d);

(2) by redesignating section 2331 (as in effect prior to enactment of the Military Construction Appropriations Act, 1991) as section 2332 and amending the heading for section 2332, as redesignated, to read as follows:

"§2332. Criminal penalties";

(3) by inserting before section 2332, as redesignated by paragraph (2), the following new section:

"§2331. Definitions

"As used in this chapter—

"(1) the term 'act of war' means any act occurring in the course of—

"(A) declared war;

"(B) armed conflict, whether or not war has been declared, between two or more nations; or

"(C) armed conflict between military forces of any origin;

"(2) the term 'international terrorism' means activities that—

"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

"(B) appear to be intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by assassination or kidnapping; and

"(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

"(3) the term 'national of the United States' has the meaning given such term in section

101(a)(22) of the Immigration and Nationality Act; and

"(4) the term 'person' means any individual or entity capable of holding a legal or beneficial interest in property."; and

(4) by inserting after section 2332, as redesignated, the following new sections:

"§2333. Civil remedies

"(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

"(b) ESTOPPEL UNDER UNITED STATES LAW.—A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 902 (i), (k), (l), (n), or (r) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472 (i), (k), (l), (n), and (r)) shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"(c) ESTOPPEL UNDER FOREIGN LAW.—A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"§2334. Jurisdiction and venue

"(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

"(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, any civil action under section 2333 against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

"(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 may be served in any other district where the defendant resides, is found, or has an agent.

"(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

"(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

"(2) that foreign court is significantly more convenient and appropriate; and

"(3) that foreign court offers a remedy that is substantially the same as the one available in the courts of the United States.

"§2335. Limitation of actions

"(a) IN GENERAL.—Subject to subsection (b), a suit for recovery of damages under section 2333 shall not be maintained unless commenced within 4 years from the date the cause of action accrued.

"(b) CALCULATION OF PERIOD.—The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or any concealment of the defendant's whereabouts, shall not be counted for the purposes of the period of limitation prescribed by subsection (a).

"§2336. Other limitations

"(a) ACTS OF WAR.—No action shall be maintained under section 2333 for injury or loss by reason of an act of war.

"(b) LIMITATION ON DISCOVERY.—If a party to an action under section 2333 seeks to discover the investigative files of the Department of Justice, the attorney for the Government may object on the ground that compliance will interfere with a criminal investigation or prosecution of the incident, or a national security operation related to the incident, which is the subject of the civil litigation. The court shall evaluate any objections raised by the Government in camera and shall stay the discovery if the court finds that granting the discovery request will substantially interfere with a criminal investigation or prosecution of the incident or a national security operation related to the incident. The court shall consider the likelihood of criminal prosecution by the Government and other factors it deems to be appropriate. A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

"(c) STAY OF ACTION FOR CIVIL REMEDIES.—(1) The Attorney General may intervene in any civil action brought under section 2333 for the purpose of seeking a stay of the civil action. A stay shall be granted if the court finds that the continuation of the civil action will substantially interfere with a criminal prosecution which involves the same subject matter and in which an indictment has been returned, or interfere with national security operations related to the terrorist incident that is the subject of the civil action. A stay may be granted for up to 6 months. The Attorney General may petition the court for an extension of the stay for additional 6-month periods until the criminal prosecution is completed or dismissed.

"(2) In a proceeding under this subsection, the Attorney General may request that any order issued by the court for release to the parties and the public omit any reference to the basis on which the stay was sought.

"§2337. Suits against Government officials

"No action shall be maintained under section 2333 against—

"(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within the officer's or employee's official capacity or under color of legal authority; or

"(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within the officer's or employee's official capacity or under color of legal authority.

"§2338. Exclusive Federal jurisdiction

"The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter.".

(c) TECHNICAL AMENDMENTS.—(1) The chapter analysis for chapter 113A of title 18, United States Code is amended to read as follows:

"CHAPTER 113A—TERRORISM

(2) The item relating to chapter 113A in the part analysis for part I of title 18, United States Code, is amended to read as follows:

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall apply to any pending case or any cause of action arising on or after 4 years before the date of enactment of this Act.

TITLE XI—EFFECTIVE DATE

SEC. 1101. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act shall be effective on and after January 1, 1993.

AMENDMENT NO. 2837

Mr. JOHNSTON. I send amendments to the desk on behalf of Senator HEFLIN and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. HEFLIN, proposes an amendment numbered 2837.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 20, line 25, beginning with "unless" strike out all through line 2 on page 21 and insert in lieu thereof "if the council certifies that sufficient judicial resources exist to establish such a panel, taking into account such factors as".

On page 21, line 9, strike out "Administrative Office of the United States Courts" and insert in lieu thereof "Judicial Conference of the United States".

On page 26, line 21, insert "convicted of a crime" before "confined".

On page 27, line 12, insert "(1)" before "The Attorney".

On page 27, line 16, insert "convicted of a crime" before "confined".

On page 27, insert between lines 19 and 20 the following:

"(2)(A) The Attorney General or court shall consider the following standards in determining whether or not administrative remedies are plain, speedy and effective:

"(i) advisory role of employees and inmates or representatives of prisoner rights in formulating a plan of administrative remedies;

"(ii) maximum time limits for written responses to grievances;

"(iii) safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and

"(iv) independent review of the disposition of grievances by an outside entity.

"(B) If the Attorney General or court finds that the administrative remedies are not in substantial compliance with the standards under subparagraph (A), the State shall prove either to the Attorney General or court that alternate procedures developed by the State accomplish the same objectives of providing a plain, speedy and effective administrative remedy.

On page 27, line 21, insert "or court" after "General".

On page 27, line 23, insert "or court" after "General".

On page 28, strike out lines 8 through 13 and insert in lieu thereof:

Section 157(c)(1) of title 28, United States Code, is amended by adding at the end thereof the following: "A party shall be deemed to

consent to the findings of fact and conclusions of law submitted by a bankruptcy judge unless the party files a timely objection. If a timely objection is not filed, the proposed findings of fact and conclusions of law submitted by the bankruptcy judge shall become final and the bankruptcy judge shall enter an appropriate order thereon.".

On page 35, line 23, strike out "Claims Court" and insert in lieu thereof "Court of Federal Claims".

On page 38, line 20, strike out "Claims Court" and insert in lieu thereof "Court of Federal Claims".

On page 42, beginning with line 7, strike out all through line 18 on page 43 and insert in lieu thereof the following:

SEC. 303. VICTIMS' RIGHTS FUNDING.

Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(1) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.";

(2) by striking out subsection (d) and inserting in lieu thereof the following:

"(d) The Fund shall be available as follows:

"(1) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(2) Of the next $100,000,000 deposited in the Fund in a particular fiscal year—

"(A) 49.5 percent shall be available for grants under section 1403; and

"(B) 45 percent shall be available for grants under section 1404(a).

"(3) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(4) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(5) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

"(A) 47.5 percent shall be available for grants under section 1403.

"(B) 47.5 percent shall be available for grants under section 1404(a).

"(C) 5 percent shall be available for grants under section 1404(c).".

On page 53, line 14, strike out "Claims Court" and insert in lieu thereof "Court of Federal Claims".

On page 59, line 4, strike out "Claims Court" and insert in lieu thereof "Court of Federal Claims".

On page 70, strike out lines 8 through 12 and insert in lieu thereof the following:

TITLE XI—COURT OF FEDERAL CLAIMS

SEC. 1101. SHORT TITLE.

This title may be cited as the "Court of Federal Claims Technical and Procedural Improvements Act of 1992".

SEC. 1102. COURT DESIGNATION.

(a) IN GENERAL.—Chapters 7, 51, 91, and 165 of title 28, United States Code, is amended by—

(1) striking "United States Claims Court" each place it appears and inserting "United States Court of Federal Claims"; and

(2) striking "Claims Court" each place it appears and inserting "Court of Federal Claims".

(b) OTHER PROVISIONS OF LAW.—Reference in any other Federal law or any document relating to—

(1) the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims"; and

(2) the "Claims Court" shall be deemed to refer to the "Court of Federal Claims".

SEC. 1103. SOCIAL SECURITY AMENDMENTS.

Section 178 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) For the purpose of construing section 3121(i)(5) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(i)(5)) and section 209(h) of the Social Security Act (42 U.S.C. 409(h)), the annuity of a Court of Federal Claims judge on senior status after age 65 shall be deemed to be an amount paid under section 371(b) of this title for performing services under the provisions of section 294 of this title.".

SEC. 1104. ELIGIBILITY FOR INSURANCE AND ANNUITIES PROGRAMS.

Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 179. Insurance and annuities programs

"For the purpose of construing the provisions of title 5, a judge of the United States Court of Federal Claims shall be deemed to be a 'judge of the United States' as designated in section 2104(a) of title 5.".

SEC. 1105. MILITARY RETIREMENT PAY FOR RETIRED JUDGES.

(a) IN GENERAL.—Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 180. Military retirement pay for retired judges

"Section 371(e) of this title shall be applicable to judges of the United States Court of Federal Claims, and for the purpose of construing section 371(e) of this title, a judge of the United States Court of Federal Claims shall be deemed to be a judge of the United States as defined by section 451 of this title.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following:

"179. Insurance and annuities programs.
"180. Military retirement pay for retired judges.".

SEC. 1106. RECALL OF COURT OF FEDERAL CLAIMS JUDGES ON SENIOR STATUS.

(a) IN GENERAL.—Section 375 of title 28, United States Code, is amended—

(1) in the first sentence of subsection (a)(1) by striking ", a judge of the Claims Court," and ", judge of the Claims Court,";

(2) by amending paragraph (2) of subsection (a) to read as follows:

"(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.";

(3) by amending paragraph (3) of subsection (a) to read as follows:

"(3) For purposes of this section, the term 'bankruptcy judge' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984."; and

(4) in subsection (f) by—

(A) striking ", a judge of the Claims Court,"; and

(B) striking ", a commissioner of the Court of Claims,".

(b) RECALL OF RETIRED JUDGES.—Section 797 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "section 178 of this title or under" after "under"; and

(2) in the second sentence of subsection (d) by striking "civil service".

SEC. 1107. LAW CLERKS AND SECRETARIES.

The first sentence of section 794 of title 28, United States Code, is amended by inserting after "may approve" the following: "for district judges".

SEC. 1108. SITES FOR HOLDING COURT.

(a) IN GENERAL.—Section 798(a) of title 28, United States Code, is amended to read as follows:

"(a) The United States Court of Federal Claims is authorized to utilize facilities and hold court in Washington, District of Columbia, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the District of Columbia.".

(b) FOREIGN COUNTRY.—

(1) REDESIGNATION.—Subsection (b) of section 798 of title 28, United States Code, is redesignated as subsection (c).

(2) HEARING IN A FOREIGN COUNTRY.—Section 798 of title 28, United States Code, is amended by inserting after subsection (a) the following:

"(b) Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency and justice will be served, the chief judge may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to the provisions of section 1292(d)(2) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.".

(c) APPEAL JURISDICTION.—Section 1292(d)(2) of title 28, United Sates Code, is amended by inserting after "When" the following: "the chief judge of the United States Court of Federal Claims issues an order under the provisions of section 798(b) of this title, or when".

SEC. 1109. JURISDICTION.

Section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) If the certification of a claim pursuant to this Act is technically defective, a court or agency board of contract appeals may permit the certification to be corrected at any time prior to a final decision by the court or agency board of contract appeals unless the failure properly to certify in the first instance was fraudulent, in bad faith, or with reckless or grossly negligent disregard of the requirements of the relevant statutes or regulations.

"(B) If the contracting officer did not challenge the validity of the certification and the court or agency board of contract appeals permits the defective certification to be corrected under this section, interest shall accrue on the claim under section 611 of this Act from the date the claim was first submitted to the contracting officer.

"(C) This paragraph shall be effective with respect to cases filed with any court or agency board of contract appeals under section 607, 608, or 609 of this Act on or after the date of the enactment of this paragraph.".

SEC. 1110. AWARDABLE COSTS.

Section 1919 of title 28, United States Code, is amended by—

(1) striking "district court or" and inserting "district court,"; and

(2) inserting after "Trade" the following: ", or the Court of Federal Claims".

SEC. 1111. PROCEEDINGS GENERALLY.

Section 2503 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d) For the purpose of construing sections 1821, 1915, 1920 and 1927 of this title, the United States Court of Federal Claims shall be deemed to be a court of the United States.".

SEC. 1112. SUBPOENAS AND INCIDENTAL POWERS.

(a) IN GENERAL.—Section 2521 of title 28, United States Code, is amended by—

(1) amending the section heading to read as follows:

"§ 2521. Subpoenas and incidental powers";

(2) inserting "(a)" before "Subpoenas requiring"; and

(3) adding at the end thereof the following new subsections:

"(b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—

"(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) misbehavior of any of its officers in their official transactions; or

"(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

"(c) The United States Court of Federal Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 165 of title 28, United States Code, is amended by amending the item relating to section 2521 to read as follows:

"2521. Subpoenas and incidental powers.".

SEC. 1113. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE XII—EFFECTIVE DATE

SEC. 1201. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act shall be effective on and after January 1, 1993.

(b) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding any provision of this Act, all sums expended pursuant to this Act shall be subject to the availability of appropriations.

Mr. HEFLIN. Mr. President, I rise today to offer an amendment to the Senate Judiciary Committee substitute version of S. 1569, the Federal Courts Study Committee Implementation Act. My amendment encompasses certain technical and other improvements to S. 1569, all of which have been agreed upon by the Judiciary Committee.

The 100th Congress created within the Judicial Conference of the United States a 15-member Federal Courts Study Committee and directed it to "make a complete study of the courts of the United States and of the several States and transmit a report * * * on such study." The Federal Courts Study Committee included members of the Federal executive, legislative and judicial branches and representatives from State governments, universities, and private practice, all of whom worked toward the goal of developing a long-range plan for the judicial system. I was privileged to serve as a member of this committee, as did Senator GRASSLEY.

Last Congress, the Federal Courts Study Committee Implementation Act of 1990 was enacted into law as part of the Judicial Improvements Act of 1990. While that legislation addresses some necessary objectives of the committee, it merely scratches the surface in terms of the remaining committee recommendations and their potential usefulness.

Therefore, S. 1569 incorporates additional recommendations of the Federal Courts Study Committee. These important provisions are as follows:

Section 101 would require each circuit to establish a bankruptcy appellate panel or participate with one or more small circuits in a multicircuit panel, if the circuit has sufficient resources to establish a panel.

Section 102 would delegate authority to the Supreme Court, under the Rules Enabling Act, to define what constitutes a final decision; and to define circumstances in which orders and actions of district courts not otherwise subject to appeal under acts of Congress may be appealed to the courts of appeals.

Section 103 would abolish the Temporary Emergency Court of Appeals and vest its remaining caseload in the Court of Appeals for the Federal circuit.

Section 104 would provide jurisdiction for magistrate judges to revoke, modify or terminate the supervised release or probation of a defendant sentenced by a magistrate judge.

Section 105 would require State prisoners to first exhaust certain administrative remedies prior to bringing a civil rights action in Federal district court.

Section 106 would provide that in non core proceedings, a bankruptcy judge's findings become final unless a party files a timely objection.

Section 107 would allow the Chief Justice of the United States, upon request, to designate and assign temporarily any circuit judge to another circuit.

Title II of the S. 1569 substitute addresses important needs and issues affecting the surviving spouses and dependents of federal judges.

This proposal would reduce the contribution of judges from 5 percent of salary to 1.5 percent of salary while in active service or while serving in senior or recalled status, and would set the rate of contribution at 3.5 percent of retirement salary for those judges leaving office. The reductions in the judges' contributions would attract more participants and extend protection to survivors of judges who otherwise would remain vulnerable to financial crises.

Titles III–VII of the S. 1569 substitute contain various judicial housekeeping items which were included at the request of the Judicial Conference of the United States. These sections focus on judicial financial administration; jury matters; judiciary personnel administration, benefits, and protections; and criminal law.

Moreover, title V of the substitute contains several miscellaneous items. Among these items is section 506, included at the request of Senator BIDEN. This provision would reduce the burden of a reporting requirement created by the Civil Justice Reform Act of 1990. Section 508, included at the request of Senator DECONCINI, would amend the Equal Access to Justice Act to clarify that it is intended to apply to the Court of Veterans Appeals. Section 509, included at the request of Senator SPECTER, would authorize the holding of court in Lancaster, PA.

Title VIII was included at the request of Senator THURMOND. In civil litigation, it would provide for the admission in evidence of foreign business records. In addition, title IX would reauthorize the State Justice Institute from 1993–1996. This reauthorization, which I strongly support, would continue the mission of the State Justice Institute to improve the administration of justice in our Nation's State court systems.

Finally, title X, included at the request of Senator GRASSLEY, would provide a civil cause of action in Federal court for victims of terrorism. Senator GRASSLEY's provision has strong bipartisan support in the Senate, and I am pleased to support its inclusion in my bill.

In addition to making technical corrections to the S. 1569 substitute, my amendment will incorporate the following changes:

SECTION 105. EXHAUSTION OF REMEDIES

The amendment outlines four standards that the Attorney General or court shall consider in determining whether or not administrative remedies are plain, speedy and effective. They basically mirror four of the five standards in the code section being amendment, 42 U.S.C. section 1997e. One of the five standards was contained in the initial section of 105(a)(1) and stated that exhaustion should not be required in any case in which the claimant alleges facts that show a risk of substantial or irreparable harm.

The report of the Federal Courts Study Committee contains a recommendation that if statutory stand-

ards were retained, a State should be able to prove to the Attorney General of the United States or a district court that it has alternate procedures which accomplish the same objectives as those addressed by the standards, and that these procedures are a plain, speedy and effective remedy which the State prisoner must exhaust prior to the resolution of the section 1983 civil suit. Thus, some flexibility is given to the Attorney General or courts in approving an administrative remedy plan and it is hoped that States will be encouraged to develop plans for approval.

SECTION 106. PARTIES' CONSENT TO DETERMINATION BY BANKRUPTCY COURT

Under present law, there are certain matters in which a bankruptcy judge is not permitted to make a final determination without the consent of all the parties to such action by the bankruptcy judge. In the absence of this complete consent—which under the Federal rules of bankruptcy procedure must express consent—the bankruptcy judge is limited to filing proposed findings of fact and conclusions of law. The proposed findings of fact and conclusion of law must be presented to a district judge for review and for entry of a final order or judgment, even when no party objects to what the bankruptcy judge has proposed.

The amendment would eliminate review by a district judge when no party files an objection to the proposals made by the bankruptcy judge. Once the period for filing objections has expired, the bankruptcy judge would enter a final order which would be appealable in the same manner as any other final order of a bankruptcy judge.

Rule 9033 of the Federal rules of bankruptcy procedure provides a 10-day period for filing objections to proposed findings of fact and conclusions of law filed by a bankruptcy judge who hears a matter under section 157(c)(1). The amendment requires that any objection be filed timely. Accordingly, the rule would continue to function as it does presently.

TITLE XI—COURT OF FEDERAL CLAIMS

On April 2, 1992, I introduced S. 2521, a bill to amend title 28 of the United States Code to improve the Federal claims litigation process before the U.S. Claims Court and to assist the court in providing better and more efficient service to its litigants. It would also ensure fair treatment for the regular and senior judges of the court by providing certain benefits equivalent to those available to other Federal trial judges.

The Subcommittee on Courts and Administrative Practice held a hearing on S. 2521 on April 29, 1992, and heard testimony from four witnesses on various aspects of the bill: Hon. Loren A. Smith, chief judge of the U.S. Claims Court; Stuart E. Schiffer, Deputy Assistant Attorney General of the Civil Division, U.S. Department of Justice; Lynda Troutman O'Sullivan, an attorney in private practice, Washington, DC; and John S. Pachter, chairman of the section of public contract law, American Bar Association, Washington, DC.

As a result of modifications suggested by various individuals and entities, the amendment I am offering today is a compromise and has the approval of all the members of the Judiciary Committee.

The Claims Court is the Nation's primary forum for monetary claims against the Federal Government. The court has jurisdiction to entertain suits for money against the United States that are founded upon the Constitution, an act of Congress, an Executive order, a regulation of an executive department, or contract with the United States and that do not sound in tort. The court hears major patent cases, Government contract suits, tax refund suits, fifth amendment takings cases and Indian claims, among many other types of lawsuits. The court has national jurisdiction, and the judges hear cases around the country at locations that are most convenient to the litigants and the witnesses.

The amendment that I am introducing today extends several existing provisions of title 28 to apply to the Claims Court and clarifies other provisions. The amendment will also make applicable to Claims Court judges provisions that now apply to Federal judges in general. The amendment will improve the service that the court can provide to litigants by clarifying one issue regarding court jurisdiction and appropriate sites for holding trials. In addition, the amendment will provide resources needed to improve the court's already impressive performance in difficult, complex cases. Finally, the amendment will also reduce confusion over the name of the court. Let me provide a brief summary of my amendment:

Section 1102 will change the name of the court from U.S. Claims Court to U.S. Court of Federal Claims. This properly reflects the actual Federal jurisdiction of the Claims Court, is faithful to the historic name of the court and will also reduce confusion between this court and small claim courts in various jurisdictions.

Section 1103 will ensure that Claims Court judges over age 65 who are on senior status will receive the same treatment as other Federal trial judges on senior status insofar as Social Security taxes and payments are concerned.

Section 1104 amends title 28 to clarify that the judges of the U.S. Claims Court are judicial officers eligible for coverage under annuity, insurance and other programs available under title 5 of the United States Code.

Section 1005 provides that judges of the Claims Court are covered by section 371(e) of title 28 and are to receive any military retirement pay to which they are otherwise entitled. This will extend to Claims Court judges the same treatment now provided for other Federal trial judges insofar as earned military retirement pay is concerned.

Section 1106 eliminates superseded and duplicated provisions pertaining to the recall of a senior judge of the Claims Court.

Section 1107 will ensure that Claims Court judges have the authority to hire the same number of law clerks as U.S. district court judges. This will insure that the Claims Court judges have sufficient legal resources to discharge their unique and heavy judicial responsibilities.

Section 1108 clarifies the authority of the court to hold proceedings where convenient to the litigants and witnesses. The amendment will restore the authority of the court to preside in hearings overseas, particularly in government contract disputes, when the circumstances of the case make that the most appropriate location for the parties and witnesses.

Section 1109 relates to the court's jurisdiction and differs from my original bill by dropping the first three provisions that would have amended its jurisdiction. Section 1109 retains, however, a provision that, in my judgment, would reduce wasteful litigation over one jurisdictional issue.

This provision would amend 41 U.S.C 605(c) by making certification of claims under the Contract Disputes Act nonjurisdictional. Wasteful and esoteric litigation over this issue has produced several hundred written and, oftentimes, conflicting opinions from various courts and agency appeals boards. The language I include today is the result of much discussion between the Administrative Conference, members of the Judiciary Committee, and the Claims Court.

The language would not eliminate the certification requirement. The language would permit an agency board of contract appeals or court to allow a certification to be amended if there are reasonable grounds and so long as the certification was not made fraudulently, in bad faith, or with reckless or grossly negligent disregard of the Contract Disputes Act or applicable regulations. This section shall also have prospective application and allow interest to accrue from the date a claim was filed where a court or board of contract appeals allows a defective certification to be corrected.

Sections 1110 and 1111 will promote uniformity among the courts by making applicable to the Claims Court various provisions of title 28 pertaining to costs, witness fees, forma pauperis proceedings and payment of judgments now applicable to other Federal trial courts.

Section 1112 will amend 28 U.S.C. 2521 to provide for the Claims Court the

same authority to enforce its orders and processes as is presently provided for the U.S. Tax Court.

I urge my colleagues to support this legislation, which I believe will promote efficiency and fairness. The U.S. Claims Court is an important part of the Federal court system. The creation of this court by the Congress to do justice responded to a very basic democratic imperative: fair dealing by the Government in disputes between the Government and the private citizen. As Abrahahh Lincoln noted: "It is as much the duty of the Government to render prompt justice against itself, in favor of citizens, as it is to administer the same, between private individuals." This amendment will allow it to better comply with its mandate and assist it in providing improved service to litigants and to the entire country.

In formulating this Federal Courts Study Committee legislation, we have been mindful of the concerns of many parties expressing an interest. I feel that these efforts have produced a consensus bill which will benefit our Federal judiciary in many ways, for years to come.

Mr. THURMOND. Mr. President, I support S. 1569, the Federal Courts Study Committee Implementation Act and the amendment offered by my good friend, Senator HEFLIN. This bill was introduced on July 26, 1991, and will implement some of the recommendations of the Federal Courts Study Committee, as well as addressing other matters.

The Federal Courts Study Committee was created in 1988 as a response to concerns about the steadily increasing expense and delay occurring within the Federal court system. Congress directed the Chief Justice of the Supreme Court to appoint this committee to examine the Federal court system and to make comprehensive recommendations to improve the efficiency of the Federal courts. Some of these recommendations became law as a part of a bill sponsored by Senator BIDEN and myself, the Judicial Improvements Act of 1990.

Title I of the bill before us today will implement certain other recommendations of the Federal Courts Study Committee. These recommendations include, among other matters, permitting the creation of bankruptcy appellate panels, authorizing U.S. magistrates to revoke, modify or terminate the supervised relief of a defendant in certain situations, and allowing the Chief Justice to assign temporarily any circuit judge to another circuit.

Title 2 of the bill will amend the Judicial Survivors Annuity Act. This act established a monetary protection system for the spouse or minor children of a deceased Federal judge by providing for the creation of an annuity for their benefit. Under current law, the judges are required to contribute 5 percent of their annual salary to the Survivors fund.

However, because of the high contribution cost which is mandatory for Federal judges participating in this program, few judges have elected to join. Under this legislation, the major change to this act will be a decrease in the current amount Federal judges are required to contribute if they choose to join the Judicial Survivors' Annuity System. Mr. President, after careful review of the survivors' annuity programs for other Federal employees and Members of Congress, I feel that this change is fair and equitable.

Title 3 through title 7 address various judicial, jury, and criminal matters. Title 8 of the bill is legislation which I sponsored, at the administration's request, to facilitate the introduction of foreign business records into evidence in Federal civil proceedings. This section is analogous to title 18, section 3505 of the United States Code, which applies to the introduction of foreign business records into evidence in Federal criminal proceedings.

Title 9 of the bill provides for the reauthorization of the State Justice Institute for the next 4 years. The Institute awards grants and supports educational programs to improve the administration of justice in our State courts. Title 10 of the bill is identical to the Civil Remedies for Victims of Terrorism bill, which is sponsored by Senator GRASSLEY and has already passed the Senate last year.

The amendment offered by Senator HEFLIN also includes a new title 11, similar to S. 2521, which addresses the Federal claims litigation process before the U.S. Claims Court. Since its creation in 1982, the Claims Court has played a vital, important role in the Federal judiciary system as the forum to hear claims brought by individuals and corporations against the Federal Government for a broad range of nontort actions.

The bill addresses a number of issues facing the Claims Court. Several sections in the bill would alter certain administrative procedures affecting judges of the Claims Court. This legislation will also make various provisions of title 28 applicable to the claims court. These matters include costs, witness fees, and payment of judgments.

This legislation changes the requirement that a contractor must certify this claim pursuant to the Contract Disputes Act in order for the Claims Court to have jurisdiction over these disputes. The certification requirement is intended to prevent fraud and encourage settlement of disputes by requiring a contractor to certify that the claim is honest and not inflated. Under current law, if a contractor fails to properly certify his claim, the claim is dismissed for lack of jurisdiction. There is simply no opportunity to amend the certification even if the impropriety is purely technical in nature.

This bill does not do away with the certification requirement or its jurisdictional nature. The legislation will authorize an agency board of contract appeals or court to permit a certification that is technically defective to be amended unless the failure to properly certify was due to the contractor's fraudulence, bad faith, or reckless or grossly negligent disregard of the governing statutes and regulations. Therefore, a contractor who makes an honest mistake in the certification will not be penalized by having his claim dismissed. However, a contractor is still under a duty to abide by the governing statutes and regulations dealing with certification.

Mr. President, I believe that the provisions of this legislation are fair and balanced, and I encourage my colleagues to support S. 1569.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2837) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments?

If not, the question is on agreeing to the substitute amendment?

The substitute amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1569), as amended, was passed as follows:

S. 1569

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Courts Study Committee Implementation Act of 1992".

TITLE I—IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SEC. 101. ESTABLISHMENT OF BANKRUPTCY APPELLATE PANELS.

Section 158 of title 28, United States Code, is amended—

(1) in subsection (b)—

(A) by striking out paragraphs (1), (3), and (4);

(B) by redesignating paragraph (2) as paragraph (1); and

(C) by inserting after paragraph (1) (as redesignated by subparagraph (B) of this paragraph) the following:

"(2) The judicial council of each circuit shall establish a bankruptcy appellate panel if the council certifies that sufficient judicial resources exist to establish such a panel, taking into account such factors as bankruptcy judges' caseloads, the geographical dispersion of bankruptcy judges in the circuit, and the opportunity to establish a joint panel with another circuit. If a judicial council certifies that the circuit has insufficient judicial resources to establish a panel, it shall within 90 days thereafter file a report with the Judicial Conference of the United States describing why the circuit's judicial resources are insufficient to permit establishment of a panel. Any panel established after the date of the enactment of the Federal Courts Study Implementation Act of 1992 shall be established for a period of three years or until a majority of the bankruptcy judges requests the council to discontinue the panel, whichever is earlier. Thereafter, the council may again establish a panel under the same procedures and standards under this paragraph. The council may reconsider its decision not to establish a panel at any time.

"(3) A bankruptcy appellate panel established under this section shall be comprised of three bankruptcy judges from districts within the circuit or circuits, to hear and determine, upon consent of all the parties, appeals under subsection (a). A bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title."; and

(2) by amending subsection (c) to read as follows:

"(c) All appeals under this section shall be heard by a bankruptcy appellate panel under subsection (b), unless the appellant elects to file an appeal under subsection (a) or any other party within 30 days after service of notice of appeal elects to have the appeal heard under subsection (a). An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by rule 8002 of the Bankruptcy Rules.".

SEC. 102. SUPREME COURT AUTHORITY TO PRESCRIBE RULES FOR APPEAL OF INTERLOCUTORY DECISIONS.

Section 1292 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The Supreme Court may prescribe rules in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals, that is not otherwise provided for under subsection (a), (b), (c), or (d).".

SEC. 103. ABOLITION OF TEMPORARY EMERGENCY COURT OF APPEALS.

(a) APPEALS UNDER ECONOMIC STABILIZATION ACT.—Section 211 of the Economic Stabilization Act of 1970 (Public Law 91-379; 84 Stat. 799) is amended by striking out subsections (b) through (h) and inserting in lieu thereof the following:

"(b) Appeals from orders or judgments entered by a district court of the United States in cases and controversies arising under this title may be brought in the United States Court of Appeals for the Federal Circuit if the appeal is from a final decision of the district court or is an interlocutory appeal permitted under section 1292(c) of title 28, United States Code.".

(b) JUDICIAL REVIEW OF EMERGENCY ORDERS UNDER THE NATURAL GAS POLICY ACT.—Section 506(c) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3416(c)) is amended—

(1) in the first sentence, by striking out "the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended," and inserting in lieu thereof "the United States Court of Appeals for the Federal Circuit"; and

(2) by striking out "Temporary Emergency Court of Appeals" each place it appears and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit".

(c) CONFORMING AMENDMENTS.—Section 1295(a) of title 28, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (9);

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraphs:

"(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

"(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

"(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

"(14) of an appeal under section 523 of the Energy Policy and Conservation Act.".

(d) ABOLITION OF COURT.—The Temporary Emergency Court of Appeals created by section 211(b) of the Economic Stabilization Act of 1970 is abolished effective six months after the date of the enactment of this Act.

(e) PENDING CASES.—(1) Any appeal which, before the effective date of abolition described under subsection (d), is pending in the Temporary Emergency Court of Appeals but has not been submitted to a panel of such court as of that date shall be assigned to the United States Court of Appeals for the Federal Circuit as though the appeal had originally been filed in that court.

(2) Any case which, before the effective date of abolition described under subsection (d), has been submitted to a panel of the Temporary Emergency Court of Appeals and as to which the mandate has not been issued as of that date shall remain with that panel for all purposes and, notwithstanding the provisions of sections 291 and 292 of title 28, United States Code, that panel shall be assigned to the United States Court of Appeals for the Federal Circuit for the purpose of deciding such case.

SEC. 104. JURISDICTION FOR MAGISTRATE JUDGES FOR MODIFICATION OF CONDITIONS OR REVOCATION OF PROBATION OR SUPERVISED RELEASE AFTER IMPRISONMENT.

Section 3401 of title 18, United States Code, is amended—

(1) in subsection (d) by striking out "and to revoke or reinstate the probation of any person granted probation by him." and inserting in lieu thereof "and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge."; and

(2) by adding at the end thereof the following new subsections:

"(h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.

"(i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended sentence under the provisions of section 3583(e) of this title. The magistrate judge shall file his proposed findings and recommendations.".

SEC. 105. EXHAUSTION OF REMEDIES.

Section 7 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e) is amended to read as follows:

"§ 1997e. Exhaustion of remedies

"(a) CERTIFICATION.—(1) In any action brought pursuant to section 1979 of the Revised Statutes (42 U.S.C. 1983) by an adult convicted of a crime confined in any jail, prison, or other correctional or detention facility, the court shall, if it finds that such a requirement would be appropriate and in the interests of justice, continue the case for 90 days in order to require exhaustion of administrative remedies if the defendant shows the court, or if the Attorney General certifies, under subsection (b), that plain, speedy, and effective remedies are available to the confined adult. Exhaustion of remedies shall not be required in any case in which the claimant alleges facts that show a risk of substantial or irreparable harm.

"(2) The failure of the Attorney General to certify an administrative remedy under subsection (b), or the decision of the Attorney General to suspend or withdraw the certification of an administrative remedy under subsection (c), shall not be binding on the courts.

"(b) PROCEDURE FOR CERTIFICATION.—(1) The Attorney General shall develop a procedure for the prompt review and certification of administrative remedies, as voluntarily submitted by the various States and political subdivisions, for the resolution of grievances of adults convicted of a crime confined in any jail, prison, or other correctional or detention facility, to determine if the administrative remedies provide plain, speedy, and effective remedies.

"(2)(A) The Attorney General or court shall consider the following standards in determining whether or not administrative remedies are plain, speedy and effective:

"(i) advisory role of employees and inmates or representatives of prisoner rights in formulating a plan of administrative remedies;

"(ii) maximum time limits for written responses to grievances;

"(iii) safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and

"(iv) independent review of the disposition of grievances by an outside entity.

"(B) If the Attorney General or court finds that the administrative remedies are not in substantial compliance with the standards under subparagraph (A), the State shall prove either to the Attorney General or court that alternate procedures developed by the State accomplish the same objectives of providing a plain, speedy and effective administrative remedy.

"(c) SUSPENSION OR WITHDRAWAL OF CERTIFICATION.—The Attorney General or court may suspend or withdraw the certification of an administrative remedy under subsection (b) if the Attorney General or court has reasonable cause to believe that the administrative remedy no longer provides a plain, speedy, and effective remedy.

"(d) FAILURE OF STATE TO ADOPT OR ADHERE TO ADMINISTRATIVE REMEDY.—The failure of a State or political subdivision of a State to adopt or adhere to an administrative remedy consistent with this section shall not constitute the basis for an action under section 3 or 5.".

SEC. 106. PARTIES' CONSENT TO DETERMINATION BY BANKRUPTCY COURT.

Section 157(c)(1) of title 28, United States Code, is amended by adding at the end there-

of the following: "A party shall be deemed to consent to the findings of fact and conclusions of law submitted by a bankruptcy judge unless the party files a timely objection. If a timely objection is not filed, the proposed findings of fact and conclusions of law submitted by the bankruptcy judge shall become final and the bankruptcy judge shall enter an appropriate order thereon.".

SEC. 107. INTERCIRCUIT TRANSFERS.

Section 291(a) of title 28, United States Code, is amended to read as follows:

"(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.".

TITLE II—JUDICIAL SURVIVORS' ANNUITIES IMPROVEMENTS

SEC. 201. JUDICIAL SURVIVORS' ANNUITIES AMENDMENTS.

(a) ELECTION.—Section 376 of title 28, United States Code, is amended in the matter following subsection (a)(1)(G)—

(1) by striking out "or" at the end of clause (v); and

(2) by adding after clause (vi) "or (vii) the date of the enactment of the Federal Courts Study Committee Implementation Act of 1992;".

(b) CONTRIBUTIONS.—Section 376(b) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(b)";

(2) in the first sentence by striking out "including any 'retirement salary', a sum equal to 5 percent of that salary." and inserting in lieu thereof "a sum equal to 1.5 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary of a senior judge eligible to perform judicial services under this title or of a judicial official on recall under sections 155(b), 178, 371(b), 372(a), 373(c)(4), 375, or 636(h) of this title shall be an amount equal to 1.5 percent of retirement salary.";

(3) by redesignating all that follows the first sentence (as amended by paragraph (2) of this subsection) as paragraph (3) and inserting before such paragraph (3) the following new paragraph:

"(2) A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within ninety days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Director of the Administrative Office of the United States Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her retirement salary, a sum equal to 3.5 percent of the deferred 'retirement salary' which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have revoked his or her election under subsection (a) of this section."; and

(4) in paragraph (3), as redesignated by paragraph (3) of this subsection, by striking out "so deducted and withheld from the salary of each such judicial official" and inserting in lieu thereof: "deducted and withheld from the salary of each such judicial official under paragraphs (1) and (2) of this subsection".

(c) DEPOSITS.—Section 376(d) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "5 percent" and inserting in lieu thereof "3.5 percent"; and

(2) in paragraph (2) by striking out "5 percent" and inserting in lieu thereof "3.5 percent".

(d) REFUND OF DEPOSITS.—Section 376(g) of title 28, United States Code, is amended to read as follows:

"(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 percent per annum to December 31, 1947; and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 1.5 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section a 'reasonable period of time' shall be presumed to be no longer than one year following the date upon which such judicial official relinquished his or her office.".

(e) PAYMENT OF ANNUITIES.—Section 376(h)(1) of title 28, United States Code, is amended by striking out "or while receiving 'retirement salary'," and inserting in lieu thereof "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section".

(f) CREDITABLE SERVICE.—Section 376(k) of title 28, United States Code, is amended—

(1) in paragraph (3) by striking out "and" at the end thereof;

(2) in paragraph (4) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) those years during which such judicial official had deductions withheld from his or her 'retirement salary' in accordance with subsection (b) (1) or (2) of this section.".

(g) COMPUTATION OF ANNUITY.—Section 376(l) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "(i) during those three years of such service in which his or her annual salary" and inserting in lieu thereof "(i) during those three years of such service, or during those three years while receiving a retirement salary in which his or her annual salary or retirement salary"; and

(2) in paragraph (1) by redesignating subparagraph (D) as subparagraph (E) and inserting after subparagraph (C) the following:

"(D) the number of years during which the judicial official had deductions withheld from his or her retirement salary under subsection (b) (1) or (2) of this section; plus".

(h) TERMINATION.—Section 376 of title 28, United States Code, is amended by adding at the end of that section the following new subsection:

"(v) If any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Director of the Administrative Office of the United States Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulations prescribe. The Director may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official established to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.".

(i) CREDIT FOR PRIOR CONTRIBUTIONS AT HIGHER RATE.—Notwithstanding any other provision of law, the contribution under section 376(b) (1) or (2) of title 28, United States Code (as amended by this Act), of any judicial official who is within the purview of section 376 on the effective date of this Act shall be reduced by 0.5 percent for a period of time equal to the number of years of service for which the judicial official has made contributions or deposits before the enactment of this Act to the credit of the Judicial Survivors' Annuities Fund or for eighteen months, whichever is less, if such contributions or deposits were never returned to the judicial official. For purposes of this subsection, the term "years" shall mean full years and twelfth parts thereof.

(j) REDEPOSIT OF PRIOR CONTRIBUTIONS.—Any judicial official who makes an election under section 376(b) of title 28, United States Code, may make a redeposit to the credit of the Judicial Survivors' Annuities Fund in installments, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. If a judicial official elects to make a redeposit in installments—

(1) the Director shall require that the first installment payment made shall be in an amount no smaller than the last eighteen months of salary deductions or deposits previously returned to that judicial official in a lump-sum payment; and

(2) the election under section 376(b) of title 28, United States Code, shall be effective upon payment of the first such installment.

SEC. 202. LIFE INSURANCE COVERAGE.

(a) ELIGIBILITY.—Section 8701(a) of title 5, United States Code, is amended—

(1) in paragraph (9) by striking out "and" after the semicolon;

(2) in paragraph (10) by adding "and" after the semicolon; and

(3) by inserting after paragraph (10) and preceding the matter before subparagraph (A) the following new paragraph:

"(11) a judicial official, including a judge of the United States Court of Federal Claims (i) who is in regular active service, or (ii) who is retired from regular active service under section 178 of title 28, United States Code; a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands (i) who is in regular active service, or (ii) who is retired from regular active service under section 373 of title 28, United States Code; a bankruptcy judge or a magistrate judge (i) who is in regular active service, or (ii) who retired after attaining age 65 from regular active service under chapter 83 or 84 of this title, section 377 of title 28, or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (28 U.S.C. 377 note; Public Law 100-659);".

(b) ADDITIONAL OPTIONAL LIFE INSURANCE.—

(1)(A) Sections 8706(a) and 8714b(c)(1) of title 5, United States Code, are each amended in the second sentence by inserting "and judicial officials described under section

8701(a)(11)" after "section 8701(a)(5) (ii) and (iii)".

(B) Sections 8714a(c)(1) and 8714c(c)(1) of title 5, United States Code, are each amended by adding after the first sentence "Justices and judges described under section 8701(a)(5) (ii) and (iii) and judicial officials described under section 8701(a)(11) of this chapter are deemed to continue in active employment for purposes of this chapter.".

(2) The amendments made under paragraph (1) shall apply to a judicial officer described in section 8701(a)(11) of title 5, United States Code (as amended by this Act) who—

(A) is retired under chapter 83 or 84 of title 5, United States Code, section 178, 373, or 377 of title 28, United States Code, or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (28 U.S.C. 377 note); and

(B) retire on or after August 1, 1987.".

(c) CONVERSION RIGHTS.—(1) Section 8714a(c)(3) of title 5, United States Code, is amended by inserting "or a judicial official as defined under section 8701(a)(11) who leaves office without an immediate annuity" after "for continuation of the judicial salary".

(2) Section 8714b(c)(1) of title 5, United States Code, is amended in the third sentence by inserting "or a judicial official as defined under section 8701(a)(11) who leaves office without an immediate annuity" after "for continuation of the judicial salary".

SEC. 203. HEALTH INSURANCE FOR SPOUSES.

Section 8901(3) of title 5, United States Code, is amended—

(1) in subparagraph (C) by striking out "and" at the end thereof;

(2) in subparagraph (D) by adding "and" at the end thereof; and

(3) by adding at the end thereof the following new subparagraph:

"(E) a member of a family who is a survivor of—

"(i) a Justice or judge of the United States, as defined under section 451 of title 28, United States Code;

"(ii) a judge of the District Court of Guam, the District Court of the Northern Mariana Islands, or the District Court of the Virgin Islands;

"(iii) a judge of the United States Court of Federal Claims; or

"(iv) a United States bankruptcy judge or a full-time United States magistrate judge;".

SEC. 204. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this title.

TITLE III—JUDICIAL FINANCIAL ADMINISTRATION

SEC. 301. AWARD OF FILING FEES IN FAVOR OF THE UNITED STATES.

(a) ACTIONS COMMENCED BY THE UNITED STATES.—Section 2412(a) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.".

(b) DISPOSITION OF FILING FEES.—Section 1931 of title 28, United States Code, is amended by inserting "or pursuant to an award in favor of the United States under section 2412(a)(2) of this title" after "chapter".

SEC. 302. AMENDMENTS TO THE JUDICIARY AUTOMATION FUND.

Section 612 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) in the second sentence by striking out "equipment for" and inserting in lieu thereof "equipment, program activities included in the courts of appeals, district courts, and other judicial services account of"; and

(B) in the third sentence—

(i) by inserting ", support personnel in the courts and in the Administrative Office of the United States Courts," after "personal services"; and

(ii) by striking out "in the judicial branch" and inserting in lieu thereof "purchased from the Fund. In addition, all agencies of the judiciary may make deposits into the Fund to meet their automatic data processing needs in accordance with subsections (b) and (c)(2).";

(2) in subsection (b)(1), by striking out "judicial branch", and inserting in lieu thereof "activities funded in subsection (a) and shall include an annual estimate of any fees that may be collected under section 404 of the Judiciary Appropriations Act, 1991 (28 U.S.C. 1913 note; Public Law 101-515; 104 Stat. 2132)";

(3) in subsection (b)(2), by striking out "judicial branch of the United States" and inserting in lieu thereof, "activities funded under subsection (a)";

(4) in subsection (c)(1)(A), by inserting "all fees collected by the judiciary under section 404 of the Judiciary Appropriations Act, 1991 (28 U.S.C. 1913 note; Public Law 101-515; 104 Stat. 2132)" after "surplus property";

(5) in subsection (e)(1) by striking out "$75,000,000" and inserting in lieu thereof "amounts estimated to be collected under subsection (c) for that fiscal year";

(6) by amending subsection (i) to read as follows:

"(i) REPROGRAMMING.—The Director of the Administrative Office of the United States Courts, under the supervision of the Judicial Conference of the United States may transfer amounts not in excess of $1,000,000 from the Fund into the account to which the funds were originally appropriated. Any amounts in excess of $1,000,000 may be transferred only by following reprogramming procedures in compliance with provisions set forth in section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100-459; 102 Stat. 2227); and";

(7) in subsection (j) in the second sentence by inserting "in statute" after "not specified"; and

(8) in subsection (l) by striking "1994" and inserting in lieu thereof "1999", and by striking out "'Judicial Services Account'" and inserting in lieu thereof "fund established under section 1931".

SEC. 303. VICTIMS' RIGHTS FUNDING.

Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(1) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.";

(2) by striking out subsection (d) and inserting in lieu thereof the following:

"(d) The Fund shall be available as follows:

"(1) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(2) Of the next $100,000,000 deposited in the Fund in a particular fiscal year—

"(A) 49.5 percent shall be available for grants under section 1403; and

"(B) 45 percent shall be available for grants under section 1404(a).

"(3) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(4) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(5) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

"(A) 47.5 percent shall be available for grants under section 1403.

"(B) 47.5 percent shall be available for grants under section 1404(a).

"(C) 5 percent shall be available for grants under section 1404(c).".

SEC. 304. FILING FEES.

Section 1931 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "The following"; and

(2) by adding at the end thereof the following new subsection:

"(b) If the court authorizes a fee of less than $120, the entire fee, up to $60, shall be deposited into the special fund provided in this section.".

TITLE IV—JURY MATTERS

SEC. 401. JURY SELECTION.

Section 1863(b)(2) of title 28, United States Code, is amended by adding at the end thereof the following: "The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.".

SEC. 402. EXPANDED WORKERS' COMPENSATION COVERAGE FOR JURORS.

(a) EXPANSION OF COVERAGE.— Section 1877(b)(2) of title 28, United States Code, is amended—

(1) by striking out "or" at the end of subparagraph (C); and

(2) by inserting before the period at the end of subparagraph (D) the following: ", or (E) traveling to or from the courthouse pursuant to a jury summons or sequestration order, or as otherwise necessitated by order of the court".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to jurors serving on or after December 1, 1991.

SEC. 403. COMPENSATION FOR LOSS OR DAMAGE TO PERSONAL PROPERTY OF JURORS.

Section 604 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(i)(1) The Director may compensate any person for the loss of, or damage to, personal effects of such person incurred incident to the performance of duties pursuant to a summons to serve as a grand or petit juror. Such compensation shall be consistent with sections 3721 and 3723 of title 31.

"(2) The Director shall prescribe guidelines for the allowance of claims for compensation under paragraph (1) of this subsection.".

SEC. 404. GRAND JURY TRAVEL.

Section 1871(c) of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines set by the Judicial Conference, the actual reasonable costs of travel by aircraft when weather conditions warrant and when certified by the chief judge of the district court in which the grand juror serves.".

SEC. 405. PERMANENT AUTHORIZATION FOR OPTIONAL USE OF NEW JURY SELECTION PROCESS.

(a) AUTHORITY TO USE ONE-STEP PROCEDURE.—Section 1878, title 28, United States Code, is amended to read as follows:

"§ 1878. Optional use of a one-step summoning and qualification procedure

"(a) At the option of each district court, jurors may be summoned and qualified in a single procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

"(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure as authorized by this section.".

(b) CONFORMING AMENDMENT.—The item relating to section 1878 in the table of sections for chapter 121 is amended to read as follows:

"1878. Optional use of a one-step summoning and qualification procedure.".

(c) SAVINGS PROVISION.—For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section), the amendment made by subsection (a) of this section shall be effective on and after January 1, 1992.

TITLE V—MISCELLANEOUS

SEC. 501. PRETERMISSION OF REGULAR SESSIONS OF COURT OF APPEALS.

Section 48(c) of title 28, United States Code, is amended by striking out ", with the consent of the Judicial Conference of the United States,".

SEC. 502. REPORTS AND STATISTICS.

(a) ELIMINATION OF DUPLICATIVE REPORTING REQUIREMENT.—Section 1121(a) of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3421(a)) is amended by adding at the end thereof "No report is required under this section after January 1, 1992.".

(b) TRANSFER OF REPORTING DUTY TO ADMINISTERING AGENCY.—Section 2412(d)(5) of title 28, United States Code, is amended by striking out "The Director" and all that follows through "this title," and inserting in lieu thereof "*The Attorney General shall report annually to the Congress on*".

(c) EXTENSION FOR JUDICIAL CENTER REPORT.—Subsection 302(c) of the Judicial Improvements Act of 1990 (Public Law 101–650; 104 Stat. 5104) is amended by striking out "2 years" and inserting in lieu thereof "2 years and 9 months".

SEC. 503. RECYCLING AND REUSE OF RECYCLABLE MATERIALS.

Section 604(g) of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"(3)(A) In order to promote the recycling and reuse of recyclable materials, the Director may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

"(B) The sale or disposal of recyclable materials under subparagraph (A) of this paragraph shall be consistent with the procedures provided in section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) for the sale of surplus property.

"(C) Proceeds from the sale of recyclable materials under subparagraph (A) of this paragraph shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.".

SEC. 504. BANKRUPTCY RULEMAKING.

(a) METHODS OF PRESCRIBING BANKRUPTCY RULES.—Section 2073 of title 28, United States Code, is amended—

(1) in subsection (a)(2), by striking out "section 2072" and inserting in lieu thereof "sections 2072 and 2075";

(2) in subsection (d), by inserting "or 2075" after "2072"; and

(3) in subsection (e), by inserting "or 2075" after "2072".

(b) EFFECTIVE DATE OF BANKRUPTCY RULES.—Section 2074(a) of title 28, United States Code, is amended by inserting "or 2075" in the first sentence after "2072".

(c) CONFORMING AMENDMENT.—Section 2075 of title 28, United States Code, is amended by striking out the third undesignated paragraph.

SEC. 505. VENUE IN DIVERSITY AND FEDERAL QUESTION CASES.

Section 1391 of title 28, United States Code, is amended—

(1) in subsection (a)(3) by inserting before the period "if there is no district in which the action may otherwise be brought"; and

(2) in subsection (b), by striking out "in" before "(1)" and inserting in lieu thereof "if".

SEC. 506. SUMMARIES OF REPORTS TO CONGRESS.

Section 103(c)(4)(B) of the Civil Justice Reform Act of 1990 (Public Law 101–650) is amended by striking "the reports" and inserting in lieu thereof "summaries of the reports".

SEC. 507. BANKRUPTCY ADMINISTRATOR PROGRAM.

(a) PRESIDING OFFICER.—A bankruptcy administrator appointed under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat. 3123), as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101–650; 104 Stat. 5115), or the bankruptcy administrator's designee may preside at the meeting of creditors convened under section 341(a) of title 11, United States Code. The bankruptcy administrator or the bankruptcy administrator's designee may preside at any meeting of equity security holders convened under section 341(b) of title 11, United States Code.

(b) EXAMINATION OF THE DEBTOR.—The bankruptcy administrator or the bankruptcy administrator's designee may examine the debtor at the meeting of creditors and may administer the oath required under section 343 of title 11, United States Code.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of enactment of this Act.

SEC. 508. COSTS AND FEES IN THE UNITED STATES COURT OF VETERANS APPEALS.

(a) IN GENERAL.—Section 2412(d)(2)(F) of title 28, United States Code, is amended by inserting before the semicolon "and the United States Court of Veterans Appeals".

(b) APPLICATION TO PENDING CASES.—The amendment made by subsection (a) shall apply to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of *the enactment of this Act.*

SEC. 509. COURT TO BE HELD AT LANCASTER, PENNSYLVANIA.

Section 118(a) of title 28, United States Code, is amended by inserting "Lancaster," before "Reading".

TITLE VI—*JUDICIARY PERSONNEL* ADMINISTRATION, BENEFITS, AND PROTECTIONS

SEC. 601. JUDICIAL RETIREMENT MATTERS.

(a) CREDITABLE SERVICE FOR CERTAIN JUDICIAL ADMINISTRATIVE OFFICIALS.—(1) Section 611(d) and 627(e) of title 28, United States Code, are each amended by inserting "a congressional employee in the capacity of primary administrative assistant to a Member of Congress or in the capacity of staff director or chief counsel for the majority or the *minority of a committee or subcommittee* of the Senate or House of Representatives," after "Congress,".

(2)(A) Sections 611(b) and 627(c) of such title are each amended—

(i) in paragraph (b), by striking out "who has served at least fifteen years and" and inserting in lieu thereof "who has at least fifteen years of service and has"; and

(ii) in the first undesignated paragraph, by striking out "who has served at least ten years," and inserting in lieu thereof "who has at least ten years of service,".

(B) Sections 611(c) and 627(d) of such title are each amended—

(i) by striking out "served at least fifteen years," and inserting in lieu thereof "at least fifteen years of service,"; and

(ii) by striking out "served less than fifteen years," and inserting in lieu thereof "less than fifteen years of service,".

(b) JUDICIAL RETIREMENT FUNDS.—Section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)) is amended by inserting after "Judicial survivors' annuities fund (10–8110–0–7–602);" the following:

"Judicial Officers' Retirement Fund (10–8122–0–7–602);

Court of Federal Claims Judges' Retirement Fund (10–8124–0–7–602);".

(c) *JUDICIARY TRUST FUNDS.*—*Section* 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after "Payment to civil service retirement and disability fund (24–0200–0–1–805);" the following:

"Payment to Judiciary Trust Funds (10–0941–0–1–752);".

SEC. 602. FULL-TIME STATUS OF COURT REPORTERS.

Section 753(e) of title 28, United States Code, is amended by inserting after the first sentence the following: "For the purposes of subchapter III of chapter 83 of title 5 and chapter 84 of such title, a reporter shall be considered a full-time employee during any pay period for which a reporter receives a salary at the annual salary rate fixed for a full-time reporter pursuant to the preceding sentence.".

SEC. 603. FEDERAL JUDICIAL CENTER.

(a) FUNCTIONS.—Subsection 620(b) of title 28, United States Code, is amended—

(1) in paragraph (4) by striking out "and" at the end thereof;

(2) in paragraph (5) by striking out the period and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new paragraph:

"(6) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with and assist agencies of the Federal Government and other appropriate organizations in providing information and advice to further improvement in the administration of justice in the courts of foreign countries and to acquire information about judicial administration in foreign countries that may contribute to performing the other functions set forth in this section.".

(b) COMPENSATION.—Subsection 625(b) of title 28, United States Code, is amended by inserting, after "section 5316, title 5, United States Code", and before the colon, the following language: ", except the Director may fix the compensation of no more than 5 percent of the authorized positions of the Center at a level not to exceed the annual rate of basic pay of level IV of such pay rates".

(c) CLERICAL COMPENSATION.—Subsection 625(c) of title 28, United States Code, is amended by striking out "competitive service and" and inserting in lieu thereof "competitive service without regard to".

TITLE VII—CRIMINAL LAW

SEC. 701. AUTHORITY TO LIMIT COLLECTION OF PRETRIAL INFORMATION IN CLASS A MISDEMEANOR CASES.

Section 3154(1) of title 18, United States Code, is amended by inserting before the period "; except that a district court may direct that pretrial services not collect, verify, and report such information on individuals charged with Class A misdemeanors as defined in section 3559(a)(6) of this title".

SEC. 702. NEW AUTHORITY FOR PROBATION AND PRETRIAL SERVICES OFFICERS.

(a) Section 3603 of title 18, United States Code, is amended—

(1) in paragraph (7) by striking out "and" at the end thereof;

(2) by redesignating paragraph (8) as paragraph (10) and inserting after paragraph (7) the following new paragraphs:

"(8)(A) when directed by the court, and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of sections 4243 and 4246 of this title, and report such person's conduct and condition to the court ordering release and to the Attorney General or his designee; and

"(B) immediately report any violation of the conditions of release to the court and the Attorney General or his designee;

"(9) if approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe; and".

(b) Section 3154 of title 18, United States Code, is amended—

(1) by redesignating paragraph (12) as paragraph (14); and

(2) by inserting after paragraph (11) the following new paragraphs:

"(12)(A) As directed by the court and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and the Attorney General or his designee.

"(B) Any violation of the conditions of release shall immediately be reported to the court and the Attorney General or his designee.

"(13) If approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe.".

SEC. 703. GOVERNMENT RATES OF TRAVEL FOR CRIMINAL JUSTICE ACT ATTORNEYS AND EXPERTS.

The Administrator of General Services Administration, in entering into contracts providing for special rates to be charged by Federal Government sources of supply, including common carriers and hotels (or other commercial providers of lodging) for official travel and accommodation of Federal Government employees, shall provide for charging the same rates for attorneys, experts, and other persons traveling primarily in connection with carrying out responsibilities under section 3006A of title 18, United States Code, including community defender organizations established under subsection (g) of that section.

SEC. 704. TECHNICAL CORRECTION.

Section 3143(b)(1) of title 18, United States Code, is amended by striking out "paragraph (b)(2)(D)" and inserting in lieu thereof "subparagraph (B)(iv) of this paragraph".

TITLE VIII—FOREIGN RECORDS OF REGULARLY CONDUCTED ACTIVITY

SEC. 801. FOREIGN RECORDS OF REGULARLY CONDUCTED ACTIVITY.

(a) AMENDMENT TO TITLE 28, UNITED STATES CODE.—Chapter 115 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1747. Foreign records of regularly conducted activity

"(a)(1) In a civil proceeding in a court of the United States, including the United States Court of Federal Claims and the United States Tax Court, a foreign record of regularly conducted activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests that—

"(A) such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

"(B) such record was kept in the course of a regularly conducted business activity;

"(C) the business activity made such a record as a regular practice; and

"(D) if such record is not the original, such record is a duplicate of the original;

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

"(2) A foreign certification under this section shall authenticate such record or duplicate.

"(b) As soon as practicable after a responsive pleading has been filed, a party intending to offer in evidence under this section a foreign record of regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

"(c) As used in this section, the term—

"(1) 'foreign record of regularly conducted activity' means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country;

"(2) 'foreign certification' means a written declaration made and signed in a foreign country by the custodian of a foreign record of regularly conducted activity or another qualified person, that if falsely made, would subject the maker to criminal penalty under the law of that country; and

"(3) 'business' includes business, institution, association, profession, occupation, and calling of every kind whether or not conducted for profit.".

(b) CONFORMING AMENDMENT.—The table of sections of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1746 the following item:

"1747. Foreign records of regularly conducted activity.".

(c) EFFECTIVE DATE.—The amendments made by this section are effective on the date of enactment of this Act.

TITLE IX—STATE JUSTICE INSTITUTE REAUTHORIZATION

SEC. 901. AUTHORIZATION OF APPROPRIATIONS.

Section 215 of the State Justice Institute Act of 1984 (Public Law 98-620; 42 U.S.C. 10713) is amended to read as follows:

"There are authorized to be appropriated to carry out the purposes of this title $20,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, $25,000,000 for fiscal year 1995, and $25,000,000 for fiscal year 1996. Amounts appropriated for each year are to remain available until expended.".

SEC. 902. INTERAGENCY AGREEMENTS.

Section 205(b) of the State Justice Institute Act of 1984 (42 U.S.C. 10705) is amended by—

(1) striking out paragraph (3) and inserting in lieu thereof the following:

"(3) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.";

(2) redesignating paragraph (4) as paragraph (5); and

(3) adding after paragraph (3) the following new paragraph:

"(4) The Institute shall have authority to enter into contracts with Federal agencies to carry out the purposes of this title.".

SEC. 903. EFFECTIVE DATE.

The provisions of this title shall take effect on the date of enactment of this Act.

TITLE X—TERRORISM CIVIL REMEDY

SEC. 1001. TERRORISM CIVIL REMEDY.

(a) REINSTATEMENT OF LAW.—The amendments made by section 132 of the Military Construction Appropriations Act, 1991 (104 Stat. 2250), are repealed effective as of April 10, 1991.

(b) TERRORISM.—Chapter 113A of title 18, United States Code, as amended by subsection (a), is amended—

(1) in section 2331 (as in effect prior to enactment of the Military Construction Appropriations Act, 1991) by striking subsection (d)

and redesignating subsection (e) as subsection (d);

(2) by redesignating section 2331 (as in effect prior to enactment of the Military Construction Appropriations Act, 1991) as section 2332 and amending the heading for section 2332, as redesignated, to read as follows:

"§ 2332. Criminal penalties";

(3) by inserting before section 2332, as redesignated by paragraph (2), the following new section:

"§ 2331. Definitions

"As used in this chapter—

"(1) the term 'act of war' means any act occurring in the course of—

"(A) declared war;

"(B) armed conflict, whether or not war has been declared, between two or more nations; or

"(C) armed conflict between military forces of any origin;

"(2) the term 'international terrorism' means activities that—

"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

"(B) appear to be intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by assassination or kidnapping; and

"(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

"(3) the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act; and

"(4) the term 'person' means any individual or entity capable of holding a legal or beneficial interest in property."; and

(4) by inserting after section 2332, as redesignated, the following new sections:

"§ 2333. Civil remedies

"(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

"(b) ESTOPPEL UNDER UNITED STATES LAW.—A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 902 (i), (k), (l), (n), or (r) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472 (i), (k), (l), (n), and (r)) shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"(c) ESTOPPEL UNDER FOREIGN LAW.—A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"§ 2334. Jurisdiction and venue

"(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

"(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, any civil action under section 2333 against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

"(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 may be served in any other district where the defendant resides, is found, or has an agent.

"(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

"(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

"(2) that foreign court is significantly more convenient and appropriate; and

"(3) that foreign court offers a remedy that is substantially the same as the one available in the courts of the United States.

"§ 2335. Limitation of actions

"(a) IN GENERAL.—Subject to subsection (b), a suit for recovery of damages under section 2333 shall not be maintained unless commenced within 4 years from the date the cause of action accrued.

"(b) CALCULATION OF PERIOD.—The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or any concealment of the defendant's whereabouts, shall not be counted for the purposes of the period of limitation prescribed by subsection (a).

"§ 2336. Other limitations

"(a) ACTS OF WAR.—No action shall be maintained under section 2333 for injury or loss by reason of an act of war.

"(b) LIMITATION ON DISCOVERY.—If a party to an action under section 2333 seeks to discover the investigative files of the Department of Justice, the attorney for the Government may object on the ground that compliance will interfere with a criminal investigation or prosecution of the incident, or a national security operation related to the incident, which is the subject of the civil litigation. The court shall evaluate any objections raised by the Government in camera and shall stay the discovery if the court finds that granting the discovery request will substantially interfere with a criminal investigation or prosecution of the incident or a national security operation related to the incident. The court shall consider the likelihood of criminal prosecution by the Government and other factors it deems to be appropriate. A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

"(c) STAY OF ACTION FOR CIVIL REMEDIES.—(1) The Attorney General may intervene in any civil action brought under section 2333 for the purpose of seeking a stay of the civil action. A stay shall be granted if the court finds that the continuation of the civil action will substantially interfere with a criminal prosecution which involves the same subject matter and in which an indictment has been returned, or interfere with national security operations related to the terrorist incident that is the subject of the civil action. A stay may be granted for up to 6 months. The Attorney General may petition the court for an extension of the stay for additional 6-month periods until the criminal prosecution is completed or dismissed.

"(2) In a proceeding under this subsection, the Attorney General may request that any order issued by the court for release to the parties and the public omit any reference to the basis on which the stay was sought.

"§ 2337. Suits against Government officials

"No action shall be maintained under section 2333 against—

"(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within the officer's or employee's official capacity or under color of legal authority; or

"(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within the officer's or employee's official capacity or under color of legal authority.

"§ 2338. Exclusive Federal jurisdiction

"The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter.".

(c) TECHNICAL AMENDMENTS.—(1) The chapter analysis for chapter 113A of title 18, United States Code is amended to read as follows:

"CHAPTER 113A—TERRORISM

(2) The item relating to chapter 113A in the part analysis for part I of title 18, United States Code, is amended to read as follows:

(d) EFFECTIVE DATE.—This section and the amendments made by this section shall apply to any pending case or any cause of action arising on or after 4 years before the date of enactment of this Act.

TITLE XI—COURT OF FEDERAL CLAIMS

SEC. 1101. SHORT TITLE.

This title may be cited as the "Court of Federal Claims Technical and Procedural Improvements Act of 1992".

SEC. 1102. COURT DESIGNATION.

(a) IN GENERAL.—Chapters 7, 51, 91, and 165 of title 28, United States Code, is amended by—

(1) striking "United States Claims Court" each place it appears and inserting "United States Court of Federal Claims"; and

(2) striking "Claims Court" each place it appears and inserting "Court of Federal Claims".

(b) OTHER PROVISIONS OF LAW.—Reference in any other Federal law or any document relating to—

(1) the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims"; and

(2) the "Claims Court" shall be deemed to refer to the "Court of Federal Claims".

SEC. 1103. SOCIAL SECURITY AMENDMENTS.

Section 178 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) For the purpose of construing section 3121(i)(5) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(i)(5)) and section 209(h) of the Social Security Act (42 U.S.C. 409(h)), the annuity of a Court of Federal Claims judge on senior status after age 65 shall be deemed to be an amount paid under section 371(b) of this title for performing services under the provisions of section 294 of this title.".

SEC. 1104. ELIGIBILITY FOR INSURANCE AND ANNUITIES PROGRAMS.

Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 179. Insurance and annuities programs

"For the purpose of construing the provisions of title 5, a judge of the United States Court of Federal Claims shall be deemed to be a 'judge of the United States' as designated in section 2104(a) of title 5.".

SEC. 1105. MILITARY RETIREMENT PAY FOR RETIRED JUDGES.

(a) IN GENERAL.—Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 180. Military retirement pay for retired judges

"Section 371(e) of this title shall be applicable to judges of the United States Court of Federal Claims, and for the purpose of construing section 371(e) of this title, a judge of the United States Court of Federal Claims shall be deemed to be a judge of the United States as defined by section 451 of this title.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following:

"179. Insurance and annuities programs.
"180. Military retirement pay for retired judges.".

SEC. 1106. RECALL OF COURT OF FEDERAL CLAIMS JUDGES ON SENIOR STATUS.

(a) IN GENERAL.—Section 375 of title 28, United States Code, is amended—

(1) in the first sentence of subsection (a)(1) by striking ", a judge of the Claims Court," and ", judge of the Claims Court,";

(2) by amending paragraph (2) of subsection (a) to read as follows:

"(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.";

(3) by amending paragraph (3) of subsection (a) to read as follows:

"(3) For purposes of this section, the term 'bankruptcy judge' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984."; and

(4) in subsection (f) by—

(A) striking ", a judge of the Claims Court,"; and

(B) striking ", a commissioner of the Court of Claims,".

(b) RECALL OF RETIRED JUDGES.—Section 797 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "section 178 of this title or under" after "under"; and

(2) in the second sentence of subsection (d) by striking "civil service".

SEC. 1107. LAW CLERKS AND SECRETARIES.

The first sentence of section 794 of title 28, United States Code, is amended by inserting after "may approve" the following: "for district judges".

SEC. 1108. SITES FOR HOLDING COURT.

(a) IN GENERAL.—Section 798(a) of title 28, United States Code, is amended to read as follows:

"(a) The United States Court of Federal Claims is authorized to utilize facilities and hold court in Washington, District of Columbia, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the District of Columbia.".

(b) FOREIGN COUNTRY.—

(1) REDESIGNATION.—Subsection (b) of section 798 of title 28, United States Code, is redesignated as subsection (c).

(2) HEARING IN A FOREIGN COUNTRY.—Section 798 of title 28, United States Code, is amended by inserting after subsection (a) the following:

"(b) Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency and justice will be served, the chief judge may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to the provisions of section 1292(d)(2) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.".

(c) APPEAL JURISDICTION.—Section 1292(d)(2) of title 28, United Sates Code, is amended by inserting after "When" the following: "the chief judge of the United States Court of Federal Claims issues an order under the provisions of section 798(b) of this title, or when".

SEC. 1109. JURISDICTION.

Section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) If the certification of a claim pursuant to this Act is technically defective, a court or agency board of contract appeals may permit the certification to be corrected at any time prior to a final decision by the court or agency board of contract appeals unless the failure properly to certify in the first instance was fraudulent, in bad faith, or with reckless or grossly negligent disregard of the requirements of the relevant statutes or regulations.

"(B) If the contracting officer did not challenge the validity of the certification and the court or agency board of contract appeals permits the defective certification to be corrected under this section, interest shall accrue on the claim under section 611 of this Act from the date the claim was first submitted to the contracting officer.

"(C) This paragraph shall be effective with respect to cases filed with any court or agency board of contract appeals under section 607, 608, or 609 of this Act on or after the date of the enactment of this paragraph.".

SEC. 1110. AWARDABLE COSTS.

Section 1919 of title 28, United States Code, is amended by—

(1) striking "district court or" and inserting "district court,"; and

(2) inserting after "Trade" the following: ", or the Court of Federal Claims".

SEC. 1111. PROCEEDINGS GENERALLY.

Section 2503 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d) For the purpose of construing sections 1821, 1915, 1920 and 1927 of this title, the United States Court of Federal Claims shall be deemed to be a court of the United States.".

SEC. 1112. SUBPOENAS AND INCIDENTAL POWERS.

(a) IN GENERAL.—Section 2521 of title 28, United States Code, is amended by—

(1) amending the section heading to read as follows:

"§ 2521. Subpoenas and incidental powers";

(2) inserting "(a)" before "Subpoenas requiring"; and

(3) adding at the end thereof the following new subsections:

"(b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—

"(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) misbehavior of any of its officers in their official transactions; or

"(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

"(c) The United States Court of Federal Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 165 of title 28, United States Code, is amended by amending the item relating to section 2521 to read as follows:

2521. Subpoenas and incidental powers.".

SEC. 1113. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE XII—EFFECTIVE DATE

SEC. 1201. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act shall be effective on and after January 1, 1993.

(b) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding any provision of this Act, all sums expended pursuant to this Act shall be subject to the availability of appropriations.

Mr. HATFIELD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

ORDER FOR RECORD TO REMAIN OPEN

Mr. JOHNSTON. Mr. President, I ask unanimous consent the RECORD remain open today until 10 p.m., in order for Senator BENTSEN to insert an explanatory statement regarding H.R. 11, the urban aid package.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to

the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a treaty which was referred to the appropriate committees.

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

REPORT ON NATIONAL EMERGENCY WITH RESPECT TO IRAQ MESSAGE FROM THE PRESIDENT—PM 265

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I hereby report to the Congress on the development since my last report of February 11, 1992, concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 of August 2, 1990. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. 1703(c).

Executive Order No. 12722 ordered the immediate blocking of all property and interests in property of the Government of Iraq (including the Central Bank of Iraq) then or thereafter located in the United States or within the possession or control of a U.S. person. In that order, I also prohibited the importation into the United States of goods and services of Iraqi origin, as well as the exploration of goods, services, and technology from the United States to Iraq. I prohibited travel-related transactions and transportation transactions to or from Iraq and the performance of any contract in support of any industrial, commercial, or governmental project in Iraq. U.S. persons were also prohibited from granting or extending credit or loans to the Government of Iraq.

The foregoing prohibitions (as well as the blocking of Government of Iraq property), were continued and augmented on August 9, 1990, by Executive Order No. 12724 which I issued in order to align the sanctions imposed by the United States with United Nations Security Council Resolution 661 of August 6, 1990.

This report discusses only matters concerning the national emergency with respect to Iraq that was declared in Executive Order No. 12722 and matters relating to Executive Order No. 12724 ("the Executive orders"). The report covers events from February 2, 1992, through August 1, 1992.

1. The economic sanctions imposed on Iraq by the Executive orders are administered by the Treasury Department's Office of Foreign Assets Control ("FAC") under the Iraqi Sanctions Regulations, 31 CFR Part 575 ("ISR"). There have been no amendments of those regulations since my last report.

2. Investigations of possible violations of the Iraqi sanctions continue to be pursued and appropriate enforcement actions taken. These are intended to deter future activities in violation of the sanctions. Additional civil penalty notices were prepared during the reporting period for violations of the IEEPA and ISR with respect to transactions involving Iraq. Penalties were collected, principally from financial institutions which engaged in unauthorized, albeit apparently inadvertent, transactions with respect to Iraq.

3. Investigation also continues into the roles played by various individuals and firms outside of Iraq in Saddam Hussein's procurement network. These investigations may lead to additions to the FAC listing of individuals and organizations determined to be specially designated nationals ("SDN's") of the Government of Iraq. In practice, an Iraqi SDN is a representative, agent, intermediary, or front (whether open or covert) of the Iraqi Government that is located outside of Iraq. Iraqi SDN's are Saddam Hussein's principal instruments for doing business in third countries, and doing business with them is the same as doing business directly with the Government of Iraq.

The impact of being named an Iraqi SDN is considerable: all assets within U.S. jurisdiction of parties found to be Iraqi SDN's are blocked; all economic transactions with SDN's by U.S. persons are prohibited; and the SDN individual or organization is exposed as an agent of the Iraqi regime.

4. Since my last report, one case filed against the Government of Iraq has gone to judgment. *Centrifugal Casting Machine Co., Inc.* v. *American Bank and Trust Co., Banca Nazionale del Lavoro, Republic of Iraq, Machinery Trading Co., Baghdad, Iraq, Central Bank of Iraq, and Bank of Rafidain*, No. 91-5150 (10th Cir., decided June 11, 1992), arose out of a contract for the sale of goods by plaintiff to the State Machinery Co., an Iraqi governmental entity. In connection with the contract, the Iraqi defendants opened an irrevocable letter of credit in favor of Centrifugal, from which Centrifugal drew a 10-percent advance payment. Repayment of the advance payment in case of nonperformance by Centrifugal was guaranteed by a standby letter of credit. Performance did not occur due to the imposition of economic sanctions against Iraq in August 1990, and the United States claimed that an amount equal to the advance payment was blocked property. The district court ruled that the standby letter of credit had expired, that no U.S. party was liable to an Iraqi entity under the standby letter of credit, and that the advance payment funds were therefore not blocked property and could be distributed to U.S. persons. The court of appeals affirmed the ruling of the district court that there was no blocked Iraqi property interest in the advance payment funds, based on applicable principles of letter of credit law.

5. FAC has issued 288 specific licenses regarding transactions pertaining to Iraq or Iraqi assets. Since my last report, 71 specific licenses have been issued. Most of these licenses were issued for conducting procedural transactions such as filing of legal actions, and for legal representation; other licenses were issued pursuant to United Nations Security Council Resolutions 661, 666, and 687, to authorize the exportation to Iraq of donated medicine, medical supplies, and food intended for humanitarian relief purposes. All of these licenses concern minor transactions of no economic benefit to the Government of Iraq.

To ensure compliance with the terms of the licenses which have been issued, stringent reporting requirements have been imposed that are closely monitored. Licensed accounts are regularly audited by FAC compliance personnel and deputized auditors from other regulatory agencies. FAC compliance personnel continue to work closely with both State and Federal bank regulatory and law enforcement agencies in conducting special audits of Iraqi accounts subject to the ISR.

6. The expenses incurred by the Federal Government in the 6-month period from February 2, 1992, through August 1, 1992, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Iraq are estimated at $2,476,000, most of which represents wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in FAC, the U.S. Customs Service, the Office of the Assistant Secretary for Enforcement, the Office of the Assistant Secretary for International Affairs, and the Office of the General Counsel), the Department of State (particularly the Bureau of Economic and Business Affairs and the Office of the Legal Adviser), the Department of Transportation (particularly the U.S. Coast Guard), and the Department of Commerce (particularly in the Bureau of Export Administration and the Office of the General Counsel).

7. The United States imposed economic sanctions on Iraq in response to Iraq's invasion and illegal occupation of Kuwait, a clear act of brutal aggression. The United States, together with the international community, is main-

taining economic sanctions against Iraq because the Iraqi regime has failed to comply fully with United Nations Security Council resolutions calling for the elimination of Iraqi weapons of mass destruction, the demarcation of the Iraq-Kuwait border, the release of Kuwaiti and other prisoners, compensation for victims of Iraqi aggression, and the return of Kuwaiti assets stolen during its illegal occupation of Kuwait. The U.N. sanctions remain in place: the United States will continue to enforce those sanctions.

The Saddam Hussein regime continues to violate basic human rights by repressing the Iraqi civilian population and depriving it of humanitarian assistance. The United Nations Security Council passed resolutions that permit Iraq to sell $1.6 billion of oil under U.N. auspices to fund the provision of food, medicine, and other humanitarian supplies to the people of Iraq. Under the U.N. resolutions, the equitable distribution within Iraq of this assistance would be supervised and monitored by the United Nations and other international organizations. The Iraqi regime continues to refuse to accept these resolutions, and has thereby chosen to perpetuate the suffering of its civilian population.

The regime of Saddam Hussein continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, as well as to regional peace and security. The United States will therefore continue to apply economic sanctions to deter Iraq from threatening peace and stability to the region, and I will continue to report periodically to the Congress on significant developments, pursuant to 50 U.S.C. 1703(c).

GEORGE BUSH.

THE WHITE HOUSE, *August 3, 1992.*

MESSAGES FROM THE HOUSE

At 12:18 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4318. An act to make certain miscellaneous and technical amendments to the Harmonized Tariff Schedule of the United States, and for other purposes;

H.R. 5191. An act to encourage private concerns to provide equity capital to small business concerns, and for other purposes;

H.R. 5678. An act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1993, and for other purposes; and

H.R. 5679. An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1993, and for other purposes.

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MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4318. An act to make certain miscellaneous and technical amendments to the Harmonized Tariff Schedule of the United States, and for other purposes; to the Committee on Finance.

H.R. 5191. An act to encourage private concerns to provide equity capital to small business concerns, and for other purposes; to the Committee on Small Business.

H.R. 5679. An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1993, and for other purposes; to the Committee on Appropriations.

The following bill, received from the House of Representatives for concurrence on July 28, 1992, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 5465. An act to amend title XIII of the Federal Aviation Act of 1958 relating to aviation insurance; to the Committee on Commerce, Science, and Transportation.

The following concurrent resolutions, received from the House of Representatives for concurrence on July 29, 1992, was read, and referred as indicated:

H. Con. Res. 302. A concurrent resolution expressing the sense of Congress regarding communities making the transition to "Hunger-Free" status; to the Committee on Agriculture, Nutrition, and Forestry.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. MIKULSKI, from the Committee on Appropriations, with amendments:

H.R. 5679. A bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1993, and for other purposes (Rept. No. 102-356).

By Mr. KENNEDY, from the Committee on Labor and Human Resources, with amendments:

S. 3065. A bill to revise and extend the Rehabilitation Act of 1973, and for other purposes (Rept. No. 102-357).

By Mr. BENTSEN, from the Committee on Finance:

H.R. 11. An act to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes.

Mr. BENTSEN. Mr. President, I ask unanimous consent that an explanation of the Finance Committee bill be printed in the RECORD.

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

TECHINICAL EXPLANATION OF THE FINANCE COMMITTEE AMENDMENT

TITLE I. ECONOMIC DEVELOPMENT IN DISTRESSED AREAS—ENTERPRISE ZONES

(Secs. 1101-1111 of the bill and new sections 1391-1397 of the Code)

Present Law

The Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax treatment. Within certain Code sections, however, there are definitions of targeted areas for limited purposes (e.g., low-income housing credit and qualified mortgage bond provisions target certain economically distressed areas). In addition, present law provides favorable Federal income tax treatment for certain U.S. corporations that operate in Puerto Rico, the U.S. Virgin Islands, or a possession of the United States to encourage the conduct of trades or businesses within these areas.

Reasons for Change

The committee believes that special consideration should be given to the problems of distressed urban and rural areas. Revitalization of economically distressed areas through expanded employment and capital incentives, especially for residents of those distressed areas, should help alleviate economic and social problems. In particular, tax incentives in the form of wage and training subsidies paid to employers will increase the employment opportunities for zone residents. Capital incentives should be targeted to promoting tangible capital improvements that directly benefit the economy and residents of the distressed area. The committee also believes that any Federal tax incentives for distressed areas should be provided in conjunction with resources committed by the nominating State and local governments as described in their agreed-upon course of action. Finally, because there is no consensus among policy analysts evaluating existing enterprise zone programs about the operation of tax provisions that target geographic areas, the Federal tax enterprise zone program should be subject to a Congressionally mandated study by the National Academy of Sciences to review the efficacy of the program. In this way, Congress can determine whether it is appropriate to continue, modify, or expand the enterprise zone program.

Explanation of Provisions

Designation of tax enterprise zones

In general.—A total of 25 tax enterprise zones will be designated (subject to availability of eligible zones) during 1993-1996. Tax enterprise zones are urban tax enterprise zones, rural development investment zones, or Indian reservation tax enterprise zones, and will be designated from areas nominated by State and local governments or a governing body of an Indian reservation.

The Secretary of Housing and Urban Development (HUD) will designate 15 urban tax enterprise zones (up to 6 zones designated in 1993, 4 zones in 1994, 3 zones in year 1995, and 2 zones in year 1996). Any shortfall in designations of zones may be carried forward to the following year, but not beyond 1996.

The Secretary of Agriculture (in consultation with the Secretary of the Interior) will designate 8 rural development investment zones (up to 3 zones designated in 1993, 2 zones in 1994, 2 zones in 1995, and 1 zone in 1996).[1] Any shortfall in designations of zones

[1] Rural development investment zones will be located in areas that are (1) outside a metropolitan

may be carried forward to the following year, but not beyond 1996.

The Secretary of the Interior will designate 2 Indian reservation tax enterprise zones (1 zone in 1993, 1 zone in 1994, and any shortfall carried forward through 1996).[2] Nominated areas located on Indian reservations also would be eligible for designation (provided the bill's criteria are met) as rural development investment zones.

Zone designations generally will remain in effect for 10 years. An area's zone designation may be revoked if the local government or State significantly modifies the boundaries or does not comply with its agreed-upon course of action for the zone (described below).[3]

Eligibility criteria for zones.—The eligibility criteria for urban tax enterprise zones, rural development investment zones, and Indian reservation tax enterprise zones generally are the same (except as noted below). To be eligible for designation as a tax enterprise zone, a nominated area is required to have all of the following characteristics: (1) a population of at least 20,000 (10,000 in the case of a rural zone and no minimum population for Indian reservation zones); (2) a condition of unemployment and general distress (indicated by factors such as high crime rates, or designation of the area as a disaster area or high-intensity drug trafficking area ("HIDTA") under the Anti-Drug Abuse Act of 1988); (3) is one contiguous area; (4) is located within not more than two States; (5) poverty rates of at least 25 percent in each of the area's census tracts;[4] (6) poverty rates of at least 35 percent in each of at least 80 percent of the area's census tracts; and (7) a satisfactory course of action (described below) adopted by the State and local governments designed to promote economic development in the nominated area.

Course of action.—In order for a nominated area to be eligible for designation as a tax enterprise zone, the local government and State in which the area is located are required to agree in writing that they will adopt (or continue to follow) a specified course of action designed to reduce burdens borne by employers of employees in the area.

A course of action must include the following actions with respect to a nominated area: (1) certification by the State insurance commissioner (or similar official) that basic commercial property insurance of a type comparable to that insurance generally in force in urban or rural areas (whichever is applicable) throughout the State is available to businesses within the nominated area; (2) a program to ensure the necessary rehabilitation of publicly owned property; (3) a commitment to increase the level, or efficiency of delivery, of local public services (such as public safety protection); (4) involvement in the program by public or private entities (e.g., community groups), including a commitment to provide jobs and job training, and technical, financial, or other assistance to employers, employees, and residents of the area; (5) special preferences granted to contractors owned and operated by socially and economically disadvantaged groups, in connection with activity in the zone; (6) certain programs to encourage local financial institutions to make loans to area businesses, with emphasis on small and locally owned businesses; and (7) special preferences for projects within the area in allocations of the State's low-income housing credit ceiling and private activity bonds ceiling.[5]

In addition, the required course of action may include the following: (1) a reduction of tax rates or fees applying within the zone; (2) donations of surplus land to community organizations agreeing to operate businesses on the land; and (3) programs to encourage employers to purchase health insurance for employees on a pooled basis.

Programs which serve as part of the required course of action may be implemented by both government and nongovernmental entities, but may not be funded with proceeds from any Federal program (other than discretionary proceeds, such as community development block grants, the use of which is not restricted to a zone). In evaluating courses of action agreed to by the State or local government, past efforts of those governments with respect to the nominated area are to be taken into account.[6]

Selection process and criteria.—All designated tax enterprise zones will be selected from nominated areas on the basis of the following factors: (1) the strength and quality of promised contributions by State and local governments relative to their fiscal ability; (2) the effectiveness and enforceability of the guarantees that the promised course of action will be implemented, including the specificity with which the commitments enumerated in the course of action are described in order that it could be determined annually by the applicable Secretary whether such commitments actually are being carried out; (3) the level of commitments by private entities of additional resources to the economy of the nominated area, including the creation of new or expanded business activities; and (4) the relative levels (compared to other nominated areas) of unemployment, general distress, and poverty in the nominated area.[7]

Tax incentives

Employer wage credit.—A 40-percent credit against income tax liability is available to all employers for the first $20,000 of wages paid to each employee who (1) is a zone resident (i.e., his or her principal place of abode is within the zone),[8] and (2) performs substantially all employment services within the zone in a trade or business of the employer.[9]

The maximum credit per qualified employee is $8,000 per year. Wages paid to a qualified employee continue to be eligible for the credit if the employee earns more than $20,000, although only the first $20,000 of wages are eligible for the credit.[10] The wage credit is available with respect to a qualified employee, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for the investment tax incentives described below).

Qualified wages include the first $20,000 of "wages," defined as (1) salary and wages as generally defined for FUTA purposes, and (2) certain training and educational expenses paid on behalf of a qualified employee, provided that (a) the expenses are paid to an unrelated third party and are creditable from gross income of the employee under present-law section 127, or (b) in the case of an employee under age 19, the expenses are incurred by the employer in operating a youth training program in conjunction with local education officials.

The credit is allowed with respect to both full-time and part-time employees. However, the employee must be employed by the employer for a minimum period of at least 90 days or 120 hours of service. Wages are not eligible for the credit if paid to certain relatives of the employer or, if the employer is a corporation, certain relatives of a person who owns more than 50 percent of the corporation. In addition, wages are not eligible for the credit if paid to a person who owns more than five percent of the stock (or capital or profits interests) of the employer.

To be eligible for the wage credit, an employer is required to notify all employees eligible to receive advance refundability of the earned income tax credit (EITC) of the availability of such advance refundability.

For certain small employers, the credit is refundable (and may be used to reduce tentative minimum tax). For this purpose, the term "small employers" is defined as employers with gross receipts not greater than $2 million during the preceding taxable year, although refundability is phased out for employers with gross receipts between $1 million and $2 million. For employers that are not "small employers," the credit is not refundable. For such employers, the credit is subject to the general business credit limitations (sec. 38) and, therefore, may not be used to reduce tentative minimum tax.

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statistical area as defined by the Secretary of Commerce, or (2) determined by the Secretary of Agriculture, after consultation with the Secretary of the Interior, to be a rural area.

[2] Indian reservation tax enterprise zones must be located on a "reservation" as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

[3] An area's designation as a tax enterprise zone may be revoked only after a hearing on the record at which officials of the State and local governments (or Indian reservation) are given an opportunity to participate and the governments have an opportunity to correct any deficiencies found at the hearing. Any such revocation may take effect only prospectively.

[4] The poverty rate is to be determined by the 1990 census or subsequent census data. If areas are not treated as population census tracts, the equivalent county divisions as defined by the Bureau of the Census for purposes of defining poverty areas would be treated as population census tracts.

[5] Required elements of a course of action apply to an area located on an Indian reservation only to the extent that the reservation governing body has legal authority to comply with such requirements.

[6] The bill provides that the required course of action may not include any action to assist any business in relocating from an area outside the tax enterprise zone to within the tax enterprise zone. However, this limitation is not to be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary if (1) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business conducts operations, and (2) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business in the area of its original location or in any other area where the existing business conducts operations.

[7] It is intended that, during the 1993-1996 period, a nominating entity may, if it so desires, submit an up-dated application for an area previously nominated for designation as a tax enterprise zone.

[8] The committee intends that employers will undertake reasonable measures to verify an employee's residence within the zone, so that the employer will be able to substantiate any wage credit claimed under the bill.

[9] The credit is not available, however, with respect to any individual employed at any facility described in present-law section 144(a)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises).

[10] To prevent avoidance of the $20,000 limit, all employers of a controlled group of corporations (or partnerships or proprietorships under common control) are treated as a single employer.

An employer's deduction otherwise allowed for wages paid is reduced by the amount of credit claimed for that taxable year.

Expansion of targeted jobs tax credit.—The present-law targeted jobs tax credit (TJTC) is expanded so that a person who resides in a tax enterprise zone is treated as a member of a targeted group for purposes of that credit.[11]

Thus, employers located outside enterprise zones are entitled to claim the 40-percent TJTC credit on up to $6,000 of qualified first-year wages paid to employees who reside within a tax enterprise zone.[12]

As under present-law, an employer's deduction otherwise allowed for wages is reduced by the amount of TJTC claimed for that taxable year.

Definition of "enterprise zone business".—The investment tax incentives described below (but not in the labor incentives described above) are available only with respect to trade or business activities that satisfy the criteria for an "enterprise zone business." Under the bill, an "enterprise zone business" is defined as a corporation or partnership (or proprietorship) if for the taxable year: (1) the sole trade or business of the corporation or partnership is the active conduct of a qualified business within a tax enterprise zone;[13] (2) at least 80 percent of the total gross income is derived from the active conduct of a qualified business within a zone; (3) substantially all of the use of its tangible property occurs within a zone; (4) substantially all of its intangible property is used in, and exclusively related to, the active conduct of such business; (5) substantially all of the services performed by employees are performed within a zone; (6) at least one-third of the employees are residents of the zone;[14] and (7) no more than five percent of the average of the aggregate unadjusted bases of the property owned by the business is attributable to (a) certain financial property, or (b) collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.

A "qualified business" is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license, or a business consisting of the operation of a facility described in present-law section 144(c)(6)(B).[15] In addition, the leasing to others of any structure or building located within a tax enterprise zone is treated as a qualified business only if at least 50 percent of the gross rental income from the building or structure is derived from property leased to enterprise zone businesses. The rental of tangible personal property to others is not a qualified business unless substantially all of the rental of such property is by enterprise zone businesses or by residents of a tax enterprise zone.[16]

Activities of legally separate (even if related) parties are not aggregated for purposes of determining whether an entity qualifies as an enterprise zone business.

Increased section 179 expensing.—The present-law $10,000 expensing allowance for certain depreciable business property provided under section 179 is increased to $75,000 for "qualified zone property" used in an enterprise zone business (as defined above). In addition, the type of property eligible for section 179 expensing is expanded to include buildings used in an enterprise zone business.

"Qualified zone property" is defined as depreciable tangible property (including buildings), provided that: (1) such property was acquired by the taxpayer (but not from a related party) after the zone designation took effect; (2) the original use of the property in the zone commences with the taxpayer;[17] and (3) substantially all of the use of the property is in the zone in the active conduct of a trade or business by the taxpayer in the zone. In the case of property which is substantially renovated by the taxpayer, however, such property need not be acquired by the taxpayer after zone designation nor originally used by the taxpayer within the zone if during any 24-month period after zone designation the additions to the taxpayer's basis in such property exceed 100 percent of the taxpayer's basis in such property at the beginning of the period or $5,000 (whichever is greater).[18]

As under present law, the section 179 expensing allowance is phased out for certain taxpayers with investment in depreciable business property during the taxable year above a specified threshold. However, the present-law phaseout range (i.e., $200,000 to $210,000 of investment during the taxable year) is increased for enterprise zone businesses to a phaseout range of $300,000 to $450,000 of investment made by the taxpayer during the taxable year.

As under present law, all component members of a controlled group are treated as one taxpayer for purposes of the $75,000 limitation and the phaseout (sec. 179(d)(6)). Also, as under present law, the $75,000 expensing allowance is to apply at both the partnership and partner level.

The increased expensing allowance is allowed for purposes of the alternative minimum tax (i.e., it will not be treated as an adjustment for purposes of the alternative minimum tax). The section 179 expensing deduction will be recaptured if the property is not used predominantly in an enterprise zone business (under rules similar to present-law section 179(d)(10)).

Accelerated depreciation.—An enterprise zone business (as defined above) will determine depreciation deductions with respect to "qualified zone property"[19] (also defined above) by using the following recovery periods:

3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	20 years

The shorter recovery periods allowed for qualified zone property of enterprise zone businesses will not be allowed for alternative minimum tax purposes.

Ordinary loss treatment.—Loss incurred by an individual or corporate taxpayer on disposition of certain property used in an enterprise zone business is treated as ordinary loss. The provision applies to tangible property used in an enterprise zone business for at least two year (five years in the case of real property). Loss on disposition of a stock or partnership interest in an enterprise zone business held by an individual for at least two years also is treated as ordinary loss. Ordinary loss treatment is not available under the provision for intangible property, other than stock or partnership interests in enterprise zone businesses.

Stock interests eligible for the ordinary loss treatment must be acquired by the individual taxpayer on original issue from the corporation solely in exchange for cash at a time when the corporation was an enterprise zone business (or was being organized for the purpose of being an enterprise zone business.[20] Similar rules would apply to partnership interests in enterprise zone businesses. Property used in an enterprise zone business is eligible for the ordinary loss treatment under the bill if the property (1) meets the definition of "qualified zone property" (defined above), or (2) is land which is an integral part of an enterprise zone business.

The ordinary loss treatment applies only to losses that are attributable to the period that the property is used in an enterprise zone business.[21] Losses from transactions with related persons are not eligible for the ordinary loss treatment (sec. 267).

Any loss that is treated as an ordinary loss under this provision is not to be taken into account in applying section 1231. In addition, any loss that is treated as an ordinary loss under this provision is to be treated as attributable to a trade or business of the taxpayer for purposes of the net operating loss deduction of section 172. Finally, the ordinary loss treatment is to apply for purposes of computing alternative minimum tax.

Stock expensing.—An individual is allowed a 50-percent deduction for the amount paid in cash during the taxable year to purchase certain stock in an enterprise zone business. The amount of the deduction is limited to $25,000 per year (with a $250,000 lifetime cap).[22] The deduction is allowed to an indi-

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[11] The TJTC (sec. 51) expired on June 30, 1992, but is extended for 18 months (i.e., through December 31, 1993) by another provision contained in the bill.

[12] Employers located within a tax-enterprise zone are not allowed to claim the TJTC with respect to an employee if any of such employee's wages were taken into account in determining the employer's enterprise zone wage credit for that taxable year.

[13] This requirement does not apply to a business carried on by an individual as a proprietorship.

[14] For this purpose, the term "employee" includes a self-employed individual (within the meaning of section 401(c)(1)).

The committee intends that the Secretary of the Treasury will prescribe regulations to determine the appropriate treatment of part-time employees for purposes of calculating whether one-third of the employees are residents of the zone.

[15] See footnote 9 above.

[16] An activity will cease to be a qualified enterprise zone as of the date on which the designation of the enterprise zone in which the activity is conducted is terminated, except that the activity will continue to be a qualified enterprise zone business with respect to (1) the first taxable year of such activity, (2) any property placed in service before the date of termination of the zone designation, and (3) any property placed in service after the date of termination pursuant to a binding, written contract in effect before the termination date (and at all times thereafter).

[17] Thus, used property may constitute qualified zone property, so long as it has not previously been used within the tax enterprise zone.

[18] Qualified zone property does not include any property to which the alternative depreciation system under section 168(g) applies, determined (1) without regard to section 168(g)(7), and (2) after application of section 280F(b).

[19] Accelerated depreciation will be available with respect to property that is not expensed under section 179.

[20] Under the bill, stock is not eligible for the ordinary loss treatment if the basis of such stock had been reduced under the stock expensing provision described below. In addition, stock is not eligible for the ordinary loss treatment if such stock was acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of the provision.

[21] For this purpose, termination or revocation of an area's designation as a tax enterprise zone is disregarded.

[22] Thus, in order for an individual to claim the maximum $25,000 per-year deduction, the individual must purchase $50,000 of qualified stock during the taxable year.

Individuals are permitted to carry excess amounts (above the $25,000 per-year limit-- to the next taxable year (subject to the $250,000 lifetime cap).

vidual as an above-the-line deduction (regardless of whether the individual claims the standard deduction).

Stock qualifies for the expensing deduction only if it was stock acquired on original issue[23] from a domestic C corporation that: (1) meets the definition of an enterprise zone business (defined above); (2) does not have more than one class of stock outstanding; (3) the sum of (a) the unadjusted bases of the assets owned by the corporation and (b) the value of leased assets does not exceed $3 million;[24] (4) more than 20 percent of the total value and total voting power of the stock of the corporation is owned by individuals (directly or through partnerships or trusts) or by estates; and (5) the cash paid for the stock is used by the issuing corporation within 12 months to acquire property (a) which is depreciable tangible property (whether real or personal) to which section 168 applies, (b) the original use of which in the zone commences with the issuing corporation, and (c) substantially all of the use of which is in the zone.

For purposes of the $25,000 annual limitation and the $250,000 lifetime cap, an individual and members of his family (as defined in present-law section 267(c)(4)) are treated as a single individual.

The basis of stock for which a deduction is claimed under the provision is reduced by the amount of the deduction. In addition, gain on disposition of the stock is treated as ordinary income to the extent of the amount allowed as a deduction, and interest is payable on certain premature dispositions. The deduction is allowed for purposes of the alternative minimum tax.

Low-income housing credit expansion.—For purposes of the low-income housing credit (LIHC),[25] tax enterprise zones automatically qualify as "difficult to develop" areas, within which the eligible basis of buildings for purposes of computing the credit is 130 percent of the cost basis. (Thus, for LIHC projects in tax enterprise zones, the credit will be based on 91 percent of present value instead of the regular LIHC rate of 70 percent of present value.) The present-law State credit cap continues to apply.

Qualified enterprise zone facility bonds

In general.—The bill authorizes a new category of exempt-facility private activity bonds, qualified enterprise zone facility bonds, for use in areas certified as eligible to be enterprise zones. Qualified enterprise zone facility bonds are bonds 95 percent or more of the net proceeds of which are used to finance qualified enterprise zone property (as defined generally under the bill) for a qualified enterprise zone business[26] and land located in the zone the use of which is an integral part of such a business.

Unlike the other tax incentives provided for designated tax enterprise zones, these bonds may be issued for use in all areas that are *eligible* for designation as one of the 25 tax designated tax enterprise zones, regardless of whether the appropriate Secretary designates the area such. However, an area is eligible for use of these new exempt-facility bonds only if an application is made to the appropriate Secretary for such a designation and that Secretary certifies that the application demonstrates that the area meets the eligibility criteria enumerated above for designation (including the required course of action by the State and local governments).

Qualified enterprise zone facility bonds may be issued for use in an area only during the 60-month period following the earlier of (a) the date the zone is certified by the appropriate Secretary as an eligible area, or (b) the date on which the zone is designated a tax enterprise zone.

Prompt expenditure required.—The proceeds of qualified enterprise zone facility bonds must be spent no later than 18 months after the date on which the bonds are issued. Tax-exemption on the bond interest will not be affected if this expenditure requirement is not satisfied, however, if (a) all unspent proceeds as of the end of the 18-month period are used to redeem bonds that are a part of the issue during the succeeding six months, and (b) the issuer pays a penalty equal to three percent per year of the unspent proceeds for the period beginning on the date the bonds are issued and ending on the date the unspent proceeds are used to redeem bonds.

Special rules on issue size and use to finance certain facilities.—The aggregate face amount of a qualified enterprise zone bond issue may not exceed the excess of $1 million over all outstanding prior issues of such bonds with respect to any qualified enterprise zone business which is a principal user of the bond proceeds. For purposes of this determination, all businesses that are related parties, within the meaning of section 52(a) or (b) are treated as a single business.

The bill exempts qualified enterprise zone facility bonds from the general restrictions on financing the acquisition of existing property (sec. 147(d)). Additionally, these bonds may not be used to finance the acquisition of farmland, including such land for use by certain first-time farmers (sec. 147(c)(2)).

Penalty for failure to continue as zone business or to use bond-financed property in the zone business.—The bill extends change-in-use rules to qualified enterprise zone facilities bonds. Accordingly, interest on all bond-financed loans to a business that no longer qualifies as an enterprise zone business, or on loans to finance property that ceases to be used by the business in the enterprise zone, becomes nondeductible, effective from the first day of the taxable year in which the disqualification or cessation of use occurs.

Further, if less than substantially all of the use of bond-financed property continues to be in the enterprise zone or the borrower ceases to be an enterprise zone business at any time within 10 years after the financing is provided, a penalty of 1.25 percent of the face amount of all qualified enterprise zone facility bond financing provided to the borrower is imposed. this penalty is in addition to the loss of interest deductions, described above.

The bill provides that the change-in-use and 1.25-percent penalties are waived in the case of borrowers that cease to qualify as enterprise zone businesses or that cease to use bond-financed property in the zone in that business as a result of bankruptcy, or solely as a result of a zone's ceasing to be eligible as such (e.g., as a result of the passage of time). Further, the committee intends that the Treasury Department may waive these penalties in the case of violations caused by circumstances beyond the control of the borrower if the violations are corrected within a reasonable period after the business has reason to know of them.

Partial exemption from State volume limitations.—Qualified enterprise zone facility bonds are allowed a 50-percent exclusion from the otherwise applicable State private activity bond volume limitations.

Exception from bank pro rata interest deduction disallowance.—The bill provides that the general rule requiring banks to forego a portion of their otherwise allowable interest expense deduction if they invest in tax-exempt bonds does not apply to investments in qualified enterprise zone facility bonds, if the issuer elects.

Rules

Within four months after the date of enactment, the Secretaries of HUD, Agriculture, and Interior are required to promulgate rules (by notice or regulation) regarding: (1) procedures for nominating areas for designation as tax enterprise zones; (2) the method for comparing the enumerated selection criteria; and (3) recordkeeping requirements to assist in the preparation of studies to be submitted to Congress (described below). Such rules must provide that State and local government shall have no less than five months after issuance to submit their applications for zone designation before such applications are evaluated and compared and any area is designated as a tax enterprise zone.

Study

The bill provides for a study to be conducted under the auspices of the National Academy of Sciences, analyzing the effectiveness of the tax incentives in the tax enterprise zones. An interim report of this study is required to be submitted to Congress by July 1, 1997, and a final report by July 1, 2000. The Secretary of the Treasury (in consultation with the Secretaries of Housing and Urban Development, Agriculture, and Interior) is directed to contract with the National Academy of Sciences within three months after the date of enactment to conduct this study.

Effective Date

Tax enterprise zone designations will be made only during calendar years 1993 through 1996. The tax incentives provided for are available during the period that the designation remains in effect, which generally will be for 10 years after the designation first becomes effective.

TITLE II. ECONOMIC GROWTH INCENTIVES

SUBTITLE A. INCREASED SAVINGS: INDIVIDUAL RETIREMENT ARRANGEMENTS (IRAs)

(Secs. 2001–2022 of the bill; secs. 72, 219, 401(k), and 403(b) of the Code; and new sec. 408A of the Code)

Present Law

Under present law, certain individuals are allowed to deduct contributions (up to the lesser of $2,000 or 100 percent of the individual's compensation or earned income) to an individual retirement arrangement (IRA). The amounts held in an IRA, including earnings on contributions, generally are not included in taxable income until withdrawn.

The $2,000 deduction limit is phased out over certain adjusted gross income (AGI) levels ($25,000 for individuals, $40,000 for joint filers) if the individual or the individual's spouse is an active participant in an em-

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[23] Stock is not eligible for the expensing deduction if such stock was acquired from a corporation which made a substantial stock redemption or distribution (without a bona fide business purpose therefor) in an attempt to avoid the purposes of the provision.

[24] The determination of the total value of assets owned and leased by the corporation will be made as of the time of issuance of the stock in question but will include amounts received by the issuing corporation for such stock.

[25] The LIHC (sec. 42) expired on June 30, 1992, but is extended for 18 months (i.e., through December 31, 1993) by another provision of the bill.

[26] For purposes of the tax-exempt bond provisions, the term qualified enterprise zone business includes a business located in a certified enterprise zone area (see below) that satisfies with respect to the certified area in which it is located all of the criteria applicable to such businesses that are located in designated tax enterprise zones.

ployer-sponsored retirement plan. An individual may make nondeductible IRA contributions (up to the $2,000 or 100 percent of compensation limit) to the extent the individual is not permitted to make deductible IRA contributions.

Reasons for Change

The committee is concerned about the national saving rate, and believes that individuals should be encouraged to save. The committee believes that the ability to make deductible contributions to an IRA is a significant savings incentive. Under present law, however, this incentive is not available to all taxpayers. Further, the present-law income thresholds for IRA deductions are not indexed for inflation, so that fewer Americans will be eligible to make a deductible IRA contribution each year, and the amount of the maximum contribution is declining in real terms over time.

The committee believes it is appropriate to encourage individual saving by making an IRA deduction available to all taxpayers. Expanding the IRA deduction will provide all Americans with a meaningful incentive to save for their retirement years. Appropriate limits for taxpayers with other elective tax-favored savings vehicles will ensure that tax benefits are distributed among individuals more evenly.

The committee is also concerned that Americans are not saving enough to ensure that their children will be able to afford a college education. College costs have risen dramatically over the past two decades. The ability to obtain a college education is an important factor in ensuring that the United States remains competitive with other nations. Home ownership among young individuals has also decreased. In addition, medical costs have continued to increase at a rate faster than inflation. Accordingly, the committee believes that there should be appropriate incentives to save for education, home ownership, and large medical expenses, and that taxpayers should be able to use amounts saved in an IRA for such purposes without penalty.

The committee also believes that some individuals would be more likely to save if funds set aside in a tax-favored account could be withdrawn without tax after a reasonable holding period. The committee believes that an account to which contributions are nondeductible but withdrawals from which are tax free will provide taxpayers with an alternative savings vehicle that some taxpayers may find more suitable for their savings needs.

Explanation of Provision

The bill restores the deductibility of IRA contributions for all taxpayers under the rules in effect prior to the Tax Reform Act of 1986 and provides for the indexing of the limits on contributions to IRAs, in increments of $500.

In addition, the bill permits nondeductible contributions to new special IRAs. Withdrawals from a special IRA are not includible in income if attributable to contributions that have been held by the special IRA for at least 5 years. A tacking rule applies in the case of qualified transfers from one special IRA to another.

The limits on contributions to deductible IRAs and special IRAs are coordinated. Furthermore, the limit on contributions to deductible IRAs and special IRAs is coordinated with the limit on elective deferrals to a qualified cash or deferred arrangement (sec. 401(k) plan), tax-sheltered annuity (sec. 403(b) annuity), simplified employee pension (SEP), or a section 501(c)(18) plan. Thus, for example, in no case can the sum of contributions (deductible and nondeductible) to an IRA, contributions to a special IRA, and elective contributions to a 401(k) plan exceed the limit on elective deferrals ($8,728 in 1992).

The bill permits qualified transfers from deductible IRAs to special IRAs without imposition of the 10-percent tax on early withdrawals. The amount transferred to a special IRA generally is includible in income in the year of transfer. However, if the transfer occurs before January 1, 1995, the transferred amount is includible in income ratably over a 4-taxable year period.

The bill allows withdrawals from an IRA and from amounts attributable to elective deferrals under (1) a section 401(k) plan, (2) a tax-sheltered annuity (sec. 403(b) annuity,) or (3) a section 501(c)(18) plan without imposition of the 10-percent additional income tax on early withdrawals to the extent the amount withdrawn is used to pay qualified acquisition, construction, or reconstruction costs with respect to a principal residence of a first-time homebuyer who is the taxpayer, the taxpayer's spouse, or the taxpayer's child or grandchild.

A first-time homebuyer is any individual (and if married, such individual's spouse) who had no present interest in a principal residence during the 3-year period prior to the purchase of a home. If an individual is deferring tax on gain from the sale of a previous principal residence and is permitted an extended rollover period, he or she is not considered a first-time homebuyer until after the end of the extended rollover period. In the case of certain homebuyers described in Code sec. 143(i)(1)(C) whose family incomes do not exceed $15,000, ownership of land subject to certain contracts for deed described in such section does not disqualify the homebuyer from being considered a first-time homebuyer.

The waiver of the 10-percent additional tax on early withdrawals also applies to the extent distributions do not exceed qualified higher education expenses. Qualified higher educational expenses means tuition, fees, books, supplies, and equipment required for the enrollment of or attendance of the taxpayer, the taxpayer's spouse, or the taxpayer's child or grandchild at a college, university, or post-secondary vocational school. The amount of qualified higher educational expenses for any taxable year is reduced by any amount excludable from gross income under the provision in the Code pertaining to U.S. education savings bonds.

In addition, the 10-percent additional tax applies to the extent distributions are made to an individual after separation from employment, if (1) the individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of the separation and (2) the distributions are made during the taxable year during which such unemployment compensation is received or the succeeding taxable year.

The bill extends to IRAs the present-law exception to the 10-percent additional income tax for distributions from qualified retirement plans used to pay deductible medical expenses. For purposes of the medical expense exception (with regard to both IRAs and qualified retirement plans), a child, grandchild, or ancestor of the taxpayer is treated as a dependent of the taxpayer in determining whether medical expenses are deductible.

Finally, the bill provides that the present-law rule permitting penalty-free IRA withdrawals after an individual reaches 59½ would not apply in the case of amounts attributable to contributions (other than rollovers from a qualified plan) made during the previous 5 years. A tacking rule applies in the case of rollovers from one IRA to another. Thus, contributions to a deductible IRA generally must remain in the account for at least 5 years to avoid withdrawal penalties. For purposes of applying the rule, distributions are treated as having been made first from the earliest contributions (and earnings) remaining in the account, and then from other contributions in the order in which made.

Effective Date

The bill generally applies to taxable years beginning after December 31, 1993. However, the provision permitting penalty-free withdrawals for qualified purposes is effective for taxable years beginning after December 31, 1992. In addition, the provision permitting transfers from deductible IRAs to special IRAs is effective for taxable years beginning after December 31, 1992. Thus, special IRAs can be established and maintained in taxable years beginning before January 1, 1994, only with funds transferred from a deductible IRA. The requirement that contributions to a deductible IRA generally must remain in the account for at least 5 years to avoid withdrawal penalties applies to contributions (and earnings allocated thereto) that are made after December 31, 1993.

SUBTITLE B. OTHER ECONOMIC DEVELOPMENT PROVISIONS

A. INVESTMENT IN REAL ESTATE

1. Modification of passive loss rules for certain real estate persons (sec. 2101 of the bill and sec. 469 of the Code)

Present Law

The passive loss rules limit deductions and credits from passive trade or business activities. Dedications attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. Credits from passive activities may not reduce the taxpayer's tax liability, to the extent such credits exceed regular tax liability from passive activities. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person.

The passive loss rules apply to individuals, estates and trusts, closely held C corporations, and personal service corporations. A special rule permits closely held C corporations to apply passive activity losses and credits against active business income (or tax liability allocable thereto) but not against portfolio income.

Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate. To materially participate in an activity, a taxpayer must be involved in the operations of the activity on a regular, continuous, and substantial basis. Except as provided in regulations, a taxpayer is treated as not materially participating in an activity held through a limited partnership interest.[1]

[1]Treas. Reg. section 1.496-5T(e) provides exceptions to this general rule for limited partnership interests in certain circumstances, including the circumstance where an individual taxpayer is both a

Rental activities (including rental real estate activities) are also treated as passive activities, regardless of the level of the taxpayer's participation. In general, rental activities cannot be treated as part of a larger activity that includes nonrental activities. A special rule permits the deduction of up to $25,000 of losses from rental real estate activities (even though they are considered passive), if the taxpayer actively participates in them. This $25,000 amount is allowed for taxpayers with adjusted gross incomes of $100,000 or less, and is phased out for taxpayers with adjusted gross incomes between $100,000 and $150,000. Active participation is a lesser standard of involvement than material participation. A taxpayer is treated as actively participating if, for example, he participates, in a significant and bona fide sense, in the making of management decisions or arranging for others to provide services (such as repairs). The active participation standard is not satisfied, however, if the taxpayer's interest is less than 10 percent (by value) of all interests in the activity. A taxpayer generally is deemed not to satisfy the active participation standard with respect to property he holds through a limited partnership interest.

Reasons for Change

The committee considers it unfair that a persons who performs more than half his personal services in a real property trade or business is not permitted in some cases to offset losses from rental estate activities in which he materially participates against nonpassive income from the conduct of a real property trade or business. The committee bill modifies the passive loss rule to alleviate this unfairness.

Explanation of Provision

If the taxpayer meets eligibility requirements with respect to real property trades or businesses in which he performs services, then the taxpayer's net loss from rental real estate activities in which the taxpayer materially participates generally is allowed to offset income from real property trade or business activities.

The provision allows a taxpayer to deduct a portion of the passive activity loss for the taxable year not exceeding the net loss from rental real estate activities in which he materially participates, subject to an income limitation. Under the income limitation, the loss allowed under the provision may not exceed the lesser of (1) the taxpayer's net income from real property trade or business activities which are not passive activities, or (2) the taxpayer's taxable income (determined without regard to this provision). A similar rule applies with respect to passive activity credits.

Real property trade or business means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

A taxpayer meets the eligibility requirements if more than half of the personal services the taxpayer performs in a trade or business during the taxable year are in real property trades or businesses in which he materially participates.

In the case of a joint return, it is intended that for purposes of the eligibility requirements each spouse's personal services are taken into account separately. In determining material participation, however, the provision does not change the present-law rule (sec. 469(h)(5)) that the participation of the spouse of the taxpayer is taken into account. Thus, for example, a husband and wife filing a joint return meet the eligibility requirements (assuming neither is an employee) if during the taxable year one spouse performs at least half of his or her business services in a real estate trade or business in which either spouse materially participates. The couple does not fail the eligibility requirements if less than half their business services, taken together, are performed in real estate trades or businesses in which either of them materially participates, provided that more than half of one spouse's business services qualify.

For purposes of the eligibility requirements, personal services performed as an employee are not treated as performed in a real estate trade or business unless the person performing services has more than a 5 percent ownership interest in the employer (within the meaning of sec. 416(i)(1)(B)).

Material participation has the same meaning as under present law. Thus, as under present law, except as provided in regulations, no interest as a limited partner in a limited partnership is treated as an interest with respect to which the taxpayer materially participates.

The provision applies to taxpayers subject to the passive loss rule, other than closely held C corporations.

Losses allowed by reason of the present-law $25,000 allowance are determined before the application of this provision.

Effective Date

The provision is effective with respect to taxable years beginning after December 31, 1991.

2. Changes relating to real estate investments by pension funds and others

a. Modification of the rules related to debt-financed income (sec. 2111 of the bill and sec. 514 of the Code)

Present Law

In general, a qualified pension trust or an organization that is otherwise exempt from Federal income tax is taxed on any income from a trade or business that is unrelated to the organization's exempt purposes (Unrelated Business Taxable Income or "UBTI") (sec. 511). Certain types of income, including rents, royalties, dividends, and interest are excluded from UBTI, except when such income is derived from "debt-financed property." Income from debt-financed property generally is treated as UBTI in proportion to the amount of debt financing (sec. 514(a)).

An exception to the rule treating income from debt-financed property as UBTI is available to pension trusts, educational institutions, and certain other exempt organizations (collectively referred to as "qualified organizations") that make debt-financed investments in real property (sec. 514(c)(9)(A)). Under this exception, income from investments in real property is not treated as income from debt-financed property. Mortgages are not considered real property for purposes of the exception.

The real property exception to the debt-financed property rules is available for investments in debt-financed property, only if the following six restrictions are satisfied: (1) the purchase price of the real property is a fixed amount determined as of the date of the acquisition (the "fixed price restriction"); (2) the amount of the indebtedness or any amount payable with respect to the indebtedness, or the time for making any payment of any such amount, is not dependent (in whole or in part) upon revenues, income, or profits derived from the property (the "participating loan restriction"); (3) the property is not leased by the qualified organization to the seller or to a person related to the seller (the "leaseback restriction"); (4) in the case of a pension trust, the seller or lessee of the property is not a disqualified person (the "disqualified person restriction"); (5) the seller or a person related to the seller (or a person related to the plan with respect to which the pension trust was formed) is not providing financing in connection with the acquisition of the property (the "seller-financing restriction"); and, (6) if the investment in the property is held through a partnership, certain additional requirements are satisfied by the partnership (the "partnership restrictions") (secs. 514(c)(9)(B)(i) through (vi)).

Reasons for Change

The committee believes that modifications to the debt-financed income rules are desirable to permit qualified organizations to make debt-financed investments in real property on commercially reasonable terms in circumstances where the committee believes there is no potential for abuse.

Explanation of Provision

Relaxation of the leaseback and disqualified person restrictions

The bill relaxes the leaseback and disqualified person restrictions to permit a limited leaseback of debt-financed real property to the seller (or a person related to the seller) or to a disqualified person.[1] The exception applies only where (1) no more than 25 percent of the leasable floor space in a building is leased back to the seller (or related party) or to the disqualified person, and (2) the lease is on commercially reasonable terms.

Relaxation of the seller-financing restriction

The bill relaxes the seller-financing restriction to permit seller financing on terms that are commercially reasonable. The bill grants authority to the Treasury Department to issue regulations for the purpose of determining commercially reasonable financing terms.

The bill generally does not modify the present-law fixed price and participating loan restrictions. Thus, for example, income from real property acquired with financing where the timing or amount of payment is based on revenue, income, or profits from the property generally will continue to be treated as income from debt-financed property, unless some other exception applies.

Relaxation of the fixed price and participating loan restriction for property foreclosed on by financial institutions

The bill relaxes the fixed price and participating loan restrictions for certain sales of real property foreclosed upon by financial institutions.[2] The relaxation of these rules is limited to cases where: (1) a qualified organization acquires the property from a financial institution that acquired the real property by foreclosure (or after an actual or imminent default), or was held by the financial institution at the time that it entered into conservatorship or receivership; (2) any gain recognized by the financial institution with

general and a limited partner, or where the taxpayer meets certain of the material participation tests (including the 500 hour test) applicable to persons other than limited partners.

[1] As under present law, a leaseback to a disqualified person remains subject to the prohibited transaction rules set forth in section 4975.

[2] For this purpose, financial institutions include financial institutions in conservatorship or receivership and certain affiliates of financial institutions (and a government corporation which succeeded to the rights and interests of such a receiver or conservator).

respect to the property is ordinary; (3) the stated principal amount of the seller financing does not exceed the financial institution's outstanding indebtedness (including accrued but unpaid interest) with respect to the property at the time of foreclosure; and (4) the value of any participation feature at the time of sale does not exceed 30 percent of the value of the property.

The bill grants authority to the Treasury Department to issue regulations for the purpose of clarifying these limitations. In particular, these regulations are expected to establish standards for determining what constitutes a participation feature and how to determine whether the value of a participation feature at the time of sale exceeds 30 percent of the value of the property. For example, a participation feature that provides the seller with less than a 30-percent interest in net proceeds, net income, or gain on sale of the property is expected to be valued at less than 30 percent of the value of the property.

Elimination of the section 514(c)(9)(B) restrictions for investments through certain large partnerships

The bill eliminates the six section 514(c)(9)(B) restrictions for qualified organizations that invest in real property through certain "large" partnerships.

A "large" partnership is a partnership having at least 250 partners that satisfies the following three tests: (1) interests in the partnership are registered with the Securities and Exchange Commission; (2) a significant percentage (at least 50 percent) of each class of interests is owned by taxable individuals (but excluding interests owned by IRAs from the calculation); and (3) a principal purpose of the partnership allocations is not tax avoidance. Partnership interests that are subject to the same terms are considered to be in the same class, regardless of whether the interests are subject to different ownership restrictions.

Effective Date

The provision generally is effective for acquisitions on or after July 28, 1992. The leaseback provision also is effective for leases entered into on or after July 28, 1992.

b. Repeal of the automatic UBTI rule for publicly-traded partnerships (sec. 2112 of the bill and sec. 512(c) of the Code)

Present Law

In general, the character of a partner's distributive share of partnership income is the same as if the income had been directly realized by the partner. Thus, whether a tax-exempt organization's share of income from a partnership (other than from a publicly-traded partnership) is treated as unrelated business income depends on the underlying character of the income (sec. 512(a)(1)).

However, a tax-exempt organization's distributive share of gross income from a publicly-traded partnership (that is not otherwise treated as a corporation) automatically is treated as UBTI (sec. 512(c)(2)(A)). The organization's share of the partnership deductions is allowed in computing the organization's taxable unrelated business income (sec. 512(c)(2)(B)).

Reasons for Change

The automatic UBTI rule effectively prevents pension funds and other tax-exempt organizations from investing in publicly-traded partnerships. The committee believes these investors could provide a valuable source of capital that should be available to publicly-traded partnerships.

Explanation of Provision

The bill repeals the rule that automatically treats income from publicly-traded partnerships as UBTI. Thus, under the provision, investments in publicly-traded partnerships are treated the same as investments in other partnerships for purposes of the UBTI rules.

Effective Date

The provision is effective for partnership years ending on or after July 28, 1992.

c. Permit title-holding companies to receive small amounts of UBTI (sec. 2113 of the bill and secs. 501 (c)(2) and (c)(25) of the Code)

Present Law

Section 501(c)(2) provides tax-exempt status to certain corporations organized for the exclusive purpose of holding title to property and turning over any income from the property to an organization which is itself tax-exempt. Section 501(c)(25) provides tax-exempt status to certain corporations and trusts that are organized for the exclusive purposes of acquiring and holding title to real property, collecting income from such property, and remitting the income therefrom to no more than 35 shareholders or beneficiaries that are: (1) qualified pension, profit-sharing, or stock bonus plans (sec. 401(a)); (2) governmental pension plans (sec. 414(d)); (3) the United States, a State or political subdivision, or governmental agencies or instrumentalities; or (4) tax-exempt charitable, educational, religious, or other organizations described in section 501(c)(3). However, the IRS has taken the position that a title-holding company described in section 501(c)(2) or 501(c)(25) will lose its tax-exempt status if it generates any amount of UBTI.[3]

Reasons for Change

Typical investments of section 501 (c)(2) and (c)(25) corporations include shopping centers, office buildings, and apartment buildings. These real estate investments typically generate rental income, which generally is not considered UBTI, but may also generate small amounts of income which could be treated as UBTI (e.g., money collected from laundry machines offered to tenants, or from vending machines offered as a convenience to the patrons of a shopping center).

The committee believes that a section 501 (c)(2) or (c)(25) organization should not lose its exemption merely because it receives *small amounts of UBTI that are incidentally* derived from the holding of real property.

Explanation of Provision

The bill permits a title-holding company that is exempt from tax under sections 501(c)(2) or 501(c)(25) to receive UBTI of up to 10 percent of its gross income for the taxable year without losing its tax-exempt status, *provided that the UBTI is incidentally* derived from the holding of real property. For example, income generated from parking or operating vending machines located on real property owned by a title-holding company generally would qualify for the 10-percent de minimis rule, while income derived from an activity that is not incidental to the holding of real property (e.g., manufacturing) would not qualify. In cases where unrelated income is incidentally derived from the holding of real property, receipt by a title-holding company of such income (up to the 10-percent limit) will be subject to tax as UBTI.

In addition, the bill provides that a section 501(c)(2) or 501(c)(25) title-holding company will not lose its tax-exempt status if UBTI that is incidentally derived from the holding of real property exceeds the 10-percent limitation, provided that the title-holding company establishes to the satisfaction of the Secretary of the Treasury that the receipt of *UBTI in excess of the 10-percent limitation* was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such excess UBTI.

Effective Date

The provision is effective for taxable years beginning after December 31, 1991.

d. Exclusion from UBTI of any gains from the disposition of property acquired from financial institutions in conservatorships or receiverships (sec. 2114 of the bill and sec. 512(b) of the Code)

Present Law

In general, gains or losses from the sale, exchange or other disposition of property are excluded from UBTI (sec. 512(b)(5)). However, gains or losses from the sale, exchange or other disposition of property held primarily for sale to customers in the ordinary course of a trade or business are not excluded from UBTI (the "dealer UBTI rule") (sec. 512(b)(5)(B)).

Reasons for Change

Real property that is owned by troubled financial institutions often is sold in bundled packages. This enables the financial institution to dispose of the less desirable properties together with the more desirable properties. It also allows institutions with large portfolios of properties to pass on to purchasers some of the burden of an orderly liquidation of the properties.

The committee understands that the dealer UBTI rule effectively discourages pension funds and other tax-exempt organizations from investing in the properties bundled together by troubled financial institutions. The committee believes that these investors could provide a valuable source of capital for the purchase of these bundled properties.

Explanation of Provision

The bill provides an exception to the dealer UBTI rule by excluding gains from the sale, exchange or other disposition of certain real property and mortgages acquired from financial institutions that are in conservatorship or receivership (or from a government corporation that succeeded to the rights and interests of such a receiver or conservator). Only real property and mortgages owned by a financial institution (or that was security for a loan extended by the financial institution) at the time that the institution entered conservatorship or receivership are eligible for the exception.

The exclusion is limited to properties designated as disposal property within nine months of acquisition, and actually disposed of within two-and-a-half years of acquisition. The two-and-a-half year disposition period may be extended by the Treasury Secretary if an extension is necessary for the orderly liquidation of the property. No more than one-half by value of properties acquired in a single transaction may be designated as disposal property.

The exclusion is not available for properties where the aggregate expenditures made by the acquiror for improvement and development which are includible in the basis of the property exceed 20 percent of the net selling price of the property. Thus, for example, the exclusion is available for property where there has been securing of zoning permits if the aggregate expenditures on improvement and development do not exceed 20 percent of the net selling price of the property.

Effective Date

The provision is effective for property acquired on or after July 28, 1992.

[3] IRS Notice 88-121, 1988-2 C.B. 457. See also Treas. Reg. sec. 1.501(c)(2)-1(a).

e. Exclusion of loan commitment fees and certain option premiums from UBTI (sec. 2115 of the bill and sec. 512(b) of the Code)

Present Law

Income from a trade or business that is unrelated to an exempt organization's purpose generally is UBTI. Passive income such as dividends, interest, royalties, and gains or losses from the sale, exchange or other disposition of property generally is excluded from UBTI (sec. 512(b)). In addition, gains on the lapse or termination of options on securities are explicitly exempted from UBTI (sec. 512(b)(5).

Present law is unclear on whether loan commitment fees and premiums from unexercised options on real estate are UBTI.

Reasons for Change

The committee believes that taxing loan commitment fees and premiums from unexercised options on real estate is inconsistent with the generally tax-free treatment of income from investment activities accorded to exempt organizations.

Explanation of Provision

The bill provides that loan commitment fees and premiums from unexercised options on real estate are excluded from UBTI. For purposes of this provision, loan commitment fees are non-refundable charges made by a lender to reserve a sum of money with fixed terms for a specified period of time. These charges are to compensate the lender for the risk inherent in committing to make the loan (e.g., for the lender's exposure to interest rate changes and for potential lost opportunities).

Effective Date

The provision is effective for premiums or loan commitment fees that are received on or after July 28, 1992.

f. Relaxation of limitations on investments in real estate investment trusts by pension funds (sec. 2116 of the bill and sec. 856(h) of the Code)

Present Law

A real estate investment trust ("REIT") is not taxed on income distributed to shareholders. A corporation does not qualify as a REIT if at any time during the last half of its taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by five or fewer individuals ("the five or fewer rule"). A domestic pension trust is treated as a single individual for purposes of this rule.

Dividends paid by a REIT are not UBTI,[4] unless the stock in the REIT is debt-financed. Depending on its character, income earned by a partnership may be UBTI (sec. 512(c)). Special rules treat debt-financed income earned by a partnership as UBTI (sec. 514(c)(9)(B)(vi)).

Reasons for Change

The committee believes that relaxation of the five or fewer rule is appropriate to encourage pension fund investment in REITs. Such investment, however, may permit circumvention of the UBTI. Accordingly, in certain circumstances, UBTI is imposed on a pension trust holding shares in a REIT if direct ownership of the REIT assets by the pension trust would have resulted in UBTI.

Description of Proposal

Qualification as a REIT

The bill provides that a pension trust generally is not treated as a single individual for purposes of the five-or-fewer rule. Rather, the bill treats beneficiaries of the pension trust as holding stock in the REIT in proportion to their actuarial interests in the trust. This rule does not apply if disqualified persons, within the meaning of section 4975(e)(2) (other than by reason of subparagraphs (B) and (D)), together own five percent or more of the value of the REIT stock and the REIT has earnings and profits attributable to a period during which it did not qualify as a REIT.[5]

In addition, the bill provides that a REIT cannot be a personal holding company and, therefore, is not subject to the personal holding company tax on its undistributed income.

Unrelated business taxable income

Under the bill, certain pension trusts owning more than 10 percent of a REIT must treat a percentage of dividends from the REIT as UBTI. This percentage is the gross income derived from an unrelated trade or business (determined as if the REIT were a pension trust) divided by the gross income of the REIT for the year in which the dividends are paid. Dividends are not treated as UBTI, however, unless this percentage is at least five percent.

The UBTI rule applies only if the REIT qualifies as a REIT by reason of the above modification of the five or fewer rule. Moreover, the UBTI rule applies only if (1) one pension trust owns more than 25 percent of the value of the REIT, or (2) a group of pension trusts individually holding more than 10 percent of the value of the REIT collectively own more than 50 percent of the value of the REIT.

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

3. Tax credit for first-time homebuyers (sec. 2121 of the bill and new sec. 23 and sec. 1016 of the Code)

Present Law

There is no tax credit for the purchase of a principal residence under present law.

Reasons for Change

The committee believes that a temporary tax credit for first-time homebuyers would accelerate the time at which first-time homebuyers purchase a home. By accelerating and increasing expenditures on home purchases, the committee also believes such a credit would assist in the recovery of the real estate industry.

Explanation of Provision

Under the bill, individuals who purchase a principal residence are eligible to receive a tax credit equal to 10 percent of the purchase price of the residence, up to a maximum credit of $2,500. The credit applies to a principal residence if (1) the taxpayer acquires such residence on or after July 28, 1992, and before January 1, 1993, or (2) the taxpayer enters into a binding contract to acquire such residence on or after July 28, 1992, and before January 1, 1993, and the taxpayer purchases such residence before April 1, 1993. One-half of the credit is allowed in the taxable year in which the purchase occurs and the other half will be allowed in the following taxable year. Only one tax credit may be claimed per residence. Manufactured homes can qualify as a principal residence under the same rules as under present law, regardless of whether they are treated as real or personal property under State law.

First-time homebuyers are defined as individuals who did not have a present interest in a residence in the 3 years preceding the purchase of a home. If an individual is deferring tax on gain from the sale of a previous principal residence and is permitted an extended rollover period, he or she is not considered a first-time homebuyer until after the end of the extended rollover period.

In the case of certain homebuyers described in Code sec. 143(i)(1)(C) whose family incomes do not exceed $15,000, ownership of land subject to certain contracts for deed described in such section does not disqualify the homebuyer as being considered a first-time homebuyer.

The first-time homebuyer credit is nonrefundable, and thus is available only to the extent the taxpayer had income tax liability to offset. However, any unused portion of the credit may be carried forward for up to 5 years and applied against future income tax liability.

The credit is recaptured if the residence on which the credit was claimed is sold or otherwise disposed of within 3 years of the date the residence was purchased. The recapture rule does not apply, however, to dispositions by reason of the taxpayer's death or divorce. If the taxpayer sells the residence within 3 years but purchases a new home within the rollover period, the credit is recaptured to the extent the taxpayer would have claimed a smaller credit on the new residence had it been purchased during the period when the credit was available.

Effective Date

The provision is effective for purchases on or after July 28, 1992.

4. Treatment of certain real property business indebtedness of individuals (sec. 2131 of the bill and sections 108 and 1017 of the Code)

Present Law

The discharge of indebtedness generally gives rise to gross income to the debtor taxpayer. Present law provides exceptions to this general rule. Among the exceptions are rules providing that income from the discharge of indebtedness of the taxpayer is excluded from income if the discharge occurs in a title 11 case, the discharge occurs when the taxpayer is insolvent, or in the case of certain farm indebtedness. The amount excluded from income under these exceptions is applied to reduce tax attributes of the taxpayer.

Prior law also provided an elective exception for the discharge of qualified business indebtedness, defined as indebtedness incurred or assumed by a corporation, or indebtedness incurred or assumed by an individual in connection with property used in his trade or business. The excludable amount was limited to the basis of the taxpayer's depreciable property, and the excludable amount was applied to reduce the basis of depreciable property of the taxpayer. The taxpayer could elect to treat inventory as depreciable property for this purpose. If the amount of discharge income exceeded the basis of depreciable property, the excess was included in gross income for the year of the discharge. This exception was repealed by the 1986 Act.

Reasons for Change

The committee understands that real property has declined in value in some areas of the nation, in some cases to such a degree that the property can no longer support the debt with which it is encumbered. The com-

[4] See Rev. Rul. 66-151, 1966-1 C.B. 151.

[5] Moreover, as under present law, any investment by a pension trust must be in accordance with the fiduciary rules of the Employee Retirement Security Act ("ERISA") and the prohibited transaction rules of the Code and ERISA.

mittee believes that where an individual has discharge of indebtedness that results from a decline in value of business real property securing that indebtedness, it is appropriate to provide for deferral, rather than current inclusion, of the resulting income. Generally, that deferral should not extend beyond the period that the taxpayer owns the property.

Explanation of Provision

The bill provides an election to individual taxpayers to exclude from gross income certain income from discharge of qualified real property business indebtedness. The amount so excluded cannot exceed the basis of certain depreciable real property of the taxpayer and is treated as a reduction in the basis of that property.

Qualified real property business indebtedness is indebtedness that (1) is incurred or assumed in connection with real property used in a trade or business (2) is secured by that real property, and (3) with respect to which the taxpayer has made an election under this provision. Indebtedness incurred or assumed on or after July 30, 1992 is not qualified real property business indebtedness unless it is either (1) debt incurred to refinance qualified real property business incurred or assumed before that date (but only to the extent the amount of such debt does not exceed the amount of debt being refinanced) or (2) qualified acquisition indebtedness. Qualified real property business indebtedness does not include qualified farm indebtedness.

Qualified acquisition indebtedness is debt incurred to acquire, construct or substantially improve real property that is secured by such debt, and debt resulting from the refinancing of qualified acquisition debt, to the extent the amount of such debt does not exceed the amount of debt being refinanced.

The amount excluded under the provision with respect to the discharge of any qualified real property business indebtedness may not exceed the excess of (1) the outstanding principal amount of such debt (immediately before the discharge), over (2) the fair market value (immediately before the discharge) of the business real property which is security for the debt. For this purpose, the fair market value of the property is reduced by the outstanding principal amount of any other qualified real property indebtedness secured by the property immediately before the discharge.

For example, assume that on July 30, 1992, Individual J owns a building, used in his trade or business, that is subject to a first mortgage securing a debt of J's of $110,000 and a second mortgage securing a second debt of J's of $90,000. J is neither a bankrupt nor insolvent and neither debt is qualified farm indebtedness. J agrees with his second mortgagee to reduce the second mortgage debt to $30,000, resulting in discharge of indebtedness income in the amount of $60,000. Under the provision, assuming that J has sufficient basis in business real property to absorb the reduction (see below), J can elect to exclude $50,000 of that discharge from gross income. This is because the principal amount of the discharged debt immediately before the discharge (i.e., $90,000) exceeds the fair market value of the property securing it (i.e., $150,000 of free and clear value less $110,000 of other qualified business real property indebtedness or $40,000) by $50,000. The remaining $10,000 of discharge is included in gross income.

The amount excluded under the provision may not exceed the aggregate adjusted bases (determined as of the first day of the next taxable year or, if earlier, the date of disposition) of depreciable real property held by the taxpayer immediately before the discharge, determined after any reductions after subsections (b) and (g) of section 108. Depreciable real property acquired in contemplation of the discharge is treated as not held by the taxpayer immediately before the discharge.

The amount of debt discharge excluded under the provision is applied, using the rules of section 1017 (as modified by the bill), to reduce the basis of business real property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs. The election under 1017(b)(3) to treat inventory as qualified property does not apply. If the taxpayer disposes of real property (in the transaction that gave rise to the discharge or otherwise) prior to the first day of the next taxable year, then the reduction in basis of such property is made as of the time immediately before the disposition.

In the case of discharge of indebtedness of a partnership, the determination of whether indebtedness is qualified real property indebtedness is made at the partnership level. For example, if partnership debt is discharged, the determination of whether the debt was incurred or assumed in connection with real property used in a trade or business is made by reference to the trade or business of the partnership and real property owned by the partnership. The election to apply the provision is made at the partner level, however, on a partner by partner basis. An interest of a partner in a partnership that owns depreciable real property is treated as depreciable real property to the extent of the partner's proportionate interest in the depreciable real property held by the partnership. The partnership's basis in depreciable real property with respect to such partner is correspondingly reduced.

If depreciable real property, the basis of which was reduced under this provision, is disposed of, then for purposes of determining the amount of recapture under section 1250: (1) any such basis reduction is treated as a deduction allowed for depreciation, and (2) the determination of what would have been the depreciation adjustment under the straight line method is made as if there had been no such reduction. Thus, the amount of the basis reduction that is recaptured as ordinary income is reduced over the time the taxpayer continues to hold the property, as the taxpayer foregoes depreciation deductions due to the basis reduction.

Effective Date

The provision is effective with respect to discharges after December 31, 1991 in taxable years ending after that date.

B. EXTENSION OF CERTAIN EXPIRING TAX PROVISIONS

1. Extension of exclusion for employer-provided educational assistance (sec. 2141 of the bill and sec. 127 of the Code)

Present Law

Under prior law, an employee's gross income and wages for income and employment tax purposes did not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts are paid or incurred pursuant to an educational assistance program that meets certain requirements. This exclusion, which expired with respect to amounts paid after June 30, 1992, was limited to $5,250 of educational assistance with respect to an individual during a calendar year.

In the absence of this exclusion, an employee generally is required to include in income and wages, for income and employment tax purposes, the value of educational assistance provided by an employer to the employee, unless the cost of such assistance qualified as a deductible job-related expense of the employee.

Reasons for Change

The exclusion from income for employer-provided educational assistance programs has two intended purposes: (1) to increase the levels of education and training in the workforce and (2) to eliminate the potential complexity of determining whether training and education benefits provided by an employer constitute job-related expenses that are deductible by the employee.

The committee believes that some of the benefits attributable to the exclusion for employer-provided educational assistance accrue to society at large by creating a better-educated workforce. The committee believes that the exclusion for employer-provided educational assistance is used by employees to improve their competitive position in the workforce. In the absence of the subsidy, the committee believes that some individuals would underinvest in education.

The committee believes it is appropriate to provide for a temporary extension of the exclusion to reduce the complexity that would exist in the absence of the exclusion and to provide the opportunity for Congress to reevaluate the value of the exclusion.

Explanation of Provision

The exclusion for employer-provided educational assistance is extended for 18 months (through December 31, 1993).

Effective Date

The provision is effective for taxable years ending after June 30, 1992.

2. Exclusion for employer-provided group legal services; tax exemption for qualified group legal services organizations (sec. 2142 of the bill and secs. 120 and 501(c)(20) of the Code)

Present Law

Under prior law, certain amounts contributed by an employer to and benefits provided under a qualified group legal services plan were excluded from an employee's gross income and wages for income and employment tax purposes. The exclusion was limited to an annual premium value of $70. The exclusion expired after June 30, 1992.

Prior law also provided tax-exempt status for an organization the exclusive function of which was to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan. The tax exemption for such an organization expired after June 30, 1992.

Reasons for Change

The committee believes that the exclusion for employer-provided group legal services and the tax exemption for group legal services organizations may increase the access of taxpayers to basic legal services.

The committee believes it is appropriate to provide for a temporary extension of the exclusion and exemption to provide the opportunity for Congress to reevaluate the value of the exclusion and exemption.

Explanation of Provision

Under the bill, the exclusion from income for employer-provided group legal services and the tax exemption for group legal services organizations is extended for 18 months (through December 31, 1993).

Effective Date

The provision is effective for taxable years ending after June 30, 1992.

3. Extend health insurance deduction for self-employed individuals (secs. 2143 of the bill and sec. 162(1) of the Code)

Present Law

Under present law, the tax treatment of health insurance expenses depends on whether the taxpayer is an employee and whether the taxpayer is covered under a health plan paid for by the employee's employor. An employer's contribution to a plan providing accident or health coverage for the employee and the employee's spouse and dependents is excludable from an employee's income. In addition, businesses can generally deduct, as an employee compensation expense, the full cost of any health insurance coverage provided for their employees. The exclusion and deduction are generally available in the case of owners of the business who are also employees.

In the case of self-employed individuals (i.e., sole proprietors or partners in a partnership), no equivalent exclusion applies. However, prior law provided a deduction for 25 percent of the amount paid for health insurance for a self-employed individual and the individual's spouse and dependents. The 25-percent deduction was also available to more than 2-percent shareholders of S corporations. The amount of expenses in excess of the deductible amount could be taken into account in determining whether the individual is entitled to a medical expense deduction (sec. 213). Thus, such amounts were deductible to the extent that, when combined with other unreimbursed medical expenses, they exceed 7.5 percent of adjusted gross income.

Individuals (who are not self employed and whose employers do not provide health insurance coverage) who purchase their own health insurance can deduct their insurance premiums only to the extent that the premiums, when combined with other unreimbursed medical expenses, exceed 7.5 percent of adjusted gross income.

The 25-percent deduction for health insurance costs of self-employed individuals expired for taxable years beginning after June 30, 1992. In the case of years beginning in 1992, only amounts paid before July 1, 1992, for coverage before July 1, 1992, are taken into account in determining the amount of the deduction.

Reason For Change

The 25-percent deduction for health insurance costs of self-employed individuals was added by the Tax Reform Act of 1986 to reduce the disparity between the tax treatment of owners of incorporated and unincorporated businesses (e.g., partnerships and sole proprietorships). The provision was enacted on a temporary basis, and has been extended several times since enactment.

In H.R. 4210, as passed by the Senate earlier this year, the committee provided for a permanent extension of the exclusion of 100 percent of the health insurance expenses of self-employed individuals. However, this provision has not been enacted. Given the short time until the 25-percent deduction will expire, the committee believes that it is appropriate at this time to extend the provision providing a 25-percent deduction again on a temporary basis.

Explanation of Provision

The bill extends the 25-percent deduction for health insurance expenses of self-employed individuals for 18 months (through December 31, 1993).

Effective Date

The provision is effective for taxable years ending after June 30, 1992.

4. Qualified mortgage bonds and mortgage credit certificates (sec. 2144 of the bill and secs. 143 and 25 of the Code)

Present Law

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used to finance the purchase, or qualifying rehabilitation or improvement of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds. Persons receiving QMB loans must satisfy principal residence, purchase price, borrower income, first-time homebuyer, and other requirements. Part or all of the interest subsidy provided by QMBs is recaptured if the borrower experiences substantial increases in income and disposes of the subsidized residence within nine years after it was purchased.

The volume of QMBs that a State may issue is limited by an annual State private activity bond volume limit.

Mortgage credit certificates

Qualified governmental units may elect to exchange private activity bond volume authority for authority to issue mortgage credit certificates ("MCCs"). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of the interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the loan remains outstanding and the residence being financed continues to be the MCC-recipient's principal residence. MCCs are subject to the same targeting requirements and recapture rules as QMBs.

Expiration

Authority to issue QMBs and to elect to trade in private activity bond volume authority to issue MCCs expired after June 30, 1992.

Reasons for Change

If properly targeted and administered, the QMB and MCC programs should enable the individuals to who otherwise would be unable to afford homes without the longer-term Federal subsidy provided by these programs. A temporary extension of the programs will permit this assistance to continue.

The committee has become aware that some states have housing programs that are designed to aid very low-income individuals who are treated as already having purchased land under a contract for deed. In a contract for deed, the individuals have purchased unimproved land under a type of land installment contract. Then the individuals frequently have constructed housing which does not meet adequate housing standards on that land for use as their principal residence. The committee understands that these contracts for deed must be refinanced in order to obtain financing for construction on the land of a new residence that meets adequate housing standards or a qualified home improvement loan for the existing housing on the land.

Explanation of Provision

The bill extends the authority to issue QMBs and to elect to trade in bond volume authority to issue MCCs for 18 months (through December 31, 1993).

The bill also provides, that in the case of homebuyers whose family income does not exceed $15,000,[1] ownership of land subject to certain contracts for deed does not violate the requirement that QMB- and MCC-financed homebuyers be first-time homebuyers and that the financing provided be for new mortgages. Thus, the bill allows QMB-financed loans to be made (and MCCs granted) to individuals who own land subject to these contracts for deed provided that the homebuyers satisfy (a) all otherwise applicable requirements of the QMB and MCC programs but for the contract for deed and (b) the special $15,000 income limit. These loans may be used to repay the contract for deed and to finance a new residence on the land. Also, as under present law, these homebuyers will remain eligible for qualified home improvement loans to rehabilitate existing housing on the land subject to the contracts for deed.

Effective Date

The extension of the QMB and MCC programs is effective after June 30, 1992. The provision relating to land owned subject to certain contracts for deed applies to loans made (and MCCs granted) after the date of the bill's enactment.

5. Qualified small-issue bonds (sec. 2145 of the bill and sec. 144 of the Code)

Present Law

Interest on small issues of private activity bonds issued by States or local governments ("qualified small-issue bonds") is excluded from gross income if certain conditions are met. First, at least 95 percent of the bond proceeds must be used to finance manufacturing facilities or certain agricultural land or equipment. Second, the bond issue must have an aggregate amount of $1 million or less, or the aggregate amount of the issue, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, may not exceed $10 million.

Issuance of qualified small-issue bonds, like most other private activity bonds, is subject to annual State volume limitations.

Authority to issue qualified small-issue bonds expired after June 30, 1992.

Reasons for Change

The committee believes that it is appropriate temporarily to permit State and local governments to continue to issue qualified small-issue bonds.

Explanation of Provision

The bill extends authority to issue qualified small-issue bonds for 18 months (through December 31, 1993).

Effective Date

The provision is effective for bonds issued after June 30, 1992.

6. Research and experimentation tax credit (sec. 2146 of the bill and sec. 41 of the Code)

Present Law

The research tax credit provides a 20-percent credit to the extent that a taxpayer's qualified research expenditures for the current year exceed its base amount for that year. The credit expired after June 30, 1992.

The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984-1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (such as "start-up firms) are assigned a fixed-base percentage of .03.

[1] This $15,000 amount will be indexed for calendar years after 1992.

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Qualified research expenditures eligible for the credit consist of: (1) "in-house" expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf. Expenditures attributable to research that is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

In addition, the 20-percent tax credit also applies to the *excess* of (1) 100-percent of corporate cash expenditures (including grants or contributions) paid for university basic research *over* (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.

Deductions for qualified research expenditures allowed to a taxpayer under section 174 are reduced by an amount equal to 100 percent of the taxpayer's research credit determined for that year.

Reasons for Change

Technological development is an important component of economic growth. However, because costly technological advances made by one firm are often cheaply copied by its competitors, businesses may not find it profitable to invest in some research activities. A research credit can help to promote investment in research, so that research activities undertaken approach the optimal level for the overall economy. The committee, therefore, believes that it is appropriate to extend the research tax credit.

Explanation of Provision

The bill extends the research tax credit for 18 months (i.e., for qualified research expenditures and university basic research expenditures incurred through December 31, 1993).

Effective Date

The provision applies to qualified expenditures incurred during the period July 1, 1992, through December 31, 1993.

7. Tax credit for low-income rental housing (sec. 2147 of the bill and sec. 42 of the Code)

Present Law

In general

A tax credit is allowed in annual installments over 10 years for qualifying newly constructed or substantially rehabilitated low-income rental housing. For most qualifying housing, the maximum credit is an amount having a present value of 70 percent of the eligible basis of the low-income housing units. For housing receiving other Federal subsidies (e.g., tax-exempt bond financing) and for the acquisition cost of existing housing that is substantially rehabilitated (e.g., costs other than rehabilitation expenditures), the maximum credit is an amount having a present value of 30 percent of qualified basis. Generally, that part of the building for which the credit is claimed must be rented to qualified low-income tenants at restricted rents for 15 years after the building is placed in service. In addition, a subsequent additional 15-year period of low-income use generally is required.

Eligible basis

The basis on which the credit is computed is determined as a percentage of the eligible basis of a qualified low-income building that is attributable to low-income rental housing units. This percentage is the lesser of (1) the percentage of low-income units to all residential units or (2) the percentage of the floor space of the low-income units to the floor space of all residential rental units. Generally, eligible basis is limited to the adjusted basis of the residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. There is no per-housing-unit limit on the amount of eligible basis.

Ten-year anti-churning rule

The credit is not allowed on buildings, or substantial improvements to buildings, that have been previously placed in service within 10 years of placement in service for credit purposes. Waivers from the 10-year rule may be granted by the Treasury Department under certain circumstances.

Minimum set-aside requirement for low-income individuals

Under the general minimum setaside a residential rental project qualifies for the credit only if: (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 50 percent or less of area median income or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals with incomes of 60 percent or less of area median income. Also, a special set-aside may be elected for projects that satisfy a stricter requirement and that significantly restrict the rents on the low-income units relative to the other residential units in the building.

Rents

The maximum rent that may be charged a family in a unit on which a credit is claimed depends on the number of bedrooms in the unit. The rent limitation is 30 percent of the qualifying income on a family deemed to have a size of 1.5 persons per bedroom (e.g., a two-bedroom unit has a rent limitation based on the qualifying income for a family of three). Prior to 1990, qualifying income for purposes of the rent limitation was determined on the family's qualified income based on actual family size, not apartment size.

Students

A housing unit generally is not eligible for the low-income housing tax credit if the tenants are full-time students who are not married individuals filing joint returns. Exceptions to this rule allow the credit to be claimed on housing units occupied by persons who are enrolled in certain job training programs or students who are receiving AFDC payments.

Qualified allocation plan

Each allocating agency is required to adopt a qualified allocation plan containing selection criteria for use in determining credit allocations to projects. The allocating agency then must allocate credit amounts to projects under such allocation plan.

State low-income housing credit authority limitation

Each State receives an annual low-income housing credit volume ceiling of $1.25 per resident. To qualify for the credit, a building owner generally must receive a credit allocation from the appropriate State credit authority. An exception is provided for property which is substantially financed with the proceeds of tax-exempt bonds subject to the State's private-activity bond volume limitation.

That portion of a State's credit authority which is unallocated in the year in which it originally arises may be carried forward and added to the State's credit authority for the subsequent calendar year. If allocations in the subsequent year exceed that year's annual credit authority, but do not exhaust the sum of that year's annual credit authority plus any credit authority carried forward from the preceding year, any remaining carried-forward credit authority is allocated in the next subsequent year to a national pool. Credit authority from the national pool is allocated to States who had utilized their entire credit allocation in the prior year.

Expiration

The low-income housing tax credit expired after June 30, 1992.

Reasons for Change

The committee believes it is appropriate for the Federal Government to play a significant role in the development of additional affordable housing for low-income individuals. The committee believes that the low-income housing tax credit is a useful incentive for increasing the housing stock available to these individuals. The committee is aware of complaints regarding the allocation process and will continue to study and analyze various alternatives that will maximize the efficient use of low-income housing credits. Further, the committee believes that certain modifications to the credit will improve its operation.

Explanation of Provision

Expiration

The bill extends the low-income housing tax credit for 18 months (through December 31, 1993), with several modifications.

Eligible basis

The bill provides that community service facilities in projects in qualified census tracts are included in eligible basis as functionally related and subordinate facilities if (a) the size of the facilities is commensurate with tenant needs, (b) the facilities are designed to serve qualifying tenant populations and employees of the project owner, and (c) no more than 20 percent of the credit project's eligible basis is attributable to such facilities.

10-year anti-churning rule

The bill authorizes the Treasury Department to grant waivers from the credit's 10-year anti-churning rule for certain projects substantially assisted, financed, or operated under section 221(d)(4) of the National Housing Act.

Minimum set-aside requirement for low-income individuals

The bill authorizes the Treasury Department to: (1) provide a waiver of penalties for de minimis errors in the application of the minimum set-aside rules, and (2) grant a waiver from the annual recertification of tenant income, for tenants in a building, if all the tenants in the building are low-income tenants.

Rents

The bill provides that if certain conditions are met, a taxpayer who placed low-income housing credit buildings in service before the effective date of the Omnibus Budget Reconciliation Act of 1989 is eligible to elect a provision of that Act on a prospective basis. Specifically, owners will be able to elect whether to use apartment size or actual family size as the basis of qualifying income for purposes of the low-income housing credit's

gross rent limitation. To qualify the owner must enter into a compliance monitoring agreement with the State allocating agency and make the irrevocable election within 180 days of enactment. The election must be made on a building-by-building basis and does not apply to rents charged to existing tenants.

Students

The bill provides that a unit occupied entirely by full-time students may qualify for the credit if the full-time students are single parents and none of the tenants or their minor children is a dependent of a third party. The bill also codifies the present-law exception regarding married students filing joint returns (which continues to apply to all buildings placed in service since original enactment of the low-income housing credit by the Tax Reform Act of 1986).

Qualified allocation plan

The bill provides that an allocating agency take into consideration the reasonableness of costs relating to the development and operation of the credit project. Generally such determination should be based on the cost of the overall project rather than on individual items. In making such determination the agency may use reasonable methods including making comparisons of costs in similar projects in the locality, and reviewing development practices or building design. Further, the degree and size of amenities should be limited to those necessary for the size and type of tenant population to be served.

State low-income housing credit authority limitation

For purposes of the carryforward rule, the bill treats credits carried forward from previous years as used before current year credits.

Effective Date

Generally, the provision is effective for allocations of low-income housing credit volume limitation (and buildings financed with tax-exempt bonds issued) after June 30, 1992. The provisions relating to an election under the gross rent limitation and to the Treasury Department's authority to grant waivers are effective on date of enactment. The provision relating to the credit carryforward rules is effective on or after January 1, 1992.

8. Targeted jobs tax credit (sec. 2148 of the bill and sec. 51 of the Code)

Present Law

Tax credit

The targeted jobs tax credit is available on an elective basis for hiring individuals from nine targeted groups. These targeted groups consist of individuals who are either recipients of payments under means-tested programs, economically disadvantaged (as measured by family income), or disabled.

The credit generally is equal to 40 percent of up to $6,000 of qualified first-year wages. A credit equal to 40 percent of up to $3,000 of wages paid to qualified summer youth employees is also allowed. Thus, the maximum credit is generally $2,400 per qualified employee, with a $1,200 maximum credit per summer youth employee. The employer's deduction for wages is reduced by the amount of the credit claimed.

No wages are taken into account for purposes of the credit unless the eligible employee is employed by the employer for the lesser of 90 days or 120 hours (14 days or 20 hours in the case of qualified summer youth employees).

The credit expired for individuals who began work for an employee after June 30, 1992.

Authorization of appropriations

Present law authorizes appropriations for administration and publicity expenses relating to the credit through June 30, 1992. These monies are to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

Reasons for Change

The committee believes that the targeted jobs tax credit provides a useful incentive for hiring disadvantaged individuals. The committee also believes that economically disadvantaged youths aged 23 and 24, long-term unemployed individuals and certain individuals residing in Federally designated enterprise zones will enjoy increased employment opportunities with the extension of the credit to these groups.

Explanation of Provision

The bill extends the targeted jobs tax credit and the authorization for appropriations for 18 months (through December 31, 1993).

The bill also makes several changes to the credit. First, the bill restores individuals aged 23 and 24 to the category of economically disadvantaged youth. Second, the bill extends the credit to employers of long-term unemployed individuals (a new eligible group). For these purposes, a long-term unemployed individual is defined as someone who has exhausted eligibility for unemployment compensation (including extended benefits) before the hiring date. The maximum credit for this new category of targeted jobs will be 40 percent of the first $3,000 of qualified first-year wages. To be eligible for the credit the employee must remain employed for a maximum of 120 days and, the employer must certify that reasonable action was taken to specifically recruit the long-term unemployed. Third, the bill extends the credit to employers of residents of Federally designated enterprise zones. Fourth, the bill repeals the 120 hour minimum employment requirement but retains the 90 day requirement. The minimum employment rule for qualified summer youth employees is unchanged.

The committee also intends that other Federal agencies may in consultation with the Treasury Department provide guidance relating to administrative matters of the credit program such as substantiation of eligibility for the credit or other documentation requirements. Further, the committee intends that States will be permitted to accept electronic filings for administrative documentation under the credit program including certification of eligibility.

Effective Date

Generally, the provision is effective for individuals who begin work for an employer after June 30, 1992. However, the provision relating to the minimum employment period is effective after the date of enactment. Also, the provision relating to long-term unemployed individuals is effective for employees hired during the six-month period starting after the date of enactment.[1]

9. Tax credit for orphan drug clinical testing expenses (sec. 2149 of the bill and sec. 28 of the Code)

Present Law

The orphan drug tax credit provides a 50-percent nonrefundable tax credit for a taxpayers' qualified clinical testing expenses paid or incurred in the testing of certain drugs for rare diseases, generally referred to as "orphan drugs." Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. Present law defines a rare disease or condition as one that (1) affects less than 200,000 persons in the United States or (2) affects more than 200,000 persons, but there is no reasonable expectation that businesses could recoup the costs of developing a drug for it from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).

The orphan drug tax credit expired after June 30, 1992.

Reasons for Change

To encourage the development of drugs to treat rare diseases, the committee believes it is appropriate to extend the orphan drug tax credit.

Explanation of Provision

The bill extends the orphan drug tax credit for 18 months (i.e., for qualified clinical testing expenses incurred through December 31, 1993).

Effective Date

The provision is effective for expenses incurred during the period July 1, 1992, through December 31, 1993.

10. Excise tax on certain vaccines for the Vaccine Injury Compensation Trust Fund (sec. 2150 of the bill and secs. 4131 and 9510 of the Code)

Present Law

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of revenue to compensate individuals who are injured (or die) as a result of the administration of certain vaccines: diphtheria, pertussis, and tetanus ("DPT"); diphtheria and tetanus ("DT"); measles, mumps, and rubella ("MMR"); and polio. The Vaccine Trust Fund provides the funding source for the National Vaccine Injury Compensation Program ("Program"), which provides a substitute, Federal "no-fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers.

Under the Program, all persons who were immunized with a covered vaccine after the effective date of the Program, October 1, 1988, are prohibited from commencing a civil action in State court for vaccine-related damages unless they first file a petition with the United States Claims Court, where such petitions are assigned to a special master and governed by streamlined procedural rules designed to expedite the proceedings.[1] In these cases, the Federal Government is the respondent party in the proceedings, and the claimant generally must show only that certain medical conditions (or death) fol-

[1]The bill also includes additional six-month periods of eligibility for long-term unemployed individuals if the national unemployment rate exceeds 7 percent in any future month.

[1]Persons who received vaccines before the Program's effective date of October 1, 1988 ("retrospective cases") also may be eligible for compensation under the Program if they had not yet received compensation and elected to file a petition with the United States Claims Court on or before January 31, 1991. Under the Program, awards in retrospective cases are somewhat limited compared to "prospective cases" (i.e., those where the vaccine was administered on or after October 1, 1988). Awards in retrospective cases are not paid out of the Vaccine Trust Fund but are paid out of funds specially authorized by Congress. See 42 U.S.C. sec. 300aa-15(i), (j) (appropriating $80 million for fiscal year 1989 and for each subsequent year).

lowed the administration of a covered vaccine and that the first onset of symptoms occurred within a prescribed time period.[2] Compensation under the Program generally is limited to actual and projected unreimbursed medical, rehabilitative, and custodial expenses, lost earnings, pain and suffering (or, in the event of death, a recovery for the estate) up to $250,000, and reasonable attorney's fees.[3] Only if the final settlement under the Program is rejected may the claimant proceed with a civil tort action in the appropriate State court, where recovery generally will be governed by State tort law principles,[4] subject to certain limitations and specifications imposed by the National Childhood Vaccine Injury Act of 1986.[5]

The Vaccine Trust Fund is funded by a manufacturer's excise tax on DPT, DT, MMR, and polio vaccines (and any other vaccines used to prevent these diseases). The excise tax per dose is $4.56 for DPT, $0.06 for DT, $4.44 for MMR, and $0.29 for polio vaccines.

The vaccine excise tax expires after the later of: (1) December 31, 1992; or (2) the date on which the Vaccine Trust Fund revenues exceed the projected liabilities with respect to compensable injuries from vaccines administered before October 1, 1992. Amounts in the Vaccine Trust Fund are available for the payment of compensation under the Program with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

Reasons for Change

Congress created the National Vaccine Injury Compensation Program as part of the National Childhood Vaccine Injury Act of 1986, in view of concerns that the combination of significantly higher prices for vaccines and uncertain compensation for injuries could result in reduced compliance with the nations childhood immunization efforts. The Program became effective following enactment of a Federal funding source. This funding source was provided by the enactment of vaccine excise taxes in the Omnibus Budget Reconciliation Act of 1987, with the excise taxes imposed on sales of covered vaccines on or after January 1, 1988. The Program for administering claims became effective on October 1, 1988, but was not fully operational until February 1, 1989.[6]

Because data on the administration of the Program and the Vaccine Trust Fund are only beginning to be collected, it is appropriate to extend for two years (i.e., through December 31, 1994) the present-law vaccine excise taxes. In addition, the authorization for compensation to be paid from the Vaccine Trust Fund for certain damages resulting from vaccines administered after September 30, 1988, and before October 1, 1992, is extended for two years (i.e., for vaccines administered before October 1, 1994). In the interim, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, should study the administration of the Program and Vaccine Trust Fund to determine whether additional vaccines should be included in the Program or other modifications (such as adjustments to the excise tax rates) are warranted.

Explanation of Provisions

Extension of excise tax and Program funding

The present-law excise taxes imposed on certain vaccines are extended for two years (i.e., through December 31, 1994). Authorization for compensation to be paid from the Vaccine Trust Fund for certain damages resulting from vaccines administered after September 30, 1988, and before October 1, 1992, also is extended for two years (i.e., for vaccines administered after September 30, 1988, and before October 1, 1994).

Study

In addition, the Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, is directed to conduct a study of: (1) the estimated amount that will be paid from the Vaccine Trust Fund with respect to vaccines administered after September 30, 1988, and before October 1, 1994; (2) the rates of vaccine-related injury or death with respect to various types of vaccines; (3) new vaccines and immunization practices being developed or used for which amounts may be paid from the Vaccine Trust Fund; (4) whether additional vaccines should be included in the Program; and (5) the appropriate treatment of vaccines produced by State governmental entities. The Secretary of the Treasury must submit a report detailing his findings not later than January 1, 1994, to the House Committee on Ways and Means and the Senate Committee on Finance.

Effective Date

The provisions are effective on the date of enactment.

11. Permanent extension of General Fund transfer to Railroad Retirement Tier 2 Fund (sec. 2151 of the bill)

Present Law

The proceeds from the income taxation railroad retirement tier 2 benefits are transferred from the general fund of the Treasury to the Railroad Retirement Account. This transfer applies only to proceeds from the taxation of benefits which have been received prior to October 1, 1992. Proceeds from the taxation of benefits received after this date remain in the general fund.

Reasons for Change

It is appropriate to make permanent the transfer of funds from the general fund of the Treasury to the Railroad Retirement Account to promote the ongoing solvency of the Railroad Retirement system.

Explanation of Provision

The transfer of proceeds from the income taxation of railroad retirement tier 2 benefits from the general fund of the Treasury to the Railroad Retirement Account is made permanent.

Effective Date

The provision is effective beginning September 30, 1992.

C. OTHER INCENTIVES

1. Special depreciation allowance for certain equipment acquired in 1992 (sec. 2161 of the bill and secs. 56 and 168 of the Code)

Present Law

Depreciation deductions

A taxpayer is allowed to recover, though annual depreciation deductions, the boost of certain property used in a trade or business are held for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the accelerated cost recovery system (ACRS), as modified by the Tax Reform Act of 1986. Under ACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property (generally tangible property other than residential rental property and nonresidential real property) range from 3 to 20 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

For purposes of the alternative minimum tax (AMT), tangible personal property generally is depreciated using the 150-percent declining balance method over lives that are typically longer than the applicable recovery periods for regular tax purposes. In addition, for purposes of the adjusted current bearings (ACE) component of the corporate AMA, tangible personal property is depreciated using the straight-line method over these longer lives.

Expensing election

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $10,000 of the cost of qualifying property placed in service for the taxable year. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $10,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. In addition, the amount eligible to be expended for a taxable year may not exceed the taxable income of the taxpayer for the year that is derived from the active conduct of a trade or business (determined without a regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations).

Reasons for Change

The committee believes that allowing additional first-year depreciation would accelerate purchases of new equipment, promote additional capital investment, modernization, and growth, and lead to a more rapid economic recovery.

Explanation of Provision

The bill allows an additional first-year depreciation deduction equal to 15 percent of the adjusted basis of certain qualified property that is placed in service before January 1, 1994. The additional depreciation deduc-

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[2]Compensation may not be awarded, however, if there is a preponderance of the evidence that the claimant's condition or death resulted from factors unrelated to the vaccine in question.

[3]42 U.S.C. sec. 300aa-15. The committee wishes to clarify its understanding that amounts received by a claimant from the Vaccine Trust Fund constitute damages received on account of personal injuries or sickness for purposes of the exclusion from gross income provided by the general rules of section 104(a)(2).

[4]In most State proceedings, significant issues arise whether injuries suffered by a child after immunization were, in fact, caused by the vaccine administered and whether the manufacturer was at fault in either the manufacture or marketing of the vaccine.

[5]Title III, P.L. 99-660. This Act preempts State tort law to a limited extent by imposing limits on recovery from vaccine manufacturers. Among the limitations are a prohibition on compensation if the injury or death resulted from side effects that were unavoidable; a presumption that manufacturers are not negligent in manufacturing or marketing vaccines if they complied, in all material respects, with Federal Food and Drug Administration requirements; and limits on punitive damage awards.

[6]Several procedural aspects of the Program were amended by section 6601 of the Omnibus Budget Reconciliation Act of 1989. To date, most of the dispositions under the Program have involved so-called "retrospective cases." See Mariner, Wendy K., *Innovation and Challenge: The First Year of the National Vaccine Injury Compensation Program*, May 1991, report prepared for consideration by the Administrative Conference of the United States.

tion is allowed for both regular tax and AMT purposes for the taxable year in which the property is placed in service. The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. A taxpayer may elect to not claim the additional first-year depreciation for qualified property.

Property qualifies for the additional first-year depreciation deduction if (1) the property is section 1245 property to which ACRS applies (other than property that is required to be depreciated under the alternative depreciation system of ACRS) and (2) the original use of the property commences with the taxpayer on or after August 1, 1992.[1] In addition, the property must be acquired by the taxpayer (1) on or after August 1, 1992, and before January 1, 1993, but only if no binding written contract for the acquisition is in effect before August 1, 1992, or (2) pursuant to a binding written contract which was entered into on or after August 1, 1992, and before January 1, 1993.

In addition, except as otherwise provided in regulations, repaired or reconstructed property is not qualified property. Finally, property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer will qualify if the taxpayer begins the manufacture, construction, or production of the property on or after August 1, 1992, and before January 1, 1993 (and all other requirements are met). For this purpose, property that is manufactured, constructed, or produced for the taxpayer by another person is considered to be manufactured, constructed, or produced by the taxpayer.

The limitations on the amount of depreciation deductions allowed with respect to certain passenger automobiles (sec. 280F of the Code) are adjusted to reflect the additional first year depreciation deduction. Thus, the limitation on the amount of depreciation allowable for the first year that a passenger automobile to which this provision applies will be increased by 15 percent and subsequent year depreciation allowances will be decreased to reflect this first year increase.

The following examples illustrate the operation of the provision:

Example 1.—Assume that on September 1, 1992, a calendar year taxpayer acquires and places in service qualified property that costs $1 million. Under the provision, the taxpayer is allowed an additional first-year depreciation deduction of $150,000. The remaining $850,000 of adjusted basis is to be recovered in 1992 and subsequent years pursuant to the depreciation rules of present law.

Example 2.—Assume that on September 1, 1992, a calendar year taxpayer acquires and places in service qualified property that costs $30,000. In addition, assume that the property qualifies for the expensing election under section 179. Under the provision, the taxpayer is first allowed a $10,000 deduction under present-law section 179. The taxpayer then is allowed an additional first-year depreciation deduction of $3,000 based on $20,000 ($30,000 original cost less the section 179 deduction of $10,000) of adjusted basis. Finally, the remaining adjusted basis of $17,000 ($20,000 adjusted basis less $3,000 additional first-year depreciation) is to be recovered in 1992 and subsequent years pursuant to the depreciation rules of present law.

Effective Date

The provision applies to property placed in service on or after August 1, 1992.

2. Corporate alternative minimum tax; Elimination of ACE depreciation adjustment for corporate AMT (sec. 2162 of the bill and sec. 56(g) of the Code)

Present Law

Under present law, a corporation is subject to an alternative minimum tax ("AMT") which is payable, in addition to all other tax liabilities, to the extent that it exceeds the corporation's regular income tax liability. Alternative minimum taxable income ("AMTI") is the corporation's taxable income increased by the corporation's tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the deferral of income resulting from the regular tax treatment of those items. For a corporation, the amount of AMT paid in a year may be carried forward as a credit and used to reduce the corporation's regular tax liability (but not below the corporation's tentative minimum tax for the year).

One of the adjustments that is made to taxable income to arrive at AMTI relates to depreciation. Depreciation on most personal property to which the modified ACRS system adopted in 1986 applies is calculated using the 150-percent declining balance method (switching to straight line in the year necessary to maximize the deduction) over the life described in Code section 168(g) (generally the ADR class life of the property).

For taxable years beginning after 1989, AMTI includes an amount equal to 75 percent of the amount by which adjusted current earnings ("ACE") exceeds AMTI (as determined before this adjustment). The ACE adjustment replaced a "book-income adjustment" applicable to tax years 1987 through 1989. In general, ACE equals AMTI with additional adjustments that generally follow the rules presently applicable to corporations in computing their earnings and profits. For purposes of ACE, depreciation is computed using the straight-line method over the class life of the property. Thus, a corporation generally must make two depreciation calculations for purposes of the AMT—once using the 150-percent declining balance method and again using the straight-line method.

Reasons for Change

The committee believes that the depreciation component of the ACE adjustment may constitute too great a reduction in the regular tax incentive for capital investment for U.S. corporations. As a result of the ACE depreciation adjustment, many capital-intensive corporations are subject to the AMT, particularly if the corporations are adding to their capital stock or experiencing depressed earnings.

The ACE depreciation adjustment also is a source of substantial complexity. As a result of the adjustment, corporations must make three separate depreciation computations to determine taxable income and alternative minimum taxable income.

Explanation of Provision

The bill eliminates the depreciation component of ACE for corporate AMT purposes. Thus, the depreciation methods and lives that a corporation uses in computing AMTI (generally, the 150-percent declining balance method for tangible personal property over the sec. 168(g) life) will apply for purposes of computing ACE.

Effective Date

The provision is effective for property placed in service in taxable years beginning after the date of enactment.

SUBTITLE C. LUXURY EXCISE TAX; DIESEL FUEL EXCISE TAX ON MOTORBOATS

1. Repeal of luxury excise tax on boats, aircraft, jewelry, and furs; indexing of luxury excise tax on automobiles (sec. 2201 of the bill and secs. 4001–4012 of the Code)

Present Law

Present law imposes a ten-percent excise tax on the portion of the retail price of the following items that exceeds the thresholds specified: automobiles above $30,000; boats above $100,000; aircraft above $250,000; jewelry above $10,000; and furs above $10,000. The tax also applies to subsequent purchases of component parts and accessories, occurring within six months of the date the automobile, boat, or aircraft is placed in service.

The tax generally applies only to the first retails sale after manufacture, production or importation of items subject to the tax. It does not apply to subsequent sales of these items. The taxes on automobiles, boats, and aircraft generally do not apply to items used in trade or business.

Present law includes no exceptions to the tax base for costs associated with specially equipping an automobile for use by disabled persons. Further, the tax does not apply to demonstrator vehicles used for the purpose of test drives by customers until the vehicle is sold, but luxury automobiles used by the sales staff for personal use are subject to the tax.

The tax applies to sales before January 1, 2000.

Reasons for Change

During the recent recession, the boat, aircraft, jewelry, and fur industries have suffered job losses and increased unemployment. The committee believes, in the context of the current general economic hardship, that it is appropriate to eliminate the burden these taxes impose in the interests of fostering economic recovery in those and related industries.

The committee recognizes that in the absence of indexation of the threshold above which the tax on automobiles applies, even modest inflation will subject more automobiles to the luxury tax than were subject to the tax when it was first enacted.

The committee further believes that it is unfair and inappropriate to treat as luxury purchases those accessories or modifications which must be purchased by an individual with a disability to enable him or her to operate or to enter or exit a vehicle.

Explanation of Provision

Repeal of tax on boats, aircraft, jewelry, and fur

The bill repeals the luxury excise tax imposed on boats, airplanes, jewelry, and furs.

Indexing of tax on automobiles

The bill modifies the luxury excise tax on automobiles to provide that the $30,000 threshold is indexed annually for inflation occurring after 1990. Consequently, the applicable threshold for 1992 will be $30,000 increased by the 1991 inflation rate.

Exemption for certain equipment installed on passenger vehicles for use by disabled individuals

The bill provides that the luxury excise tax does not apply to the cost of a part or accessory installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the

[1] A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property is to be treted as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

vehicle, in order to compensate for the effect of the disability. This exception does not apply to accessories commonly available from the manufacturer or dealer, such as power steering, power door locks, power seats, or power windows.

Treatment of demonstrator vehicles

The bill exempts automobile dealers from paying the luxury tax on demonstrator vehicles used for purposes other than test drives. Under the provision, the tax, if any, is to be assessed and paid on the sales price of the car when the car is sold.

Effective Date

The repeal of the luxury excise taxes on boats, aircraft, jewelry, and furs is effective for sales on or after January 1, 1992. The indexation of the threshold applicable to automobiles is effective for sales on or after July 1, 1992. The provision relating to the purchase of accessories or modifications by disabled persons is effective for purchases after December 31, 1990. The provision relating to the use before sale of demonstrator vehicles is effective for vehicle use beginning after June 30, 1992.

Persons entitled to a refund may request it from the seller at which they purchased the taxed item, who then may obtain the refund as provided under present-law Code section 6416.

2. Impose excise tax on diesel fuel used in noncommercial motorboat (sec. 2202 of the bill and secs. 4092, 4041, 6421, 9503, and 9508 of the Code)

Present Law

Federal excise taxes generally are imposed on gasoline and special motor fuels used in highway transportation, by certain off highway recreational trail vehicles, and by boats (14 cents per gallon). A Federal excise tax also is imposed on diesel fuel (20 cent per gallon) used in highway transportation. Diesel fuel used in trains generally is taxed at 2.5 cents per gallon.

The revenues from these taxes, minus 2.5 cents per gallon, are deposited in the Highway Trust Fund, the National Recreational Trails Trust Fund, or the Aquatic Resources Trust Fund through September 30, 1999. Revenues from the remaining 2.5 cents per gallon are retained in the General Fund through September 30, 1995, after which time the 2.5-cents-per-gallon portion of the taxes (including the tax on diesel fuel used in trains) is scheduled to expire.

An additional 0.1-cent-per-gallon tax applies to these fuels to finance the Leaking Underground Storage Trust Fund, generally through December 31, 1995.

Diesel fuel used in recreational boats is not taxed.

Reasons for Change

The bill eliminates the discrepancy between gasoline used by pleasure boats (which is taxable) and diesel fuel used by these boats (which is not taxable).

Explanation of Provision

The bill extends the current 20.1-cents-per-gallon diesel fuel excise taxes to diesel fuel used by boats. Fuel used by boats for commercial fishing, transportation for compensation or hire, or for business use other than predominantly for entertainment, amusement, or recreation, remains exempt.

The tax is collected at the same point in the distribution chain as the highway diesel fuel tax (i.e., on sale to a retailer). However, to prevent unnecessary tax-paid sales followed by refunds, retailers that sell diesel fuel exclusively to commercial (i.e., nonpleasure) boats are permitted to buy the fuel without payment of tax.

The revenues from the 20.1-cents-per-gallon tax on diesel fuel used by boats will be retained in the General Fund.

The bill provides that the tax imposed on diesel fuel used in noncommercial motorboats expires after September 30, 1997.

Effective Date

The provision is effective after September 30, 1992.

TITLE III. OFFSETTING REVENUE INCREASES

SUBTITLE A. GENERAL PROVISIONS

1. Mark-to-market accounting method for dealers in securities (sec. 3001 of the bill and new sec. 475 of the Code)

Present Law

A taxpayer that is a dealer in securities is required for Federal income tax purposes to maintain an inventory of securities held for sale to customers. A dealer in securities is allowed for Federal income tax purposes to determine (or value) the inventory of securities held for sale based on: (1) the cost of the securities; (2) the lower of the cost or market value of the securities; or (3) the market value of the securities.

If the inventory of securities is determined based on cost, unrealized gains and losses with respect to the securities are not taken into account for Federal income tax purposes. If the inventory of securities is determined based on the lower of cost or market value, unrealized losses (but not unrealized gains) with respect to the securities are taken into account for Federal income tax purposes. If the inventory of securities is determined based on market value, both unrealized gains and losses with respect to the securities are taken into account for Federal income tax purposes.

For financial accounting purposes, the inventory of securities generally is determined based on market value.

Reasons for Change

Inventories of securities generally are easily valued at year end, and, in fact, are currently valued at market by securities dealers in determining their income for financial statement purposes and in adjusting their inventory using the lower of cost or market method for Federal income tax purposes. The committee believes that the cost method and the lower of cost or market method generally understate the income of securities dealers and that the market method most clearly reflects the income of securities dealers. Consequently, as proposed in the administration's fiscal year 1993 budget, the bill requires certain securities that are held by a dealer in securities to be marked to market for Federal income tax purposes.

Explanation of Provision

In general

The bill provides two general rules (the "mark-to-market rules") that apply to certain securities that are held by a dealer in securities. First, any such security that is inventory in the hands of the dealer is required to be included in inventory at its fair market value. Second, any such security that is not inventory in the hands of the dealer and that is held as of the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account by the dealer in determining gross income for that taxable year.[1]

If gain or loss is taken into account with respect to a security by reason of the second mark-to-market rule, then the amount of gain or loss subsequently realized as a result of a sale, exchange, or other disposition of the security, or as a result of the application of the mark-to-market rules, is to be appropriately adjusted to reflect such gain or loss. In addition, the bill authorizes the Treasury Department to promulgate regulations that provide for the application of the second mark-to-market rule at times other than the close of a taxable year or the last business day of a taxable year.

The mark-to-market rules do not apply for purposes of determining the holding period of any security. In addition, the mark-to-market rules do not apply in determining whether gain or loss is recognized by any other taxpayer that may be a party to a contract with a dealer in securities.

Character of gain or loss

Any gain or loss taken into account under the provision (or any gain or loss recognized with respect to a security that would be subject to the provision if held at the end of the year) generally is treated as ordinary gain or loss. This character rule does not apply to any gain or loss allocable to any period during which the security (1) is a hedge of a position, right to income, or a liability that is not subject to a mark-to-market rule under the provision, or (2) is held by the taxpayer other than in its capacity as a dealer in securities. In addition, the character rule does not apply to any security that is improper by identified (as described in detail below) by the taxpayer.

No inference is intended as to the character of any gain or loss recognized in taxable years prior to the enactment of this provision or any gain or loss recognized with respect to any property to which this character rule does not apply.

Definitions

A dealer in securities is defined as any taxpayer that either (1) regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

A security is defined as: (1) any share of stock in a corporation; (2) any partnership or beneficial ownership interest in a widely-held or publicly-traded partnership or trust; (3) any note, bond, debenture, or other evidence of indebtedness; (4) any interest rate, currency, or equity notional principal contract such as a notional principal contract that is based on the price of oil, wheat, or other commodity); and (5) any evidence of an interest in, or any derivative financial instrument in any currency or in a security described in (1) through (4) above, including any option, forward contract, short position, or any similar financial instrument in such a security or currency.

In addition, a security is defined to include any position if: (1) the position is not a security described in the preceding paragraph; (2) the position is a hedge with respect to a security described in the preceding paragraph; and (3) before the close of the day on which the position was acquired or entered into (or such other time as the Treasury Department may specify in regulations), the position is

[1] For purpose of this provision, a security is treated as sold to a person that is not related to the dealer even if the security is itself a contract between the dealer and a related person. Thus, for example, sections 267 and 707(b) of the Code are not to apply to any loss that is required to be taken into account under this provision.

clearly identified in the dealer's records as a hedge with respect to a security described in the preceding paragraph.

A security, however, is not to include a contract to which section 1256(a) of the Code applies, unless such contract is a hedge of a security to which the provision applies. The special character rule of the bill (rather than the special character rule of section 1256(a)) will apply to any such contract that is a hedge of a security to which the provision applies.

A hedge is defined as any position that reduces the dealer's risk of interest rate or price changes or currency fluctuations, including any position that is reasonably expected to become a hedge within 60 days after the acquisition of the position.

Exceptions to the mark-to-market rules

Notwithstanding the definition of security, the mark-to-market rules generally do not apply to: (1) any security that is held for investment;[2] (2) any evidence of indebtedness that is acquired (including originated) by a dealer in the ordinary course of its trade or business but only if the evidence of indebtedness is not held for sale; (3) any security that is acquired by a floor specialist of a national securities exchange or a market maker of the National Association of Security Dealers Automated Quotation System, in connection with the specialist's or market maker's duties as a specialist or market maker;[3] (4) any security which is a hedge with respect to a security that is not subject to the mark-to-market rules (i.e., any security that is a hedge with respect to (a) a security held for investment, (b) an evidence of indebtedness described in (2) or (c) a security of a floor specialist or a market maker described in (3)); and (5) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer.[4]

To extent provided in regulations to be promulgated by the Treasury Department, the exceptions to the mark-to-market rules for certain hedges do not apply to any security that is held by a taxpayer in its capacity as a dealer in securities. Thus, regulations may provide that the exceptions to the mark-to-market rules for certain hedges do not apply to securities that are entered into with customers in the ordinary course of a trade or business. A hedge that is identified as not subject to the mark-to-market rules will not be considered to be held for sale in the ordinary course of a trade or business.

In addition, the exceptions to the mark-to-market rules do not apply unless, before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations),[5] the security is clearly identified in the dealer's records as being described in one of the exceptions listed above.[6]

It is anticipated that the identification rules with respect to hedges will be applied in such a manner as to minimize the imposition of additional accounting burdens on dealers in securities. For example, it is understood that certain dealers in securities use accounting systems which treat certain transactions entered into between separate business units as if such transactions were entered into with unrelated third parties. It is anticipated that for purposes of the mark-to-market rules, such an accounting system generally will provide an adequate identification of hedges with third parties.

In addition to clearly identifying a security as qualifying for one of the exceptions to the mark-to-market rules listed above, a dealer must continue to hold the security in a capacity that qualifies the security for one of the exceptions listed above. If at any time after the close of the day on which the security was acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations), the security is not held in a capacity that qualifies the security for one of the exceptions listed above, then the mark-to-market rules are to apply to any changes in value of such security that occur after the security no longer qualifies for an exception.[7]

Conversely, different rules apply to a security that originally is held by the taxpayer in a capacity that subjects the security to the mark-to-market rules, but later becomes otherwise eligible for an exception from the mark-to-market rules. For example, assume that a security to which the mark-to-market rules apply is hedged (and thus the hedge is subject to the mark-to-market rules) and the security (but not the hedge) is sold before year end. In such case, the "naked" hedge generally will be subject to the mark-to-market rules at the year end.

However, the Treasury Department has authority to issue regulations that would allow the taxpayer to identify, on the date the security is sold, the "naked" hedge as a security to which one of the exceptions to the mark-to-market rules (assuming the "naked" hedge otherwise qualifies for the exception). In making this identification, it is anticipated that the taxpayer would be required to apply the mark-to-market rules to the "naked" hedge as of the date of the sale of the security, take any resulting gain or loss into account for the taxable year of sale, and treat the "naked" hedge as a security to which the exceptions to the mark-to-market rules apply.

Whether or not the taxpayer is allowed under regulations to make the identification described above (and whether or not the taxpayer makes the identification), any gain or loss attributable to the period after the date of sale of the security will not be subject to the special character rule of the bill if the hedge is not held by the taxpayer in its capacity as a dealer during such period. Thus, if the "naked" hedge is a capital asset in the hands of the taxpayer, any gain or loss recognized with respect to the "naked" hedge that is attributable to the period after the date of sale of the security will be capital gain or loss.

In proper identification

The bill provides that if (1) a dealer identifies a security as qualifying for an exception to the mark-to-market rules but the security does not qualify for that exception, or (2) a dealer fails to identify a position that is not a security as a hedge of a security but the position is a hedge of a security, then the mark-to-market rules are to apply to any such security or position, except that loss is to be recognized under the mark-to-market rules prior to the disposition of the security or position only to the extent of gain previously recognized under the mark-to-market rules (and not previously taken into account under this provision) with respect to the security or position.

Other rules

The bill provides that the uniform cost capitalization rules of section 263A of the Code and the rules of section 263(g) of the Code that require the capitalization of certain interest and carrying charges in the case of straddles do not apply to any security to which the mark-to-market rules apply because the fair market value of a security should include the costs that the dealer would otherwise capitalize.

In addition, a security subject to the provision is not to be treated as sold and reacquired for purposes of section 1091 of the Code. Section 1092 of the Code will apply to any loss recognized under the mark-to-market rules (but will have no effect if all the offsetting positions that make up the straddle are subject to the mark-to-market rules).

Furthermore, the bill provides that (1) the mark-to-market rules do not apply to any section 988 transaction (generally, a foreign currency transaction) that is part of a section 988 hedging transaction, and (2) the determination of whether a transaction is a section 988 transaction is to be made without regard to whether the transaction would otherwise be marked-to-market under the bill.

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[2] To the extent provided in regulations to be promulgated by the Treasury Department, the exception to the mark-to-market rules for a security that is held for investment is not to apply to any notional principal contract or any derivative financial instrument that is held by a dealer in such securities.

[3] A floor specialist is defined as a person who (1) is a member of a national securities exchange, (2) is registered as a specialist with the exchange, and (3) meets the requirements for specialists established by the Securities and Exchange Commission.

A market maker is defined as a person who (1) is registered as a market maker with the National Association of Security Dealers, with respect to a security that is included in National Association of Security Dealers Automated Quotation System (NASDAQ), and (2) as of the last day of the taxable year, has been actively and regularly engaged as a market maker in the security for the lesser of (a) two years or (b) the period beginning 61 days after the security was first included on the NASDAQ and ending on such last day.

[4] For purpose of the mark-to-market rules, debt issued by a taxpayer is not a security in the hands of such taxpayer.

[5] It is anticipated that the Treasury regulations will permit a dealer that originates evidences of indebtedness in the ordinary course of a trade or business to identify such evidences of indebtedness as not held for sale based on the accounting practices of the dealer but in no event later than the date that is 30 days after the date that any such evidence of indebtedness is originated. Further, it is anticipated that the Treasury regulations will permit a dealer that enters into commitments to acquire mortgages to identify such commitments as being held for investment if the dealer acquires the mortgages and holds the mortgages as investments. It is anticipated that this identification of commitments to acquire mortgages will occur within a reasonable period after the acquisition of the mortgages but in no event later than the date that is 30 days after the date that the mortgages are acquired.

[6] A security is to be treated as clearly identified in a dealer's records as being described in one of the exceptions listed above if all of securities of the taxpayer that are not so described are clearly identified in the dealer's records as not being described in such exception.

For example, assume that, in the ordinary course of its trade or business, a bank originates loans that are sold if the loans satisfy certain conditions. In addition, assume that (1) the bank determines whether a loan satisfies the conditions within 30 days after the loan is made, and (2) if a loan satisfies the conditions for sale, the bank records the loan in a separate account on the date that the determination is made. For purposes of the bill, the bank is a dealer in securities with respect to the loans that it holds for sale. In addition, by identifying these loans as held for sale, the bank is considered to have identified all other loans as not held for sale. Consequently, the loans that are not held for sale are not subject to the mark-to-market rules.

[7] Any gain or loss that is attributable to the period that the security was not subject to the mark-to-market rules generally is to be taken into account at the time that the security is actually sold (rather than treated as sold by reason of the mark-to-market rules).

The bill also authorizes the Treasury Department to promulgate regulations which provide for the treatment of a hedge that reduce a dealer's risk of interest rate or price changes or currency fluctuations with respect to securities that are subject to the mark-to-market rules as well as with respect to securities, positions, rights to income, or liabilities that are not subject to the mark-to-market rules. It is anticipated that the Treasury regulations may allow taxpayers to treat any such hedge as not subject to the mark-to-market rules provided that such treatment is consistently followed from year to year.

Finally, the bill authorizes the Treasury Department to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the bill, including rules to prevent the use of year-end transfers, related persons, or other arrangements to avoid the provisions of the bill. Such authority includes coordinating the mark-to-market rules with the original issue discount rules.

Effective Date

The provision applies to taxable years ending on or after December 31, 1992. A taxpayer that is required to change its method of accounting to comply with the requirements of the provision is treated as having initiated the change in method of accounting and has having received the consent of the Treasury Department to make such change.

The net amount of the section 481(a) adjustment is to be taken into account ratably over a 10-taxable year period beginning with the first taxable year ending on or after December 31, 1992, to the extent that such amount does not exceed the net amount of the section 481(a) adjustment that would have been determined had the change in method of accounting occurred for the last taxable year beginning before March 20, 1992.

The excess (if any) of (1) the net amount of the section 481(a) adjustment for the first taxable year ending on or after December 31, 1992, over (2) the net amount of the section 481(a) adjustment that would have been determined had the change in method of accounting occurred for the last taxable year beginning before March 20, 1992, is to be taken into account ratably over a 4-taxable year period beginning with the first taxable year ending on or after December 31, 1992.

The principles of section 8.03 (1) and (2) of Rev. Proc. 92-20, 1992-12 I.R.B. 10, are to apply to the section 481(a) adjustment. It is anticipated that section 8.03(1) of Rev. Proc. 92-20 will be applied by taking into account all securities of a dealer that are subject to the mark-to-market rules (including those securities that are not inventory in the hands of the dealer). In addition, it is anticipated that net operating losses will be allowed to offset the section 481(a) adjustment, tax credit carryforwards will be allowed to offset any tax attributable to the section 481(a) adjustment, and, for purposes of determining liability for estimated taxes, the section 481(a) adjustment will be taken into account ratably throughout the taxable year in question.

In determining the amount of the section 481(a) adjustment for taxable years beginning before the date of enactment of the mark-to-market rules, the identification requirements are to be applied in a reasonable manner. It is anticipated that any security that was identified as being held for investment under section 1236(a) of the Code as of the last day of the taxable year preceding the taxable year of change is to be treated as held for investment for purposes of the mark-to-market rules. It is also anticipated that any other security that was held as of the last day of the taxable year preceding the taxable year of change is to be treated as properly identified if the dealer's records as of such date support such identification.[8]

Finally, no addition to tax is to made under section 6654 or 6655 of the Code for any underpayment of estimated tax that is due before the date of enactment of the mark-to-market rules to the extent that the underpayment is attributable to the enactment of the mark-to-market rules. The amount of the first required payment of estimated tax that is due or after the date of enactment of the mark-to-market rules is to be increased by the amount of estimated tax that was not previously paid by reason of the preceding sentence.

2. Modify estimated tax requirements for individuals (sec. 3002 of the bill and sec. 6654 of the Code)

Present Law

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax liability of the prior year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax liability of the current year. Income tax withholding from wages is considered to be a payment of estimated taxes.

In addition, for taxable years beginning after 1991 and before 1997, the 100 percent of last year's liability safe harbor generally is not available to a taxpayer that (1) has an adjusted gross income (AGI) in the current year that exceeds the taxpayer's AGI in the prior year by more than $40,000 ($20,000 in the case of a separate return by a married individual) and (2) has an adjusted gross income (AGI) in excess of $75,000 in the current year ($37,500 in the case of a separate return by a married individual).

Reasons for Change

The committee believes that the application of the special rule that denies the use of the 100 percent of last year's liability safe harbor is unduly cumbersome in some circumstances. In order to simplify the calculation of estimated tax requirements for individuals, the special rule is replaced with a new, permanent safe harbor.

Explanation of Provision

The special rule that denies the use of the 100 percent of last year's liability safe harbor is repealed for taxable years beginning after 1992. In addition, the 100 percent of last year's liability safe harbor is modified to be 120 percent of last year's liability safe harbor.

Thus, under the bill, for taxable years beginning after 1992, any individual generallly does not have an underpayment of estimated tax if he of she makes timely estimated tax payments at least equal to: (1) 120 percent of the tax liability of the prior year or (2) 90 percent of the tax liability of the current year.

Effective Date

The provision is effective for estimated tax payments applicable to taxable years beginning after December 31, 1992.

3. Modify estimated tax payment rules for large corporations (sec. 3003 of the bill and sec. 6655 of the Code)

Present Law

A corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning after June 30, 1992 and before 1997, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least equal 97 percent of the tax liability shown on the return for the current taxable year. A corporation may estimate its current year tax liability based upon a method that annualizes its income through the period ending with either the month or the quarter ending prior to the estimated tax payment date.

For taxable years beginning after 1996, the 97-percent requirement becomes a 91-percent requirement. The present-law 97-percent and 91-percent requirements were added by the Unemployment Compensation Amendments of 1992.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of its tax liability for the preceding taxable year (the "100 percent of last year's liability safe harbor"). A large corporation may use this rule with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

Reasons for Change

The committee believes that corporate estimated tax requirements should be increased to require corporations to more timely remit their current year tax liabilities. In addition, the committee believes that in order to simplify and rationalize the calculation of annualized income for corporate estimated tax purposes, an additional set of annualization periods should be provided and applied consistently.

Explanation of Provision

For taxable years beginning after 1992, a corporation that does not use the 100 percent of last year's liability safe harbor for its estimated tax payments is required to base its estimated tax payments on 100 percent (rather than 97 percent or 91 percent) of its current year tax liability, whether such liability is determined on an actual or annualized basis.

The bill does not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations.

In addition, the bill modifies the rules relating to income annualization for corporate estimated tax purposes. Under the bill, annualized income is to be determined based on the corporation's activity for the first 3 months of the taxable year (in the case of the first and second estimated tax installments); the first 6 months of the taxable year (in the case of the third estimated tax installment); and the first 9 months of the taxable year (in the case of the fourth estimated tax installment). Alternatively, a corporation may elect to determine its annualized income based on the corporation's activity for either: (1) the first 3 months of the taxable year (in the case of the first estimated tax installment); the first 4 months of the taxable year (in the case of the second estimated tax installment); the first 7 months of the taxable year (in the case of the third estimated tax installment); and the first 10 months of the taxable year

[8] In addition, it is anticipated that in order for any security that is held on the date of enactment of the mark-to-market rules to qualify for one of the exceptions to the mark-to-market rules, the security must be identified as being described in one of the exceptions within a reasonable period after the date of enactment but in no event later than the date that is 30 days after the date of enactment.

(in the case of the fourth estimated tax installment); or (2) the first 3 months of the taxable year (in the case of the first estimated tax installment); the first 5 months of the taxable year (in the case of the second estimated tax installment); the first 8 months of the taxable year (in the case of the third estimated tax installment); and the first 11 months of the taxable year (in the case of the fourth estimated tax installment). An election to use either of the annualized income patterns described in (1) or (2) above must be made on or before the due date of the second estimated tax installment for the taxable year for which the election is to apply, in a manner prescribed by the Secretary of the Treasury.

Effective Date

The provision is effective for estimated tax payments with respect to taxable years beginning after December 31, 1992.

4. Expansion of 45-day interest-free period for certain refunds (sec. 3004 of the bill and sec. 6611 of the Code)

Present Law

No interest is paid by the Government on a refund arising from an income tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed (sec. 6611(e)).

There is no parallel rule for refunds of taxes other than income taxes (i.e., employment, excise, and estate and gift taxes), for refunds of any type of tax arising from amended returns, or for claims for refunds of any type of tax.

If a taxpayer files a timely original return with respectful to any type of tax and later files an amended return claiming a refund, and if the IRS determines that the taxpayer is due a refund on the basis of the amended return, the IRS will pay the refund with interest computed from the due date of the original return.

Reasons for Change

The committee believes that it is inappropriate for the payment of interest on tax refunds to be determined by the type of tax; all types of taxes should be treated similarly. In addition, taxpayers generally control the time of filing of an amended return or claim for refund. Consequently, the committee believes that it is appropriate to alter the interest rules with respect to amend returns and claims for refund.

Explanation of Provision

No interest is to be paid by the Government on a refund arising from any type of original tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed.

A parallel rule applies to amend returns and claims for refunds: if the refund is issued by the 45th day after the date the amended return or claim for refund is filed, no interest is to be paid by the Government for that period of up to 45 days (interest would continue to be paid for the period from the due date of the return to the date the amended return or claim for refund is filed). If the IRS does not issue the refund by the 45th day after the date the amended return or claim for refund is filed, interest would be paid (as under present law) for the period from the due date of the original return to the date the IRS pays the refund.

A parallel rule also applies to IRS-initiated adjustments (whether due to computational adjustments or audit adjustments). With respect to these adjustments, the IRS is to pay interest for 45 fewer days than it otherwise would.

Effective Date

The extension of the 45-day processing rule is effective for returns required to be filed (without regard to extensions) on or after October 1, 1992. The amended return rule is effective for amended returns and claims for refunds filed on or after October 1, 1992 (regardless of the taxable period to which they relate). The rule relating to IRS-initiated adjustments is applicable to refunds paid on or after October 1, 1992 (regardless of the taxable period to which they relate).

5. Tax treatment of certain FSLIC financial assistance (sec. 3005 of the bill and secs. 165, 166, 585, and 593 of the Code)

Present Law and Background

A taxpayer may claim a deduction for a loss on the sale or other disposition of property only to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the disposition and the loss is not compensated for by insurance or otherwise (sec. 165 of the Code). In the case of a taxpayer on the specific charge-off method of accounting for bad debts, a deduction is allowable for the debt only to the extent that the debt becomes worthless and the taxpayer does not have a reasonable prospect of being reimbursed for the loss. If the taxpayer accounts for bad debts on the reserve method, the worthless portion of a debt is charged against the taxpayer's reserve for bad debts, potentially increasing the taxpayer's deduction for an addition to this reserve.

A special statutory tax rule, enacted in 1981, excluded from a thrift institution's income financial assistance received from the Federal Savings and Loan Insurance Corporation (FSLIC),[1] and prohibited a reduction in the tax basis of the thrift institution's assets on account of the receipt of the assistance. Under the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), taxpayers generally were required to reduce certain tax attributes by one-half the amount of financial assistance received from the FSLIC pursuant to certain acquisitions of financially troubled thrift institutions occurring after December 31, 1988. These special rules were repealed by FIRREA, but still apply to transactions that occurred before May 10, 1989.

Prior to the enactment of FIRREA, the FSLIC entered into a number of assistance agreements in which it agreed to provide loss protection to acquirors of troubled thrift institutions by compensating them for the difference between the book value and sales proceeds of "covered assets." "Covered assets" typically are assets that were classified as nonperforming or troubled at the time of the assisted transaction but could include other assets as well. Many of these covered assets are also subject to yield maintenance guarantees, under which the FSLIC guaranteed the acquirer a minimum return or yield on the value of the assets. The assistance agreements also generally grant the FSLIC the right to purchase covered assets. In addition, many of the assistance agreements permit the FSLIC to order assisted institutions to write down the value of covered assets on their books to fair market value in exchange for a payment in the amount of the write-down.

Under most assistance agreements, one or more Special Reserve Accounts are established and maintained to account for the amount of FSLIC assistance owed by the FSLIC to the acquired entity. The assistance agreements generally specify the precise circumstances under which amounts with respect to covered assets are debited to an account. Under the assistance agreements, these debit entries generally are made subject to prior FSLIC direction or approval. When amounts are so debited, the FSLIC generally becomes obligated to pay the debited balance in the account to the acquirer at such times and subject to such offsets as are specified in the assistance agreement.

In September 1990, the Resolution Trust Corporation (RTC), in accordance with the requirements of FIRREA, issued a report to Congress and the Oversight Board of the RTC on certain FSLIC-assisted transactions (the "1988/89 FSLIC transactions"). The report recommended further study of the covered loss and other tax issues relating to these transactions. A March 4, 1991 Treasury Department report ("Treasury report") on tax issues relating to the 1988/89 FSLIC transactions concluded that deductions should not be allowed for losses that are reimbursed with exempt FSLIC assistance. The Treasury report states that the Treasury view is expected to be challenged in the courts and recommended that Congress enact clarifying legislation disallowing these deductions.[2]

Reasons for Change

Allowing tax deductions for losses on covered assets that are compensated for by FSLIC assistance gives thrift institutions a perverse incentive to minimize the value of these assets when sold. The FSLIC, and not the institution, bears the economic burden corresponding to any reduction in value because it is required to reimburse the thrift institution for the loss. However, the tax benefit to the thrift institution and its affiliates increases as tax losses are enhanced. The thrift institution, therefore, has an incentive to minimize the value of covered assets in order to maximize its claimed tax loss and the attendant tax savings.

It is desirable to clarify, as of the date of the Treasury Report, that FSLIC assistance with respect to certain losses is taken into account as compensation for purposes of the loss and bad debt deduction provisions of the Code.

Explanation of Provision

General rule

Any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of an asset shall be taken into account as compensation for such loss for purposes of section 165 of the Code. Any FSLIC assistance with respect to any debt shall be taken into account for purposes of determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts. For

[1] Until it was abolished by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), FSLIC insured the deposits of its member savings and loan associations and was responsible for insolvent member institutions. FIRREA abolished FSLIC and established the FSLIC Resolution Fund (FRF) to assume all of the assets and liabilities of FSLIC (other than those expressly assumed or transferred to the Resolution Trust Corporation (RTC)). FRF is administered by the Federal Deposit Insurance Corporation (FDIC). The term "FSLIC" is used hereafter to refer to FSLIC and any successor to FSLIC.

[2] Department of the Treasury, *Report on Tax Issues Relating to the 1988/89 Federal Savings and Loan Insurance Corporation Assisted Transactions*, March, 1991 at pp. 16-17.

this purpose, FSLIC assistance means any assistance or right to assistance with respect to a domestic building and loan association (as defined in section 7701(a)(19) of the Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).[3]

Thus, if a taxpayer disposes of an asset entitled to FSLIC assistance, no deduction is allowed under section 165 of the Code for a loss (if any) on the disposition of the asset to the extent the assistance agreement contemplates a right to receive FSLIC assistance with respect to the loss. Similarly, if a loan held by a taxpayer constitutes an asset entitled to FSLIC assistance, the thrift institution shall not charge off any amount of the loan covered by the assistance agreement against the bad debt reserve and no charge-off will be taken into account in computing an addition to the reserve under the experience method, to the extent the assistance agreement contemplates a right to receive FSLIC assistance on a write-down of such asset under the agreement or on a disposition. The institution also shall not be allowed to deduct such amount of the loan under the specific charge-off method.[4]

It is intended that the right to FSLIC assistance for purposes of this provision is to be determined by reference to the gross amount of FSLIC assistance that is contemplated by the assistance agreement with respect to the sale or other disposition, or write-down, without taking into account any offsets that might reduce the net amount FSLIC is obligated to pay under the agreement. For example, under an assistance agreement an institution's right to be reimbursed for a loss on the disposition or write-down of an asset may be reflected as a debit to a Special Reserve Account, while certain other items that will reduce the ultimate amount of assistance to be paid may be reflected as credits to the account. In such a case, the gross amount of FSLIC assistance contemplated by the agreement is the amount represented by the debit, without regard to any offset.

Financial assistance to which the FIRREA amendments apply

The provision does not apply to any financial assistance to which the amendments made by section 1401(a)(3) of FIRREA apply.

No inference

No inference is intended as to prior law or as to the treatment of any item to which this provision does not apply.

Effective Date

In general

The provision applies to financial assistance credited on or after March 4, 1991, with respect to (1) assets disposed of and charge-offs made in taxable years ending on or after March 4, 1991; and (2) assets disposed of and charge-offs made in taxable years ending before March 4, 1991, but only for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991.

For this purpose, financial assistance generally is considered to be credited when the taxpayer makes an approved debit entry to a Special Reserve Account required to be maintained under the assistance agreement to reflect the asset disposition or write-down. An amount will also be considered to be credited prior to March 4, 1991 if the asset was sold, with prior FSLIC approval, before the date.

An amount is not deemed to be credited for purposes of the provision merely because the FSLIC has approved a management or business plan or similar plan with respect to an asset or group of assets, or has otherwise generally approved a value with respect to an asset.

As an example of the application of the effective date provision, assume that a thrift institution is subject to an FSLIC assistance agreement that, through the use of a Special Reserve Account, operates to compensate the institution for the difference between the book and fair market values of certain covered assets upon their disposition or write-down. Further assume that on February 1, 1991 the thrift institution wrote down a covered asset that has a book value and tax basis of $100 to $60, the asset's fair market value. With FSLIC approval, the institution debited the Special Reserve Account prior to March 4, 1991, to reflect the write-down of $40, and properly submitted to the FSLIC a summary of the account that reflected that debit, along with other debits for the quarter ended March 31, 1991. The provisions would not apply to a loss claimed by the thrift institution with respect to the write-down of the covered asset on February 1, 1991. The same result would apply if the institution has sold the asset for $60 on February 1 with prior FSLIC approval. In this sale case, the provision would not apply even if there were no debit to the Special Reserve Account prior to March 4, 1991, so long as the FSLIC approved the amount of the reimbursable loss for purposes of providing assistance under the agreement.

Application to certain net operating losses.

The provision applies to the determination of any net operating loss[5] carried into a taxable year ending on or after March 4, 1991, to the extent that the net operating loss is attributable to a loss or charge-off for which the taxpayer has a right to FSLIC assistance which had not been credited before March 4, 1991.

For example, assume a calendar year thrift institution is a party to an FSLIC assistance agreement that compensates the institution for the amount that covered loans are written down or charged off pursuant to the agreement. The agreement provides that the institution must receive the prior approval of the FSLIC to write down a loan for purposes of this compensation. Further assume that the institution uses the experience method to account for bad debts for tax purposes, and that in 1990 it charged off $100 with respect to a covered loan. Assume that this charge-off initially reduced the taxpayer's bad debt reserve balance by $100 and allowed the taxpayer to increase its addition to its reserve by $100 to bring the reserve to an appropriate balance. The taxpayer deducted this amount and utilized $20 for the year ended in 1990 (i.e., the last taxable year of the taxpayer ending before March 4, 1991). The produced a net operating loss of $60 for the remainder. The net operating loss is carried forward to 1991 (a taxable year of the taxpayer ending on or after March 4, 1991). Assume that the taxpayer did not debit the Special Reserve Account prior to March 4, 1991. The net operating loss carried to 1991 would be redetermined talking into account the provisions. Applying the provisions to 1990 would result in disallowing the charge-off of the $100 loan against the experience method reserve, in effect disallowing the $100 addition to the reserve. In such case, the taxpayer would continue to owe no tax for 1990, but the $80 net operating loss would be disallowed. However, the taxpayer's tax liability for 1990 would not be redetermined under the provision.

As a further example, assume that the net operating loss described in the example directly above were carried back to, and absorbed in, an earlier year ending prior to March 4, 1991 (rather than being carried forward). In that case, the provision would not apply to reduce the net operating loss carryback.

Estimated taxes

Finally, no addition to tax is to be made under section 6654 or 6655 of the Code for any underpayment of estimated tax that is due before the day of enactment of the provision to the extent that the underpayment is attributable to the treatment of any FSLIC assistance credited before such date in manner other than that provided by this provision. The amount of the first required payment of estimated tax that is due on or after the date of enactment of the provision is to be increased by the amount of estimated tax that was not previously paid by reason of the preceding sentence. However, in providing this relief, no inference is intended as to prior law, the effect of the provision on prior law, or the treatment of any item to which this provision does not apply.

6. Reporting of amounts of property tax reimbursements paid to sellers of residences (sec. 3006 of the bill and sec. 6045(e) of the Code)

Present Law

Individual taxpayers who itemize deductions may deduct State and local real property taxes. Under Code section 164(d)(1), if real property is sold during any real property tax year, the part of the real property tax that is properly allocable to that part of the year that ends on the day before the date of sale is treated as imposed on the seller. The part of the real property tax that is properly allocable to that part of the year that begins on the date of sale is treated as imposed on the buyer.

Under present law, real estate transactions are required to be reported on a return to the IRS and on statements to the customers. In general, the primary responsibility for reporting is on the "real estate reporting person," that is, the person responsible for closing the transactions, including any title company or attorney who closes the transaction. If there is no person responsible for closing the transaction, the real estate reporting person is the first person who exists in the following order: the mortgage lender, the seller's broker, the buyer's broker, or such other person designated in regulations prescribed by the Secretary.

Reasons for Change

The committee believes that compliance with present law can be improved by reporting the apportionment of certain real estate

[3] FSLIC assistance for purposes of the provision does not include "net worth assistance". "Net worth assistance" is generally computed at the time of an acquisition, without targeting loss coverage to ultimate dispositions or write-downs with respect to particular assets.

[4] It is expected that, for purposes of the adjusted current earnings adjustment of the corporate alternative minimum tax, there will not be any net positive adjustment to the extent that FSLIC assistance is taken into account as compensation for a loss or in determining worthlessness and there is, therefore, no deductible loss or bad debt charge-off.

[5] For purposes of determining any alternate minimum tax net operating loss carryover to periods ending on or after March 4, 1991, it is expected that the principles described in the preceding footnote will apply.

taxes between the buyer and the seller of a residence. Such reporting will reduce the possibility that the seller and buyer both claim a deduction for the same amount of real estate taxes paid.

Explanation of Provision

The bill provides that in the case of a real estate transaction involving a residence, the real estate reporting person is required to include on an information return and on the customer statements the portion of any real property tax that is treated as a tax imposed on the purchaser. The committee expects that the Treasury will promptly provide guidance with respect to the reporting requirement imposed by the bill. In connection therewith, the committee anticipates that such guidance will permit the real estate reporting person to report such portion by reference to specified line items on the HUD-1 form or any comparable form provided at the closing of the transaction.

Effective Date

The provision is effective for transactions after December 31, 1992.

7. Require taxpayers to include rental value of residence in income without regard to period of rental (sec. 3007 of the bill and sec. 280A(g) of the Code)

Present Law

Gross income for purposes of the Internal Revenue Code generally includes all income from whatever source derived, including rents. The Code (sec. 280A(g)) provides a *de minimis* exception to this rule where a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year. In this case, the income from such rental is not included in gross income and no deductions arising from such rental use are allowed as a deduction.

Reasons for Change

The *de minimis* exception allows a taxpayer to exclude from income large rental payments for the short-term rental of the taxpayer's residence. The committee believes that such amounts should be included in income of the taxpayer.

Explanation of Provision

The bill requires taxpayers to include in income the rental income received with respect to the rental of a residence without regard to the period of the rental. The rules of section 280A (c)(3) and (e) would govern the deductibility of expenses attributable to the rental of such property. The committee expects that the Department of the Treasury will issue regulatory relief to provide a de minimis exception from the operation of the statute.

Effective Date

The provision is effective for taxable years beginning after the date of enactment.

8. Increase recovery period for depreciation of nonresidential real property (sec. 3008 of the bill and sec. 168 of the Code)

Present Law

A taxpayer is allowed to recover, through annual depreciation allowances, the cost or other basis of nonresidential real property (other than land) that is used in a trade or business or that is held for the production of rental income. For regular tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year generally is determined using the straight-line method and a recovery period of 31.5 years. For alternative minimum tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year is determined using the straight-line method and a recovery period of 40 years.

Reasons for Change

The committee believes that the recovery period for nonresidential real property under present law results in depreciation allowances that are larger than the actual decline in value of the property. In order to more accurately measure the economic income derived from the use of nonresidential real property in a trade or business or an investment activity, the recovery period for the depreciation of such property should be increased.

Explanation of Provision

The bill requires the depreciation deduction allowed with respect to nonresidential real property for regular tax purposes to be determined by using a recovery period of 40 years. The bill does not change the determination of the depreciation deduction allowed with respect to nonresidential real property for alternative minimum tax purposes.

Effective Date

The proposal generally would apply to property placed in service on or after July 28, 1992. The proposal would not apply to property that is placed in service by a taxpayer before January 1, 1995, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before July 28, 1992, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before July 28, 1992.

9. Information reporting on State and local tax payments and refunds (sec. 3009 of the bill and sec. 6050E of the Code)

Present Law

Individual taxpayers who itemize deductions may deduct State and local income, real property, and personal property taxes. The refund, credit, or offset of such State or local taxes that were deducted (with a resulting tax benefit) in a previous year is includable in the taxpayer's gross income. There is no provision of present law that requires State and local governments to provide information reports to the IRS and the taxpayer on payments of State and local real property taxes or on refunds, credits, or offsets of such taxes.

Reasons for Change

The committee is concerned that there is significant overstatement of claims of the itemized deduction for State and local real property taxes. The committee believes that it is appropriate to require information reporting of payments of these taxes and of refunds, credits, or offsets of such taxes. The committee believes such information reporting will remind taxpayers of the proper tax treatment of refunds of real property taxes and will assist taxpayers and the IRS in ensuring that only State and local real property taxes actually paid are deducted.

Explanation of Provision

The bill requires any State or local government that imposes a real property tax to report to the individual who paid those taxes and to the IRS the amount of those taxes paid by the individual. These information reports shall set forth the amount of payments, credits, or offsets and the name, address, and taxpayer identification number of the individual paying such tax or receiving such payment, credit, or offset. In the case of payments made on behalf of the taxpayer by another entity, such as a mortgagee, that entity shall provide the information to the taxpayer and the IRS.

The information reports must be filed in accordance with the timetable generally applicable to other information returns. Consequently, the copy for the taxpayer must be provided by the last day of January of the year following the year these taxes are paid; the State and local government has one additional month (until the end of February) to supply the information return to the IRS.

In order to reduce the burden on the State and local governments, the bill provides that no information return need be provided to the individual taxpayer if it is determined (in the manner provided under Treasury regulations) that that individual taxpayer does not itemize deductions.

Effective Date

The provision is effective for payments made after December 31, 1993. Thus, State and local governments will first provide information returns to individual taxpayers by the end of January 1995, and to the IRS by the end of February 1995, on taxes that were paid in 1994.

10. Deduction for moving expenses (sec. 3010 of the bill and sec. 217 of the Code)

Present Law

An employee or self-employed individual may deduct from gross income certain expenses incurred as a result of moving to a new residence in connection with beginning work at a new location (sec. 217). The deduction is not subject to the floor that generally limits a taxpayer's allowable miscellaneous itemized deductions to those amounts that exceed 2 percent of his or her adjusted gross income. Any amount received directly or indirectly by such individual as a reimbursement of moving expenses must be included in the taxpayer's gross income as compensation (sec. 82), but a deduction is permitted for the amount that would otherwise qualify as deductible moving expenses under sec. 217.

Deductible moving expenses are the expense of transporting the taxpayer and members of his household, their household goods, and their personal effects from the old to the new residence; the cost of meals and lodging en route; the expense for pre-move househunting trips; temporary living expenses for up to 30 days (90 days in the case of foreign moves) [1] in the general location of the new job; and certain expenses related to both the sale of or settlement of a lease on the old residence and the acquisition of a lease or the purchase of a new residence in the general location of the new job.

The moving expense deduction is subject to a number of limitations. A maximum of $1,500 can be deducted for pre-move househunting and temporary living expenses in the general location of the new job. A maximum of $3,000 (reduced by any deduction claimed for househunting or temporary living expenses) can be deducted for certain qualified expenses for the sale and purchase of a residence or settlement of a lease. For foreign moves, the above limits are $4,500 and $6,000 respectively. If both a husband and wife begin new jobs in the same general location, the move is treated as a single commencement of work. If a husband and wife file separate returns, the maximum deduc-

[1] Section 217(h)(3) defines a foreign move as the commencement of work by the taxpayer at a new principal place of work located outside the United States.

tion available to each is one-half the amounts otherwise allowed.

Also, in order for a taxpayer to claim a moving expense deduction, his new principal place of work has to be at least 35 miles farther from his former residence than was his former principal place of work (or his former residence, if he has no former place of work).

Reasons for Change

The committee believes that no deduction is justified for certain expenses that do not directly relate to the cost of moving. Such expenses include those related to: (1) the sale of the old residence, (2) the settlement of a lease on the old residence, (3) the acquisition of a lease or the purchase of a new residence in the general location of the new job. Also, the committee believes that it is unfair to provide a deduction for such expenses under sec. 217 to some taxpayers while denying it to others.

Further, the committee believes that the expense of meals in this context are primarily a personal living expense rather than an expense incurred for business purposes and should be afforded similar tax treatment to other personal expenses, namely nondeductibility.

Explanation of Provision

The bill denies the moving expense deduction for: (1) qualified expenses for the sale and purchase of a residence or settlement of a lease and, (2) meal and entertainment expenses.

Effective Date

The provision is effective for taxable years beginning after December 31, 1992.

11. Increase excise tax on wages (sec. 3011 of the bill and sec. 4401(a)(1) of the Code)

Present Law

An excise tax is imposed on the amount of certain wagers. The rate of tax is 0.25 percent for any wager authorized under the law of the State in which accepted and 2 percent for any other wager.

Wagers subject to the excise tax are those placed in a lottery conducted for profit or those with respect to a sports event or contest that are placed: (1) with a person engaged in the business of accepting wagers or (2) in a wagering pool conducted for profit. The term "lottery" does not include games in which usually: (1) wagers are placed, (2) winners are determined, and (3) prizes are distributed in the presence of all persons placing wagers. The term "lottery" also does not include drawings conducted by organizations exempt from tax under Code sections 501 or 521 if no part of the net proceeds of the games inures to the benefit of any private shareholder or individual.

No excise tax is imposed on wagers placed in a wagering pool conducted by a parimutuel wagering enterprise licensed under State law, in a coin-operated device, or in a State-conducted lottery (but only if the wager is placed with the State agency conducting the lottery).

Reasons for Change

The committee believes that it is appropriate to increase the rate of the excise tax on State-authorized wagers.

Explanation of Provision

The bill increases the rate of the excise tax on State-authorized wagers from 0.25 percent to 1 percent.

Effective Date

The provision is effective for wagers placed after the date of enactment.

12. Classification of certain interests in corporations as stock or indebtedness (sec. 3012 of the bill and sec. 385 of the Code)

Present Law

There presently is no definition in the Internal Revenue Code or the income tax regulations which can be used to determine whether an interest in a corporation constitutes debt or equity for Federal income tax purposes. The characterization of an investment in a corporation as debt or equity for Federal income tax purposes generally is determined under principles developed in case law by reference to numerous factors intended to identify the economic substance of the investor's interest in the corporation.

In 1969, Congress granted the Secretary of the Treasury the authority to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated as stock or indebtedness for Federal income tax purposes (sec. 385). The regulations were to prescribe factors to be taken into account in determining, with respect to particular factual situations, whether a debtor-creditor relationship or a corporation-shareholder relationship existed. Proposed regulations under section 385 were issued in 1980 and 1981, although they were withdrawn in 1983. To date, no additional regulations have been issued.

Information returns must be filed for certain payments made during a calendar year. In general, every person who makes payments of dividends (or interest) aggregating $10 or more to any other person during any calendar year must file a Form 1099-DVI (or Form 1099-INT). Such information returns are not required in the case of payments of dividends or interest to corporations (secs. 6042, 6049).

Reasons for Change

It has come to the attention of the committee that certain issuers and holders may be taking inconsistent positions with respect to the characterization of a corporate instrument as debt or equity. For example, the issuer of a corporate instrument may treat an instrument as debt in order to be able to deduct as interest any amounts paid or accrued on the instrument, while a corporation that holds that instrument may treat it as equity in order to claim a dividends received deduction with respect to those same amounts. The committee believes that the integrity of the Federal income tax system should be protected against this potential for inconsistent debt-equity classifications by issuers and holders of corporate financial instruments.

Explanation of Provision

The bill provides that the characterization (as of the time of issuance) of a corporate instrument as stock or debt by the corporate issuer is binding on the issuer and on all holders. This characterization, however, is not binding on the Secretary of the Treasury. Neither a holder nor an issuer is excused from any interest or penalties that might result under present law from an improper characterization.

Except as provided in regulations, a holder who treats such instrument in a manner inconsistent with such characterization must disclose the inconsistent treatment on such holder's tax return.

The Secretary of the Treasury is authorized to require such information as is deemed necessary to implement the provision.

Effective Date

The provision applies to instruments issued after the date of enactment.

13. Treatment of pre-contribution gain on certain partnership redemptions (sec. 3013 of the bill and new sec. 737 of the Code)

Present Law

Generally, if a partner contributes appreciated property to a partnership, no gain is recognized to the contributing partner at the time of the contribution, and the contributing partner's basis in his partnership interest is increased by the basis of the contributed property at the time of the contribution. The pre-contribution gain is reflected in the difference between the partner's capital account and his basis in his partnership interest ("book/tax differential"). Gain recognized subsequently by the partnership with respect to that property must be allocated to the contributing partner to the extent of the remaining book/tax differential. In addition, if the property is subsequently distributed to another partner within 5 years of the contribution, the contributing partner generally will recognize gain as if the property had been sold for its fair market value at the time of the distribution (sec. 704(c)(1)(B)).

If a partnership distributes property to a partner, the partner does not recognize income except to the extent any cash received in the distribution exceeds such partner's basis of his partnership interest. The distributee partner's basis in distributed property is determined by reference to either the partnership's basis for the property or the partner's basis for his partnership interest.

Present law generally does not require a partner who contributes appreciated property to a partnership to recognize pre-contribution gain upon a subsequent distribution of other property to that partner even if the value of that other property exceeds the partner's basis in his partnership interest.[1]

Reasons for Change

The committee is concerned that a partner who contributes appreciated property to a partnership may be able to avoid or defer the recognition of gain with respect to that property through the mechanism of having the partnership distribute other partnership property to him in partial or complete redemption of his interest while the partnership continues to own the contributed property.

Explanation of Provision

The provision requires a partner who contributes appreciated property to a partnership to include pre-contribution gain in income to the extent that the value of other property distributed by the partnership to that partner exceeds his adjusted basis in his partnership interest. The provision applies whether or not the contributing partner's interest in the partnership is reduced in connection with the distribution. In accordance with the 5-year limitation of present law, the provision applies only if the distribution is made within 5 years after the contribution of the appreciated property. The bill provides rules for taking into consideration multiple contributions by the same partner within the five-year period and generally permits the netting of pre-contribution losses

[1] Present law does limit the use of partnerships to make disguised sales of appreciated property by providing that if there is a direct or indirect transfer of money or property by a partner to a partnership, and a related transfer of money or other property by the partnership to the transferor partner or another partner, and the transfers, viewed together, are properly characterized as a sale or exchange of property, then the transfers are treated as a transaction occurring between the partnership and a non-partner, or between non-partners (sec. 707(a)(1)(B)).

against pre-contribution gains. Generally, the character of the gain is determined by reference to the character of the net pre-contribution gain.

For example, assume A and B form a partnership. A contributes appreciated property X and B contributes property Y, which has a basis equal to its value at the time of contribution. Y is distributed to A within 5 years, at a time when there have been no intervening distributions or dispositions of property by the partnership. Under the provision, A includes in income his pre-contribution gain with respect to X to the extent the value of Y exceeds A's basis in his partnership interest.

Appropriate basis adjustments are to be made in the basis of the distributee partner's interest in the partnership and the partnership's basis in the contributed property to take account of gain recognized by the distributee partner.

Gain recognition generally is not required to the extent the partnership distributes property which had been contributed by the distributee partner. Rules are provided, however, to prevent avoidance of pre-contribution gain (under this provision and under the recognition provisions of present law) through the use of entities.

Under these rules, if the property distributed consists of an interest in an entity, gain recognition is required to the extent that the value of the interest in the entity is attributable to property contributed to the entity after the interest in it was contributed to the partnership. Similarly, the bill provides that if contributed property is distributed indirectly to a partner other than its contributor partner is subject to tax on the pre-contribution gain as if the property had been distributed directly rather than indirectly.

For example, assume that A and B form a partnership. A contributes appreciated property X and B contributes property Y, which is also appreciated. A also contributes the stock of C, a corporation with no substantial assets. Instead of distributing Y to A, the partnership contributes Y to C, then distributes the stock of C back to A. Under the provision, A must include in income pre-contribution gain with respect to X to the extent the value of the C stock (taking into account the value of Y) exceeds his basis in his partnership interest. In addition, B must include in income pre-contribution gain with respect to Y.

It is intended that the provision be coordinated with the rules governing partnership terminations (sec. 708).[2] Pre-contribution gain otherwise required to be recognized under the provision is not triggered by a constructive termination under section 708(b)(1)(B). A constructive termination does not change the application of the sharing requirements of 704(c) of present law to pre-contribution gain with respect to property contributed to the partnership before the termination. Partners will recognize gain in connection with any distribution of partnership property within 5 years following the constructive termination, to the extent of their respective shares of the pre-termination appreciation in the value of the partnership property that is not already required to allocated to the original contributor (if any) of the property.

[2]This coordination is intended to be consistent with the coordination provided with respect to the present-law pre-contribution gain rules in the case of a partnership termination. See Senate Finance Committee, Committee Print, Revenue Reconciliation Act of 1989 (Oct. 12, 1989) at 197–198.

Effective Date

The provision applies to partnership distributions on or after June 25, 1992.

14. Deny deduction relating to travel expenses paid or incurred in connection with travel of taxpayer's spouse or dependents (sec. 3014 of the bill and sec. 274 of the Code)

Present Law

In general, a taxpayer is permitted a deduction for all ordinary and necessary expenses paid or incurred during the taxable year (1) in carrying on any trade or business and (2) in the case of an individual, for the production of income. Such deductible expenses may include reasonable travel expenses paid or incurred while away from home, such as transportation costs and the cost of meals and lodging.

In the case of ordinary and necessary business expenses, if a taxpayer travels to a destination and while at that destination engages in both business and personal activities, travel expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, expenses while at the destination that are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible (Treas. reg. sec. 1.162–2(b)(1)).

Under Treasury regulations, if the taxpayer's spouse accompanies the taxpayer on a business trip, expenses attributable to the spouse's travel are not deductible unless it is adequately shown that the spouse's presence on the trip has a bona fide business purpose (Treas. reg. section 1.162–2(c)). The performance of some incidental service by the spouse does not cause the expenses to qualify as deductible business expenses. Under the regulations, the same rules apply to any other members of the taxpayer's family who accompany the taxpayer on such a trip.

In general, business expenses other than unreimbursed employee business expenses are deductible above-the-line and are not subject to the 2-percent floor on miscellaneous itemized deductions. Expenses for the production of income other than rental or royalty income are generally deductible below-the-line (if the activity does not constitute a trade or business) and are subject to the 2-percent floor on miscellaneous itemized deductions.

Gross income does not include the value of a working condition fringe (sec. 132(d)). A "working condition fringe" is any property or service provided to an employee of an employer to the extent that if an employee paid for the property or service, the amount paid would be deductible as an ordinary and necessary business expense (sec. 162) or a depreciation expense (sec. 167).

Reasons for Change

In most cases, there will be a substantial personal component to any travel expense paid or incurred with respect to a family member who is accompanying an individual who is traveling on business. No deduction for these expenses should be allowed in light of the large element of personal consumption and the difficulties of enforcing the present-law rules.

Explanation of Provision

The bill denies a deduction for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying a person on business travel, unless (a) the spouse, dependent, or other individual accompanying the person is a bona fide employee of the person paying or reimbursing the expenses, (b) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and (c) the expenses of the spouse, dependent, or other individual would otherwise be deductible. No inference is intended as to the deductibility of these expenses under present law.

Effective Date

The provision is effective for amounts paid or incurred after December 31, 1992.

15. Increase excise tax on certain ozone-depleting chemicals (secs. 3015 of the bill and secs. 4681–4682 of the Code)

Present Law

An excise tax is imposed on certain ozone-depleting chemicals. The amount of tax generally is determined by multiplying the base tax amount applicable for the calendar year by an ozone-depleting factor assigned to the chemical. Certain chemicals are subject to a reduced rate of tax for years prior to 1994.

Between 1992 and 1995 there are two base tax amounts applicable, depending upon whether the chemicals were initially listed in the Omnibus Budget Reconciliation Act of 1989 or whether they were newly listed in the Omnibus Budget Reconciliation Act of 1990. The base tax amount applicable to initially listed chemicals is $1.67 per pound for 1992, $2.65 per pound for 1993 and 1994, and an additional 45 cents per pound per year for each year thereafter. The base tax amount applicable to newly listed chemicals is $1.37 per pound for 1992, $1.67 per pound for 1993, $3.00 per pound for 1994, $3.10 per pound for 1995, and an additional 45 cents per pound per year for each year thereafter.

Reasons for Change

On February 11, 1992, President Bush announced that, in response to recent scientific findings, the United States unilaterally will accelerate the phaseout of substances that deplete the Earth's ozone layer. The President announced that the production of major CFC's, halons, methyl chloroform, and carbon tetrachloride generally will be eliminated by December 31, 1995. The President noted that the tax on ozone-depleting chemicals has helped the United States achieve a more rapid reduction in use of such chemicals than that called for under the Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol").

In light of the recent scientific evidence, the President's action, and in recognition of the importance of the tax on ozone-depleting chemicals as an economic incentive, the committee believes it is important to enhance the conservation effort and speed the search for safe substitutes by increasing the base rate of tax on ozone-depleting chemicals. The committee believes an increase in the base rate of tax will help market forces in finding substitutes. In addition, the committee is concerned that the market prices for ozone-depleting chemicals currently do not reflect many of the environmental and other social costs associated with their use. As a result, the quantities of these chemicals being produced and used may be greater than optimal. The committee believes the tax on ozone-depleting chemicals helps foster reduced use of ozone-depleting chemicals.

The committee, however, is concerned that an increase in the price of ozone-depleting chemicals used as medical sterilants may, at this time, have an undue effect in discouraging the use of these chemicals in such use and could lead to an increase in staphylococci and other bacterial infections.

Explanation of Provision

Base tax amount.—The bill increases the base tax amount of both initially listed chemicals and newly listed chemicals. The bill increases the base tax amount of initially listed and newly listed chemicals by $0.15 per pound for 1992, by $0.25 per pound for 1993, by $0.35 per pound for 1994, and by $0.45 per pound for 1995. For each year after 1995, the increase in the base tax amount for both initially and newly listed chemicals is $0.45 per pound. These increases in the base tax amounts are in addition to those currently scheduled to occur under present law, including the $0.45 per pound per year increases for years after 1994 for initially listed chemicals and the $0.45 per pound per year increases for years after 1995 for newly listed chemicals.

Medical sterilants.—The bill provides for a reduced rate of tax for 1992 (for sale or use on or after October 1, 1992) and 1993 for certain ozone-depleting chemicals used to sterilize medical devices. The tax applicable to such chemicals is determined by multiplying the otherwise applicable tax rate by the applicable percentage. The applicable percentage is 91.76 percent for sale or use in 1992 occurring on or after October 1, 1992, and 55.67 percent for calendar year 1993. A taxpayer who has paid tax on ozone-depleting chemicals used (on or after October 1, 1992) to sterilize medical devices at a rate higher than that required will receive a credit or refund (without interest) of such excess.

Rigid foam insulation and halons.—In addition, the bill reduces the applicable percentage used in the computation of the tax applied to chemicals used in rigid foam insulation in 1992 and 1993. The bill reduces the applicable percentage from 15 percent to 13.76 percent for 1992, and reduces the applicable percentage from 10 percent to 8.33 percent for 1993. Similarly, the bill reduces the applicable percentage applied to Halon-1211, Halon-1301, and Halon-2402 in 1992 and 1993. The following table contains the new applicable percentages.

	Applicable percentage	
	1992	1993
Halon-1211	4.58	2.78
Halon-1301	1.38	0.83
Halon-2402	2.29	1.39

The applicable percentages for 1992 apply only to sale or use after the effective date. The effect of this provision is to continue present-law rates on these chemicals for 1992 and 1993.

Effective Date

The provision is effective for taxable chemicals sold (or used) on or after October 1, 1992. Floor stocks taxes are imposed on taxable chemicals held on the effective dates of changes in the base tax amount.

SUBTITLE B. EXTENSION OF EXISTING PROVISIONS

1. Five-year extension of top estate and gift tax rates (sec. 3101 of the bill and sec. 2001 of the Code)

Present Law

The Federal estate and gift taxes are unified so that a single progressive rate schedule is applied to an individual's cumulative gifts and bequests. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate.

For 1992, the Federal estate and gift tax rates begin at 18 percent on the first $10,000 of taxable transfers and reach 55 percent on taxable transfers in excess of $3 million. For transfers occurring after 1992, the maximum Federal estate and gift tax rates are scheduled to decline to 50 percent on taxable transfers over $2.5 million.

In addition, the benefit of the graduated rates and the unified credit is phased-out at a 5-percent rate for taxable transfers in excess of $10,000,000 and $21,040,000.

Reasons for Change

At the present time, the committee believes it is inappropriate to permit existing rates for estate and gift taxes to be reduced.

Explanation of Provision

The proposal would defer for five years the estate and gift tax rate reductions that were scheduled to take effect after 1992 until after 1997. Also, the rate of tax on generation skipping transfers would remain at 55 percent until after 1997.

Effective Date

The provision is effective for decedents dying, gifts made, and generation skipping transfers occurring after December 31, 1992.

2. Extension of phaseout of personal exemption for high-income taxpayers (sec. 3102 of the bill and sec. 151 of the Code)

Present Law

Present law permits a personal exemption deduction from gross income for an individual, the individual's spouse, and each dependent. For 1992, the amount of this deduction is $2,300 for each exemption claimed. This exemption amount is adjusted for inflation. The deduction for personal exemptions is phased out for taxpayers with adjusted gross income (AGI) above a threshold amount (indexed for inflation) which is based on filing status. For 1992, the threshold amounts are $157,200 for married taxpayers filing joint returns, $78,950 for married taxpayers filing separate returns, $131,550 for unmarried taxpayers filing as head of household, and $105,250 for unmarried taxpayers filing as single.

The total deduction for personal exemptions which may be claimed by a taxpayer is reduced by 2 percent for each $2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold (the phaseout rate is 4 percent for married taxpayers filing separate returns). Thus, the deduction for personal exemptions claimed is phased out over a $122,500 range, beginning at the applicable threshold.

This provision does not apply to taxable years beginning after December 31, 1996.

Reasons for Change

The committee believes that the phaseout of the deduction for personal exemptions claimed by higher-income individuals is an effective means of ensuring that the individual income tax system remains a sufficiently progressive means of raising revenue. Accordingly, this provision should be made a permanent feature of the Federal individual income tax system.

Explanation of Provision

The bill extends permanently the present-law personal exemption phaseout applicable to higher-income taxpayers.

Effective Date

The bill is effective for taxable years beginning after 1996.

3. Extension of overall limitation on itemized deductions for high-income taxpayers (sec. 3103 of the bill and sec. 68 of the Code)

Present Law

Under present law, individuals who do not elect the standard deduction may claim itemized deductions (subject to certain limitations) for certain nonbusiness expenses incurred during the taxable year. Among these deductible expenses are unreimbursed medical expenses, casualty and theft losses, charitable contributions, qualified residence interest, State and local income and property taxes, unreimbursed employee business expenses, and certain other miscellaneous expenses.

Certain itemized deductions are allowed only to the extent that the amount exceeds a specified percentage of the taxpayer's adjusted gross income (AGI). Unreimbursed medical expenses for care of the taxpayer and the taxpayer's spouse and dependents are deductible only to the extent that the total of these expenses exceeds 7.5 percent of the taxpayer's AGI. Nonbusiness casualty or theft losses are deductible only to the extent that the amount of loss arising from each casualty or theft exceeds $100 and only to the extent that the net amount of casualty and theft losses exceeds 10 percent of the taxpayer's AGI. Unreimbursed employee business expenses and certain other miscellaneous expenses are deductible only to the extent that the total of these expenses exceeds 2 percent of the taxpayer's AGI.

The total amount of otherwise allowable itemized deductions (other than medical expenses, casualty and theft losses, and investment interest) is reduced by 3 percent of the amount of the taxpayer's AGI in excess of $105,250 in 1992 (indexed for inflation). Under this provision, otherwise allowable itemized deductions may not be reduced by more than 80 percent. In computing the reduction of total itemized deductions, all present-law limitations applicable to such deductions are first applied and then the otherwise allowable total amount of deductions is reduced in accordance with this provision.

The reduction of otherwise allowable itemized deductions does not apply to taxable years beginning after December 31, 1995.

Reasons for Change

The committee believes that the limitation on itemized deductions for higher-income individuals is an effective means of ensuring that the individual income tax system remains a sufficiently progressive means of raising revenue. In addition, the goal of personalizing the Federal income tax to reflect an individual's ability to pay taxes is promoted by a rule that imposes some limitation on the deductibility of amounts paid by higher-income individuals, yet generally allows full deductibility of these expenses on the margin. Accordingly, this provision should be permanently incorporated into the Federal individual income tax system.

Explanation of Provision

The bill extends permanently the present-law itemized deduction limitation applicable to higher-income individuals.

Effective Date

The bill is effective for taxable years beginning after 1995.

SUBTITLE C. TAXABLE YEAR ELECTION FOR PARTNERSHIPS, S CORPORATIONS, AND PERSONAL SERVICE CORPORATIONS (SECS. 3201–3204 OF THE BILL AND SECS. 280H, 444, AND 7519 OF THE CODE)

Present Law

In general

A partnership is generally required for Federal income tax purposes to use the taxable year that is used by a majority of its partners. An S corporation is generally required for Federal income tax purposes to use the calendar year as its taxable year. A personal service corporation also is generally required for Federal income tax pur-

poses to use the calendar year as its taxable year.[1]

A partnership, S corporation, or personal service corporation, however, may elect to use a taxable year other than the required taxable year. In the case of a partnership, S corporation, or personal service corporation that is adopting a taxable year or changing a taxable year, the taxable year that may be elected generally may not result in a deferral period of more than three months. For this purpose, the deferral period generally is the number of months between (1) the beginning of the taxable year of the partnership, S corporation, or personal service corporation, and (2) the close of the first required taxable year that ends within such year.

A partnership, S corporation, or personal service corporation is required to obtain the approval of the Internal Revenue Service in order to change to a taxable year other than the required taxable year. A partnership, S corporation, or personal service corporation that terminates an election to use a taxable year other than the required taxable year may not make an election for any subsequent taxable year.

An election may not be made by a partnership, S corporation, or personal service corporation that is part of a tiered structure other than a tiered structure that is comprised of one or more partnerships or S corporations, all of which have the same taxable year. An electing partnership, S corporation, or personal service corporation that becomes part of a proscribed tiered structure is considered to have terminated its election.

Required payment for electing partnerships and S corporations

A partnership or S corporation that elects a taxable year other than the required taxable year is required to make a payment to the Internal Revenue Service (a "required payment") that is designed to compensate the Federal government for the deferral of tax that results from the use of a taxable year other than the required taxable year. The amount of the required payment for any taxable year for which an election is in effect (an "applicable election year") equals the excess (if any) of (1) the highest rate of tax in effect under section 1 of the Code plus 1 percentage point multiplied by the net base year income of the partnership or S corporation, over (2) the net required payment balance. The net required payment balance is the aggregate amount of required payments less refunds of required payments for all preceding taxable years for which an election was in effect.

The required payment is due on May 15 of the calendar year that follows the calendar year in which the applicable election year began. The required payment is required to be refunded by the Internal Revenue Service if certain conditions are satisfied. No interest is to be paid by the Internal Revenue Service with respect to a refund of a required payment.

Minimum distribution requirement for electing personal service corporations

A personal service corporation that elects a taxable year other than the required taxable year is required to satisfy a minimum distribution requirement that applies to applicable amounts paid by the personal service corporation.[2] If the minimum distribution requirement is not satisfied for any taxable year for which a taxable year election is in effect, the deduction otherwise allowed for applicable amounts paid or incurred during such taxable year is limited to the applicable amounts paid during the deferral period of the taxable year multiplied by a ratio, the numerator of which is the number of months in the taxable year and the denominator of which is the number of months in the deferral period of the taxable year.

The minimum distribution requirement is satisfied with respect to a taxable year only if the applicable amounts paid or incurred during the deferral period of the taxable year equal or exceed the lesser of (1) the applicable amounts paid during the preceding taxable year multiplied by a ratio, the numerator of which is the number of months in the deferral period of the taxable year and the denominator of which is the number of months in the taxable year, or (2) the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

A net operating loss carryback is not allowed to or from a taxable year of a personal service corporation for which a taxable year election is in effect.

Reasons for Change

The committee believes that the limitations on the taxable years that may be elected by partnerships, S corporations, and personal service corporations have resulted in an excessive burden on tax return preparers due to the concentration of workload during a limited portion of the year. In order to more evenly spread this workload throughout the year, the committee believes that a partnership, S corporation, or personal service corporation should be allowed to elect any taxable year, provided that the tax benefit from the deferral of income that is available through the use of a taxable year other than the required taxable year is eliminated through other means.

Explanation of Provision

In general

The bill allows a partnership, S corporation, or personal service corporation to elect any taxable year without regard to the length of the deferral period of the taxable year elected. If a partnership, S corporation, or personal service corporation, however, has annual reports or statements that (1) ascertain the income, profit, or loss of the entity, and (2) are used for credit purposes or are provided to the partners, shareholders, or other proprietors of the entity, then the entity may only elect a taxable year that covers the same period as such annual reports or statements.

The bill also repeals that provision of present law that prohibits a partnership, S corporation, or personal service corporation from electing a taxable year other than the required taxable year if an earlier taxable year election has been terminated. The bill continues to require a partnership, S corporation, or personal service corporation to obtain the approval of the Internal Revenue Service in order to change a taxable year (including, unlike present law, a change to the required taxable year).

The committee anticipates that the Internal Revenue Service will provide a procedure by which a partnership, S corporation, or personal service corporation may expeditiously obtain the approval of the Internal Revenue Service in order to change a taxable year (for example, by timely filing a form with the Internal Revenue Service). The committee anticipates that this "automatic consent" procedure will only apply to a partnership, S corporation, or personal service corporation that has not changed its taxable year within the past 6 calendar years, except that the 6-year limitation will not apply to any partnership, S corporation, or personal service corporation that has changed its taxable year in order to comply with the taxable year requirements contained in the Tax Reform Act of 1986.

The committee also anticipates that the "automatic consent" procedure will require any net operating loss of a personal service corporation that arises in a short period required to effect a change in taxable year to be deducted ratably over a 6-year period beginning with the first taxable year after the short period. In addition, the committee anticipates that the "automatic consent" procedure will require any excess of deductions over income of a partnership or S corporation that arises in a short period required to effect a change in taxable year to be taken into account by the partners or shareholders over a 6-year period beginning with the taxable year of the partners or shareholder that includes the last day of the first taxable year of the partnership or S corporation that occurs after the short period.

The bill also provides that a taxable year election is to remain in effect until the partnership, S corporation, or personal service corporation terminates its election and changes to the required taxable year.[3] A change from a taxable year that is not a required taxable year to another taxable year that is not a required taxable year is not treated as a termination of the taxable year election unless the taxable year is allowable by reason of a business purpose.

The bill provides that a partnership, S corporation, or personal service corporation is not to be considered part of a tiered structure solely because a trust the beneficiaries of which use the calendar year owns an interest in the partnership, S corporation, or personal service corporation. Consequently, an election of a taxable year other than the required taxable year may be made by a partnership, S corporation, or personal service corporation with respect to which a trust owns an interest if all of the beneficiaries of the trust use the calendar year and the partnership, S corporation, or personal service corporation is not otherwise considered to be part of a proscribed tiered structure.

Required payment for electing partnerships and S corporations

The bill increases the amount of the required payment that must be made by a partnership or S corporation that elects a taxable year other than the required taxable year (including any partnership or S corporation that has an election in effect on the date of enactment of the bill). Under the bill, the amount of the required payment for any applicable election year equals the excess (if any) of (1) the highest rate of tax in effect

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[1] For this purpose, a personal service corporation is defined as a C corporation the principal activity of which is the performance of services if (1) the services are substantially performed by employee-owners, and (2) more than 10 percent of the stock of the corporation is owned by employee-owners.

[2] The term "applicable amount" generally is defined as any amount paid to an employee-owner that is includable in the gross income of the employee-owner other than any dividend paid by the personal service corporation or any gain from the sale or exchange of property by the employee-owner to the personal service corporation.

[3] As under present law, a taxable year election is also terminated if: (1) the entity becomes part of a proscribed tiered structure; or (2) a partnership or S corporation willfully fails to comply with the required payment rules described below. In addition, the bill authorizes the Treasury Department to issue regulations which provide for the termination of a taxable year election if the entity does not comply with the annual financial statement requirement described above.

under section 1 of the Code as of the close of the first required taxable year ending within the applicable election year plus 2 percentage points, multiplied by the net base year income of the partnership or S corporation, over (2) the net required payment balance.

In addition, the bill requires an additional required payment for any new applicable election year of a partnership or S corporation. For this purpose, a new applicable election year is defined as any applicable election year that either (1) immediately follows a taxable year for which a taxable year election was not in effect, or (2) covers a different period than the preceding taxable year by reason of a change in the taxable year elected. If, however, the applicable election year described in the preceding sentence is a short taxable year that does not include the last day of a required taxable year, then the new applicable election year is the taxable year immediately following the short taxable year.

In the case of a new applicable election year that does not result from a change in the taxable year elected, the amount of the additional required payment equals 75 percent of the amount of the required payment for such applicable election year (determined without regard to the additional required payment). In the case of a new applicable election year that results from a change in the taxable year elected, the amount of the additional required payment equals 75 percent of the excess (if any) of (1) the amount of the required payment for such applicable election year (determined without regard to the additional required payment), over (2) the amount of required payment for such applicable election year (determined without regard to the additional required payment) determined by using the deferral ratio and the deferral period that applied to the taxable year that was used prior to the change.[4]

The additional required payment is required to be made on or before September 15 of the calendar year in which the new applicable election year begins. A partnership or S corporation that fails to make the additional required payment by the due date of such payment is treated as having terminated the taxable year election and changed to the required taxable year.

In determining the net base year income of a partnership or S corporation for purposes of the required payment (including the additional required payment), the base year is defined as the first taxable year of 12 months (or 52–53 weeks) of the partnership or S corporation that precedes the applicable election year.[5] In addition, in the case of a new applicable election year, the net income for the base year is to be increased by the excess (if any) of (1) the applicable payments taken into account in determining net income for the base year, over (2) 120 percent of the average amount of applicable payments made during the 3 taxable years immediately preceding the base year.[6]

The bill also requires interest to be paid by the Internal Revenue Service with respect to a refund of a required payment but only for the period that begins on the date that the refund is payable and that ends on the date of the payment of the refund.

Minimum distribution requirement for electing personal service corporations

The bill modifies the minimum distribution requirement that must be satisfied by a personal service corporation that elects a taxable year other than the required taxable year (including a personal service corporation that has an election in effect on the date of enactment of the bill). The minimum distribution requirement is satisfied with respect to a taxable year only if the applicable amounts paid during the deferral period of the taxable year equal or exceed the lesser of (1) 110 percent of the applicable amounts paid during the first preceding taxable year of 12 months (or 52–53 weeks)[7] multiplied by a ratio, the numerator of which is the number of months in the deferral period of the taxable year and the denominator of which is 12, or (2) 110 percent of the applicable percentage of the adjusted taxable income for the deferral period of the taxable year.

The bill also permits a personal service corporation to carry back a net operating loss from a taxable year for which a taxable year election was not in effect to a taxable year for which a taxable year election was in effect.

Effective Date

The provision applies to taxable years beginning after December 31, 1992.

SUBTITLE D.

1. Withholding on supplemental wage payments (sec. 330 of the bill)

Present Law

Under Treasury regulations (Treas. Reg. sec. 31.3402(g)–1), withholding on supplemental wage payments (such as bonuses, commissions, and overtime pay) that are not paid concurrently with wages (or that are paid concurrently with wages, but are separately stated) for a payroll period may be done at a rate of 20 percent (at the employer's election).

Reasons for Change

The committee believes that it is appropriate to raise the withholding rate on supplemental wage payments so that withholding more closely approximates the ultimate tax liability with respect to these payments.

Explanation of Provision

The elective withholding rate on supplemental wage payments is increased from 20 percent to 28 percent.

Effective Date

The provision is effective for payments of supplemental wages made after December 31, 1992.

2. Increase withholding on gambling winnings (sec. 3302 of the bill and sec. 3402(q) of the Code)

Present Law

In general, proceeds from a wagering transaction are subject to withholding at a rate of 20% if such proceeds exceed $1,000 and if the amount of such proceeds is at least 300 times as large as the amount wagered. The proceeds from a wagering transaction are determined by subtracting from the amount received the amount wagered. Any non-monetary proceeds that are received are taken into account at fair market value.

In the case of State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20% if such proceeds exceed $5,000, regardless of the odds of the wager. This rule applies only if the wager is placed with the State agency conducting the lottery or with its authorized agents or employees.

In the case of sweepstakes, wagering pools, or lotteries other than State-conducted lotteries, proceeds from a wager are subject to withholding at a rate of 20% if such proceeds exceed $1,000, regardless of the odds of the wager.

No withholding tax is imposed on winnings from a slot machine, bingo, or keno.

Reasons for Change

The committee believes that it is appropriate to increase the rate of withholding on gambling winnings.

Explanation of Provision

The bill increases the rate of withholding on proceeds from a wagering transaction to 28%.

Effective Date

The provision is effective for payments made after December 31, 1992.

TITLE IV. SIMPLIFICATION PROVISIONS

SUBTITLE A. INDIVIDUAL TAX PROVISIONS

1. Rollover of gain on sale of principal residence in the case of divorce or separation (sec. 4101 of the bill and sec. 1034 of the Code)

Present Law

No gain is recognized on the sale of a principal residence if a new residence at least equal in cost to the sales price of the old residence is purchased and used by the taxpayer as his or her principal residence within a specified period of time (sec. 1034). This replacement period generally begins two years before and ends two years after the date of sale of the old residence. The basis of the replacement residence is reduced by the amount of any gain not recognized on the sale of the old residence by reason of section 1034.

The determination whether property is used by a taxpayer as a principal residence depends upon all the facts and circumstances in each case, including the good faith of the taxpayer. No safe harbor is provided for sales of principal residences incident to divorce or marital separation.

Reasons for Change

In the case of a divorce or marital separation, the determination of principal residence for one or both spouses may be unduly complex for both the taxpayer and the Internal Revenue Service. The creation of a safe-harbor rule for certain sales pursuant to a divorce or marital separation will ease administration of the law while still preserving the policy that the rollover is available only for the sale of an individual's principal residence.

Explanation of Provision

The bill provides a safe harbor in the determination of principal residence in certain cases incident to divorce or marital separation. Specifically, the bill provides that a residence is treated as the taxpayer's principal residence at the time of sale if (1) the

[4] In the case of a new applicable election year that results from a change in the taxable year elected, an additional required payment is required only if the deferral period of the new applicable election year exceeds the deferral period of the former applicable election year.

[5] The Treasury Department is authorized to promulgate regulations that provide for the application of the required payment rules if there is no taxable year of 12 months (or 52–53 weeks) of the partnership or S corporation that precedes the applicable election year. The committee anticipates that these regulations will annualize the results of any short taxable year that is used as the base year.

[6] In the event that there are not 3 taxable years immediately preceding the base year, the provision is to apply based on the number of taxable years immediately preceding the base year.

[7] The Treasury Department is authorized to promulgate regulations that provide for the application of the minimum distribution requirement if there is no preceding taxable year of 12 months (or 52–53 weeks) of the personal service corporation. The committee anticipates that these regulations will annualize the results of any short year that is taken into account for purposes of these rules.

residence is sold pursuant to a divorce or marital separation and (2) the taxpayer used such residence as his or her principal residence at any time during the two-year period ending on the date of sale.

Effective Date

The provision applies to sales of old residences (within the meaning of section 1034) after the date of enactment.

2. Election by parent to claim unearned income of certain children on parent's return (sec. 4102 of the bill and secs. 1(g)(7) and 59(j)(1) of the Code)

Present Law

The net unearned income of a child under 14 years of age is taxed to the child at the parents' statutory rate. Net unearned income means unearned income less the sum of $500 and the greater of: (1) $500 of the standard deduction or $500 of itemized deductions or (2) the amount of allowable deductions directly connected with the production of the unearned income. The dollar amounts are adjusted for inflation occurring after 1987.

In certain circumstances, a parent may elect to include a child's unearned income on the parent's income tax return if the child's income is less than $5,000. A parent making this election must include the gross income of the child in excess of $1,000 in income for the taxable year. In addition, the parent must report an additional tax liability equal to the lesser of (1) $75 or (2) 15 percent of the excess of the child's income over $500. The dollar amounts for the election are not adjusted for inflation.

A person claimed as a dependent cannot claim a standard deduction exceeding the greater of $500 or such person's earned income. For alternative minimum tax purposes, the exemption of a child under 14 years of age generally cannot exceed the sum of such child's earned income plus $1,000. The $500 amount is adjusted for inflation occurring after 1987 but the $1,000 amount is not.

Reasons for Change

The election by a parent to include a child's unearned income on a return is intended to eliminate the need to file a separate return for a child without reducing the family's total tax liability. Indexation of the underlying dollar amounts simplifies return preparation by making the election available to more taxpayers.

The restriction upon the exemption allowed to a child for alternative minimum tax purposes is intended to treat the family the same as if the child's income had been included on the parent's return. Indexation of this exemption amount achieves this goal and simplifies transfers by removing a tax consideration influencing the ownership of property within the family.

Explanation of Provision

The bill adjusts for inflation occurring after 1987 the dollar amounts involved in the election to claim unearned income on the parent's return. It likewise indexes the $1,000 amount used in computing the child's alternative minimum tax.

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

3. Simplified foreign tax credit limitation for individuals (sec. 4103 of the bill and sec. 904 of the Code)

Present Law

In order to compute the foreign tax credit, a taxpayer computes foreign source taxable income and foreign taxes paid in each of the applicable separate foreign tax credit limitation categories. In the case of an individual, this requires the filing of IRS Form 1116, designed to elicit sufficient information to perform the necessary calculations.

In many cases, individual taxpayers who are eligible to credit foreign taxes may have only a modest amount of foreign source gross income, all of which is income from investments (e.g., dividends from a foreign corporation subject to foreign withholding taxes or dividends from a domestic mutual fund that can pass through its foreign taxes to the shareholder (see sec. 853)). Taxable income of this type ordinarily is subject to the single foreign tax credit limitation category known as passive income. However, under certain circumstances, the Code treats investment-type income (e.g., dividends and interest) as income in several other separate limitation categories (e.g., high withholding tax interest income, general limitation income) designed to accomplish certain policy objectives or forestall certain abuses. For this reason, any taxpayer with foreign source gross income is required to provide sufficient detail on Form 1116 to ensure that foreign source taxable income from investments, as well as all other foreign source taxable income, is allocated to the correct limitation category.

Reasons for Change

The committee believes that a significant number of individuals are entitled to credit relatively small amounts of foreign tax imposed at modest effective tax rates on foreign source investment income. For taxpayers in this class, applicable foreign tax credit limitations typically exceed the amounts of taxes paid. Therefore, relieving these taxpayers from application of the full panoply of foreign tax credit rules may achieve significant reduction in the complexity of the tax law without significantly altering actual tax liabilities. At the same time, however, the committee believes that the benefits of simplified treatment should be limited to cover those cases where the taxpayer is receiving a payee statement showing the amount of the foreign source income and the foreign tax.

Explanation of Provision

The bill allows individuals with no more than $200 ($400 in the case of married persons filing jointly) of creditable foreign taxes, and no foreign source income other than income that is in the passive basket, to elect a simplified foreign tax credit limitation equal to the lesser of 25 percent of the individual's foreign source gross income or the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year. (The committee intends that an individual electing this simplified limitation calculation not be required to file Form 1116 in order to obtain the benefit of the credit.) A person who elects the simplified foreign tax credit limitation is not allowed a credit for any foreign tax not shown on a payee statement (as that term is defined in sec. 6724(d)(2)) furnished to him or her. Nor is the person entitled to treat any excess credits for a taxable year to which the election applied as a carryover to another taxable year. Because the limitation for a taxable year to which the election applies can be no more than the creditable foreign taxes actually paid for the taxable year, it is also the case under the bill that no excess credits from another year can be carried over to the taxable year to which the election applies.

For purposes of the simplified limitation, passive income generally is defined to include all types of income that would be foreign personal holding company income under the subpart F rules, plus income inclusions from passive foreign corporations (as defined by the bill), so long as the income is shown on a payee statement furnished to the individual. Thus, for purposes of the simplified limitation, passive income includes all dividends, interest (and income equivalent to interest), royalties, rents, and annuities; net gains from dispositions of property giving rise to such income; net gains from certain commodities transactions; and net gains from foreign currency transactions that give rise to foreign currency gains and losses as defined in section 988. The statutory exceptions to treating these types of income as passive for foreign tax credit limitation purposes, such as the exceptions for high-taxed income and high-withholding-tax interest, are not applicable in determining eligibility to use the simplified limitation.

Although an estate or trust generally computes taxable income and credits in the same manner as in the case of an individual (Code sec. 641(b); Treas. Reg. sec. 1.641(b)-1), the simplified limitation does not apply to an estate or trust.

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

4. Personal transactions by individuals in foreign currency (sec. 4104 of the bill and sec. 988 of the Code)

Present Law

When a U.S. taxpayer with a dollar functional currency makes a payment in a foreign currency, gain or loss (referred to as "exchange gain or loss") arises from any change in the value of the foreign currency relative to the U.S. dollar between the time the currency was acquired (or the obligation to pay was incurred) and the time that the payment is made. Gain or loss results because foreign currency, unlike the U.S. dollar, is treated as property for Federal income tax purposes.

Exchange gain or loss can arise in the course of a trade or business or in connection with an investment transaction. Exchange gain or loss can also arise where foreign currency was acquired for personal use. For example, the IRS has ruled that a taxpayer who converts U.S. dollars to a foreign currency for personal use—while traveling abroad—realizes exchange gain or loss or reconversion of appreciated or depreciated foreign currency (Rev. Rul. 74-7, 1974-1 C.B. 198).

Prior to the Tax Reform Act of 1986 (the "1986 Act"), most of the rules for determining the Federal income tax consequences of foreign currency transactions were embodied in a series of court cases and revenue rulings issued by the Internal Revenue Service ("IRS"). Additional rules of limited application were provided by Treasury regulations and, in a few instances, statutory provisions. Pre-1986 law was believed to be unclear regarding the character, the timing of recognition, and the source of gain or loss due to fluctuations in the exchange rate of foreign currency. The result of prior law as uncertainty of tax treatment for many legitimate transactions, as well as opportunities for tax-motivated transactions. Therefore, in 1986 Congress determined that a comprehensive set of rules should be provided for the U.S. tax treatment of transactions involving "nonfunctional currencies;" that is, currencies other than the taxpayer's "functional currency."

However, the 1986 Act provisions designed to clarify the treatment of currency transactions, primarily found in section 988, apply

to transactions entered into by an individual only to the extent that expenses attributable to such transactions would be deductible under section 162 (as a trade or business expense) or section 212 (as an expense of producing income, other than expenses incurred in connection with the determination, collection, or refund of taxes). Therefore, the principles of pre-1986 law continue to apply to personal currency transactions.[1]

Reasons for Change

An individual who lives or travels abroad generally cannot use U.S. dollars to make all of the purchases incident to ordinary daily life. Instead, the local currency must often be used, yet the individual will not be treated for tax purposes as having changed his or her functional currency to the local currency. If it were necessary to treat foreign currency in this instance as property giving rise to U.S. dollar income or loss every time it was, in effect, "bartered" for goods or services, the U.S. individual living in or visiting a foreign country would have a significant administrative burden that may bear little or no relation to whether U.S.-dollar measured income has increased or decreased. An analogous issue arises for a corporation that has a qualified business unit ("QBU") in a foreign country but nevertheless uses the U.S. dollar as its functional currency pursuant to section 986(b)(3). Complexity concerns aside, Congress could have required in that case that gain or loss be computed on each transaction carried out in the local currency. Instead, however, Congress directed the Treasury to adopt a method of translation of the QBU's results that merely approximates the results of determining exchange gain or loss on a transaction-by-transaction basis.[2] The committee believes that individuals also should be given relief from the requirement to keep track of gains on an actual transaction-by-transaction basis in certain cases.

Explanation of Provision

In a case where an individual acquires nonfunctional currency and then disposes of it in a personal transaction, and where exchange rates have changed in the intervening period, the bill provides for nonrecognition of an individual's resulting exchange gain not exceeding $200. The bill does not change the treatment of resulting exchange losses. The committee understands that under other Code provisions, such losses typically are not deductible by individuals (e.g., sec. 165(c)).

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

5. Make income tax withholding rules parallel to rules for exclusion from income for combat pay (sec. 4105 of the bill and sec. 3401(a)(1) of the Code)

Present Law

Exclusion for combat pay

Gross income does not include certain combat pay of members of the Armed Forces (sec. 112). If enlisted personnel serve in a combat zone during any part of any month, military pay for that month is excluded from gross income (special rules apply if enlisted personnel are hospitalized as a result of injuries, wounds, or disease incurred in a combat zone). In the case of commissioned officers, these exclusions from income are limited to $500 per month of military pay.

Income tax withholding

There is no income tax withholding with respect to military pay for a month in which a member of the Armed Forces of the United States is entitled to the benefits of section 112 (sec. 3401(a)(2)). With respect to enlisted personnel, this income tax withholding rule parallels the exclusion from income under section 112: there is total exemption from income tax withholding and total exclusion from income. With respect to officers, however, the withholding rule is not parallel: there is total exemption from income tax withholding, although the exclusion from income is limited to $500 per month.

Reasons for Change

In most instances, the wage withholding rules closely parallel the inclusion in income rules. Consequently, most individuals whose income is subject to withholding may rely on withholding to fulfill their tax obligations. The differences between the withholding rules and the exclusion rules with respect to combat pay could cause affected taxpayers (primarily officers) to be surprised at the size of their additional tax liability at the time of filing their tax returns as a result of underwithholding. Paying the additional tax liability with their tax returns could lead to greater financial hardship than would withholding that is parallel to the exclusion rules.

Explanation of Provision

The bill makes the income tax withholding exemption rules parallel to the rules providing an exclusion from income for combat pay.

Effective Date

The provision is effective as of January 1, 1993.

6. Expanded access to simplified income tax returns (sec. 4106 of the bill)

Present Law

There are three principal tax forms that are utilized by individual taxpayers: Form 1040EZ, Form 1040A, and Form 1040.

Reasons for Change

Many individual taxpayers find the tax forms to be complex.

Explanation of Provision

The bill provides that the Secretary of the Treasury (or his delegate) shall take such actions as may be appropriate to expand access to simplified individual income tax forms and otherwise to simplify the individual income tax returns, including, if appropriate, expanding access to form 1040A to include itemizers who deduct charitable contributions, State and local taxes, and mortgage interest, as well as removing or raising the income caps applicable to that Form.

The bill also requires that the Secretary submit a report to the Congress on the actions undertaken pursuant to this provision, together with any recommendations he may deem advisable.

Effective Date

The report is due no later than one year after the date of enactment.

7. Simplification of tax treatment of rural letter carriers' vehicle expenses (sec. 4107 of the bill and sec. 162 of the Code)

Present Law

A taxpayer who uses his or her automobile for business purposes may deduct the business portion of the actual operation and maintenance expenses of the vehicle, plus depreciation (subject to the limitations of sec. 280F). If the taxpayer is an employee and these expenses are not reimbursed, the deduction is subject to the two-percent floor. Alternatively, the taxpayer may elect to utilize a standard mileage rate in computing the deduction allowable for business use of an automobile that has not been fully depreciated. Under this election, the taxpayer's deduction equals the applicable rate multiplied by the number of miles driven for business purposes and is taken in lieu of deductions for depreciation and actual operation and maintenance expenses.

An employee of the U.S. Postal Service may compute his or her deduction for business use of an automobile in performing services involving the collection and delivery of mail on a rural route by using, for all business use mileage, 150 percent of the standard mileage rate.

Reasons for Change

The filing of tax returns by rural letter carriers can be complex. Under present law, those who are reimbursed at more than the 150 percent rate must report their reimbursement as income and deduct their expenses as miscellaneous itemized deductions (subject to the 2-percent floor). Permitting the income and expenses to wash, so that neither will have to be reported on the rural letter carrier's tax return, will simplify these tax returns.

Explanation of Provision

The bill repeals the special rate of 150 percent of the standard mileage rate. In its place, the bill provides that the rate of reimbursement provided by the Postal Service to rural letter carriers is considered to be equivalent to their expenses. The rate of reimbursement that is considered to be equivalent to their expenses is the rate of reimbursement contained in the 1991 collective bargaining agreement, which may in the future be increased by no more than the rate of inflation.

Effective Date

The provision is effective for taxable years beginning after December 31, 1991.

8. Exemption from luxury excise tax for certain equipment installed on passenger vehicles for use by disabled individuals (sec. 4108 of the bill and sec. 4004(b)(3) of the Code)

Present Law

The Code imposes a 10-percent excise tax on the portion of the retail price of a passenger vehicle that exceeds $30,000. The tax also applies to separate purchases of component parts and accessories occurring within six months of the date the vehicle is placed in service.

Reasons for Change

It is appropriate to reduce the compliance burdens on handicapped persons.

Explanation of Provision

The bill provides that the luxury excise tax does not apply to a part or accessory installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, in order to compensate for the effect of the disability.

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[1] See, e.g., Rev. Rul. 90-79, 1990-2 C.B. 187 (where the taxpayer purchased a house in a foreign country, financed by a foreign currency loan, and the currency appreciates before the house is sold and the loan is repaid, the taxpayer's exchange loss on repayment of the loan is not deductible under sec. 165 and does not offset taxable gain on the sale of the house).

[2] See Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., *General Explanation of the Tax Reform Act of 1986* at 1096 (1987); Treas. Reg. sec. 1.985-3.

Persons entitled to a refund may request it from the seller at which they purchased the taxed item, who then obtains the refund as provided under present-law Code section 6416.

Effective Date

The provision is effective for purchases after December 31, 1990.

9. Simplification of earned income tax credit (sec. 4109 of the bill and secs. 32, 162, and 213 of the Code)

Present Law

Eligible low-income workers are able to claim a refundable earned income tax credit (EITC) of up to 17.6 percent of the first $7,520 of earned income for 1992 (18.4 percent for taxpayers with more than one qualifying child). The maximum amount of credit for 1992 is $1,324 ($1,384 for taxpayers with more than one qualifying child). This maximum credit is reduced by 12.57 percent of earned income (or adjusted gross income, if greater) in excess of $11,840 (the phase-out rate is 13.14 percent for taxpayers with more than one qualifying child). The EITC is totally phased out for workers with earned income (or adjusted gross income, if greater) over $22,370. The maximum amount of earned income on which the EITC may be claimed and the income threshold for the phaseout of the EITC are indexed for inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

The credit rates for the EITC change over time under present law, as shown in the following table.

Year	One qualifying child		Two or more qualifying children	
	Credit rate	Phase-out rate	Credit rate	Phase-out rate
1992	17.6	12.57	18.4	13.14
1993	18.5	13.21	19.5	13.93
1994 and after	23.0	16.43	25.0	17.86

A supplemental young child credit is available to taxpayers with qualifying children under the age of one year. This young child credit rate is 5 percent and the phase-out rate is 3.57 percent. It is computed on the same income base as the ordinary EITC. The maximum supplemental young child credit for 1992 is $376. If a taxpayer claims the supplemental young child credit, the child that qualifies the taxpayer for such credit is not a qualifying individual for purposes of the dependent care tax credit (sec. 21).

A supplemental health insurance credit is available to taxpayers who provide health insurance coverage for their qualifying children. This health insurance credit rate is 6 percent and the phase-out rate is 4.285 percent. It is computed on the same income base on the ordinary EITC, but the credit claimed cannot exceed the out-of-pocket cost of the health insurance coverage. In addition, the taxpayer is denied an itemized deduction for medical expenses of qualifying insurance coverage up to the amount of credit claimed. The maximum supplemental health insurance credit for 1992 is $451.

Reasons for Change

The committee is concerned that the compliance burdens on EITC recipients are greater than is desirable due, in part, to certain rules related to claiming the supplemental credit components of the EITC. In particular, the determination of allowable medical expense deductions, allowable deductions for health insurance coverage of self-employed individuals, and eligibility for the dependent care credit may entail involved interpretations of legal rules. These complicated determinations may deter some eligible individuals from claiming the full amount of EITC to which they are entitled.

Explanation of Provision

The bill permits taxpayers to include all health insurance expenses as medical expenses, subject to the 7.5 percent of adjusted gross income floor on deductible medical expenses, regardless of whether these expenses are used to claim the health insurance component of the EITC. The bill also permits a self-employed taxpayer to claim the allowable deduction for health insurance costs and to use the full amount of these expenses that are related to coverage of dependent children to claim the health insurance component of the EITC.

The bill also permits taxpayers to claim the dependent care credit for expenses related to the care of a child for which the taxpayer claims the supplemental young child credit.

Effective Date

The bill is effective for taxable years beginning after December 31, 1991.

10. Rollover of gain on sale of principal residence in the case of frozen deposits (sec. 4101 of the bill and sec. 1034 of the Code)

Present Law

No gain is recognized on the sale of a principal residence if a new residence at least equal in cost to the sale price of the old residence is purchased and used by the taxpayer as his or her principal residence within a specified period of time (sec. 1034). This replacement period generally begins two years before and ends two years after the date of sale of the old residence. The basis of the replacement residence is reduced by the amount of any gain not recognized on the sale of the old residence by reason of section 1034. The determination whether property is owned by a taxpayer as a principal residence depends upon all the facts and circumstances in each case.

Reasons for Change

The committee believes that the absence under present law of any relief from the two-year period after the date of sale of the old residence when the taxpayer has substantial frozen deposits could unfairly result in the loss of nonrecognition treatment to otherwise innocent taxpayers.

Explanation of Provision

The bill suspends the running of the two-year period after the date of sale of the old residence (referred to in sec. 1034 (a) and (c) other then (c)(4)) during any time that the taxpayer has frozen deposits during the two-year period beginning on the date of sale of the old residence. The period as suspended may not extend beyond the date that is four years after the date of sale of the old residence. A taxpayer is treated as having frozen deposits if the taxpayer's deposit in a financial institution may not be withdrawn due to: (1) the bankruptcy or insolvency of the financial institution or, (2) any requirement imposed by the State in which the financial institution is located by reason of the bankruptcy or insolvency (or threat thereof) of one or more financial institutions located in the State.

Effective Date

The provision applies to any residence sold or exchanged after December 31, 1990, and any residence sold or exchanged before that date if the two-year period had not expired before January 1, 1991.

SUBTITLE B. PENSION SIMPLIFICATION

A. SIMPLIFIED DISTRIBUTION RULES (SECS. 4201–4204 OF THE BILL AND SECS. 72(D) OF THE CODE)

Present Law

In general

Under present law as amended by the Unemployment Compensation Amendments Act of 1992 (P.L. 102-318) (the Unemployment Act) for years after 1992, a distribution of benefits from a tax-favored retirement arrangement generally is includible in gross income in the year it is paid or distributed under the rules relating to the taxation of annuities. A tax-favored retirement arrangement includes (1) a qualified pension plan (sec. 401(a)), (2) a qualified annuity plan (sec. 403(a)), and (3) a tax-sheltered annuity (sec. 403(b)). Special rules apply in the case of lump-sum distribution from a qualified plan, distributions that are rolled over to an individual retirement arrangement (IRA), and employer-provided death benefits.

Lump-sum distributions

Under present law, lump-sum distributions from qualified plans and annuities are eligible for special 5-year forward income averaging (sec. 402(d)). In general, a lump-sum distribution is a distribution within one taxable year of the balance to the credit of an employee that becomes payable to the recipient (1) on account of the death of the employee, (2) after the employee attains age 59½, (3) on account of the employee's separation from service, or (4) in the case of self-employed individuals, on account of disability. In addition, a distribution is treated as a lump-sum distribution only if the employee has been a participant in the plan for at least 5 years before the year of the distribution. Lump-sum treatment is not available for distributions from tax-sheltered annuity contracts.

A taxpayer is permitted to make an election with respect to a lump-sum distribution received on or after the employee attains age 59½ to use 5-year forward income averaging under the tax rates in effect for the taxable year in which the distribution is made. Only one such election on or after age 59½ may be made with respect to any employee.

Special transition rules adopted in the Tax Reform Act of 1986 are available with respect to an employee who attained age 50 before January 1, 1986. Under these rules, an individual, trust, or estate may elect to use 5-year forward income averaging (using present-law tax rates) or 10-year forward income averaging (using the tax rates in effect prior to the Tax Reform Act of 1986) with regard to a single lump-sum distribution, without regard to whether the employee has attained age 59½. In addition, an individual, trust, or estate receiving a lump-sum distribution with respect to such employee may elect to retain the capital gains character of the pre-1974 portion of the lump-sum distribution (using a tax rate of 20 percent).

Employer-provided death benefits

Under present law, the beneficiary or estate of a deceased employee generally can exclude up to $5,000 in benefits paid by or on behalf of an employer by reason of the employee's death (sec. 101(b)).

Recovery of basis

Qualified plan distributions other than lump-sum distribution generally are includible in gross income in the year they are paid or distributed under the rules relating to taxation of annuities (sec. 402). Amounts received as an annuity generally are includible in income in the year received, except to the extent they represent the return of the recipient's investment in the contract (i.e.,

basis) (sec. 72). Under present law, a pro-rata basis recovery rule generally applies, so that the portion of any annuity payment that represents nontaxable return of basis is determined by applying an exclusion ratio equal to the employee's total investment in the contract divided by the total expected payments over the term of the annuity.

The total expected payments depend on the form of the payment, e.g., a single-life annuity, an annuity with payments guaranteed for a specified number of years, or a joint and survivor annuity. For example, if benefits are paid in the form of an annuity during the life of the employee, the expected payments are calculated by multiplying the annual payment amount by the employee's life expectancy on the annuity starting date. If benefits are paid in the form of a joint and survivor annuity, then the total expected return depends on the life expectancies of both the primary annuitant and the person who is to receive the survivor annuity. The IRS has issued tables of life expectancies that are used to calculate expected returns.

Under a simplified alternative method provided by the Internal Revenue Service (IRS) (Notice 88-118) for payments from or under qualified retirement arrangements, the taxable portion of qualifying annuity payments is determined under a simplified exclusion ratio method. Under the simplified method, the portion of each annuity payment that represents nontaxable return of basis is equal to the employee's total investment in the contract (including the $5,000 death benefit exclusion under section 101(b), to the extent applicable), divided by the number of anticipated payments listed in a table published by the IRS. The number of anticipated payments listed in the table is based on the employee's age on the annuity starting date. The simplified method is available if (1) the annuity payments depend on the life expectancy of the recipient (or the joint lives of the recipient and his or her beneficiary), and (2) the recipient is less than age 75 on the annuity starting date or there are fewer than 5 years of guaranteed payments under the annuity.

Under both the pro rata and simplified alternative methods, in no event can the total amount excluded from income as nontaxable return of basis be greater than the recipient's total investment in the contract.

Required distributions

Present law provides uniform minimum distribution rules generally applicable to all types of tax-favored retirement vehicles, including qualified plans and annuities, IRAs, and tax-sheltered annuities.

Under present law, a qualified plan is required to provide that the entire interest of each participant will be distributed beginning no later than the participant's required beginning date (sec. 401(a)(9)). The required beginning date is generally April 1 of the calendar year following the calendar year in which the plan participant or IRA owner attains age 70½. In the case of a governmental plan or a church plan, the required beginning date is the later of (1) such April 1, or (2) the April 1 of the year following the year in which the participant retires.

Reasons for Change

In almost all cases, the responsibility for determining the tax liability associated with a distribution from a qualified plan, tax-sheltered annuity, or IRA rests with the individual receiving the distribution. Under present law, this task can be burdensome. Among other things, the taxpayer must consider (1) whether special tax rules apply that reduce the tax that otherwise would be paid, (2) the amount to the taxpayer's basis in the plan, annuity, or IRA and the rate at which such basis is to be recovered, and (3) whether or not a portion of the distribution is excludable from income as a death benefit.

The number of special rules for taxing pension distributions makes it difficult for taxpayers to determine which method is best for them and also increases the likelihood of error. In addition, the specifics of each of the rules create complexity. For example, the present-law rules for determining the rate at which a participant's basis in a qualified plan is recovered often entail calculations that the average participant has difficulty performing. These rules require a fairly precise estimate of the period over which benefits are expected to be paid. The IRS publication on taxation of pension distributions (Publication 939) contains over 60 pages of actuarial tables used to determine total expected payments.

The original intent of the income averaging rules for pension distributions was to prevent a bunching of taxable income because a taxpayer received all of the benefits in a qualified plan in a single taxable year. Liberalization of the rollover rules in the Unemployment Act increased taxpayers' ability to determine the time of the income inclusion of pension distributions, and eliminates the need for special rules such as 5-year forward income averaging to prevent bunching of income.

The committee believes it is inappropriate to require all participants to commence distributions by age 70½ without regard to whether the participant is still employed by the employer. However, the accrued benefit of employees who retire after age 70½ generally should be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits.

Explanation of Provisions

In general

The bill eliminates 5-year averaging for lump-sum distributions from qualified plans, repeals the $5,000 death benefit exclusion, and simplifies the basis recovery rules applicable to distributions from qualified plans. In addition, the bill modifies the rule that generally requires all participants to commence distributions by age 70½.

Special rules for lump-sum distributions

The bill repeals the special 5-year forward income averaging rule.

The bill preserves the transition rules adopted in the Tax Reform Act of 1986. The bill also retains the present-law treatment of net unrealized appreciation on employer securities and generally retains the definition of lump-sum distribution solely for such purpose.

Employer-provided death benefits

The bill repeals the exclusion from gross income of up to $5,000 in employer-provided death benefits.

Recovery of basis

Under the bill, the portion of an annuity distribution from a qualified retirement plan, qualified annuity, or tax-sheltered annuity that represents nontaxable return of basis generally is determined under a method similar to the present-law simplified alternative method provided by the Internal Revenue Service. Under the simplified method provided in the bill, the portion of each annuity payment that represents nontaxable return of basis generally is equal to the employee's total investment in the contract as of the annuity starting date, divided by the number of anticipated payments determined by reference to the age of the participant listed in the table set forth in the bill. The number of anticipated payments listed in the table is based on the employee's age on the annuity starting date. If the number of payments is fixed under the terms of the annuity, that number is to be used instead of the number of anticipated payments listed in the table.

The simplified method does not apply if the primary annuitant has attained age 75 on the annuity starting date unless there are fewer than 5 years of guaranteed payments under the annuity. If in connection with commencement of annuity payments, the recipient receives a lump-sum payment that is not part of the annuity stream, such payment is taxable under the rules relating to annuities (sec. 72) as if received before the annuity starting date, and the investment in the contract used to calculate the simplified exclusion ratio for the annuity payments is reduced by the amount of the payment. As under present law, in no event will the total amount excluded from income as nontaxable return of basis be greater than the recipient's total investment in the contract.

Required distributions

The bill modifies the rule that requires all participants in qualified plans to commence distributions by age 70½ without regard to whether the participant is still employed by the employer and generally replaces it with the rule in effect prior to the Tax Reform Act. Under the bill, distributions generally are required to begin by April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70½ or (2) the calendar year in which the employee retires. However, in the case of a 5-percent owner of the employer, distributions are required to begin no later than April 1 of the calendar year following the year in which the 5-percent owner attains age 70½. Distributions from an IRA are required to begin no later than April 1 of the calendar year following the year in which the IRA owner attains age 70½.

In addition, in the case of an employee (other than a 5-percent owner) who retires in a calendar year after attaining age 70½, the bill generally requires the employee's accrued benefit to be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits under the plan. Thus, under the bill, the employee's accrued benefit is required to reflect the value of benefits that the employee would have received if the employee had retired at age 70½ and had begun receiving benefits at that time.

The actuarial adjustment rule and the rule requiring 5-percent owners to begin distributions after attainment of age 70½ does not apply, under the bill, in the case of a governmental plan or church plan.

Effective Date

The provisions generally apply to years beginning after December 31, 1992. The provision modifying the required distribution rules applies to years beginning after December 31, 1993.

B. INCREASED ACCESS TO PENSION PLANS

1. Modifications to simplified employee pensions and creation of PRIME accounts (secs. 4211-4212 of the bill, sec. 408(k)(6) of the Code, and new sec. 408(p) of the Code)

Present Law

Under present law, certain employers (other than tax-exempt and governmental

employers) can establish a simplified employee pension (SEP) for the benefit of their employees under which the employees can elect to have contributions made to the SEP or to receive the contributions in cash (sec. 408(k)(6)). If an employee elects to have contributions made on the employee's behalf to the SEP, the contribution is not treated as having been distributed or made available to the employee. In addition, the contribution is not treated as an employee contribution merely because the SEP provides the employee with such an election. Therefore, an employee is not required to include in income currently the amounts the employee elects to have contributed to the SEP. Elective deferrals under a SEP are to be treated in the same manner as elective deferrals under a qualified cash or deferred arrangement and, thus, are subject to the $8,728 (for 1992) cap on elective deferrals.

The election to have amounts contributed to a SEP or received in cash is available only if at least 50 percent of the employees of the employer elect to have amounts contributed to the SEP. In addition, such election is available for a taxable year only if the employer maintaining the SEP had 25 or fewer eligible employees at all times during the prior taxable year.

Under present law, elective deferrals under SEPs are subject to nondiscrimination standards. The amount eligible to be deferred as a percentage of each highly compensated employee's compensation (i.e., the deferral percentage) is limited by the average deferral percentage (based solely on elective deferrals) for all nonhighly compensated employees who are eligible to participate. The deferral percentage for each highly compensated employee (taking into account only the first $222,220 (indexed) of compensation) cannot exceed 125 percent of the average deferral percentage for all other eligible employees. Nonelective SEP contributions may not be combined with the elective SEP deferrals for purposes of this test. An employer may not make any other SEP contributions conditioned on elective SEP deferrals. If the 125-percent test is not satisfied, rules similar to the rules applicable to excess contributions to a cash or deferred arrangement are applied.

If any employee is eligible to make elective SEP deferrals, all employees satisfying the participation requirements must be eligible to make elective SEP deferrals. An employee satisfies the participation requirements if the employee (1) has attained age 21, (2) has performed services for the employer during at least 3 of the immediately preceding 5 years, and (3) received at least $363 (indexed) in compensation from the employer for the year. An employee can participate even though he or she is also a participant in one or more other qualified retirement plans sponsored by the employer. However, SEP contributions are added to the employer's contribution to the other plans on the participant's behalf in applying the limits on contributions and benefits (sec. 415).

Reasons for Change

The tax incentives for pension plans under present law have not significantly improved pension coverage for employees of small businesses. One of the reasons small employers fail to establish pension plans for their employees is because of the administrative costs and burdens attributable to such plans.

The committee believes that further simplification and broadening of the rules applicable to plans of small employers rules will encourage more small employers to establish plans for their employees. In particular, the committee believes that making salary deferral SEPs available to a larger number of employers and providing a design-based qualification test for such SEPs will make such plans more attractive to small employers.

The committee also believes that a new model plan for small business, with simplified reporting, a design-based qualification test, and features combining the elements of IRAs and section 401(k) plans, will encourage small employers that do not maintain qualified pension plans to provide retirement benefits for their employees.

Explanation of Provisions

a. Simplified employee pensions (SEPs)

The bill conforms the eligibility requirements for SEP participation to the rules applicable to pension plans generally by providing that contributions to a SEP must be made with respect to each employee who has at least one year of service with the employer.

The bill modifies the rules relating to salary reduction SEPs by providing that such SEPs may be established by employers with 100 or fewer employees. The bill also repeals the requirement that at least half of eligible employees actually participate in a salary reduction SEP.

The bill also provides that an employer is deemed to satisfy the nondiscrimination requirements applicable to salary reduction SEPs if the plan satisfies the safe harbor nondiscrimination rules applicable to qualified cash or deferred arrangements and employees are notified of the availability and features of the SEP.

b. PRIME ("private retirement incentives matched by employers") accounts

The bill creates another simplified retirement plan targeted to small businesses called the PRIME ("private retirement incentives matched by employers") account (new sec. 408(p)). A PRIME account is an individual retirement plan with respect to which employees can make salary reduction contributions of up to $3,000 per year, with a 100 percent employer match up to 3 percent of the employee's compensation contributed to the account. No nondiscrimination rules apply to PRIME accounts. Simplified reporting requirements apply. PRIME accounts are subject to the same spousal consent rules applicable to defined contribution plans.

Only employers who normally employ fewer than 100 employees and who do not maintain a qualified plan or a SEP may establish PRIME accounts for their employees. All employees of the employer who have at least one year of service and who are reasonably expected to work at least 1,200 hours during the year must be eligible to participate in the PRIME account. All contributions to an employee's PRIME account are fully vested. Additional early withdrawal penalties apply to preretirement withdrawals during the first 3 years of participation.

A common trust fund or common investment fund of PRIME account assets generally is treated as a common trust fund or common investment fund of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a). Accordingly, PRIME accounts can be invested by financial organizations in collective investment funds to the same extent, and under the same conditions, as qualified retirement plans. Any load or other fees imposed by any financial organization maintaining a PRIME account must be reasonable.

Effective Date

The provisions apply to years beginning after December 31, 1993.

2. Repeal of limitation on ability of nongovernmental tax-exempt employers to maintain cash or deferred arrangements (sec. 4213 of the bill and secs. 401(k) and 408(k)(6) of the Code)

Present Law

Under present law, if a tax-qualified profit-sharing or stock bonus plan meets certain requirements, then an employee is not required to include in income any employer contributions to the plan merely because the employee could have elected to receive the amount contributed in cash (sec. 401(k)). Plans containing this feature are referred to as cash or deferred arrangements. Tax-exempt organizations are generally prohibited from establishing qualified cash or deferred arrangements. Because of this limitation, many of such employers are precluded from maintaining broad-based, funded, elective deferral arrangements for their employees.

Reasons for Change

The committee believes that nongovernmental tax-exempt entities should be permitted to maintain qualified cash or deferred arrangements for their employees on the same basis as other employers.

Explanation of Provision

The bill allows tax-exempt organizations (other than State and local governments and their agencies and instrumentalities) to maintain cash or deferred arrangements. Thus, any organization, including an Indian tribe, previously denied eligibility on the ground that they are a tax-exempt organization (and not because they are a State or local government or agency or instrumentality thereof) is eligible to maintain a cash or deferred arrangement for its employees under the bill. As under present law, the limitation on the amount that may be deferred by an individual participating in both a cash or deferred arrangement and another elective deferral arrangement applies.

Effective Date

The provision applies to nongovernmental tax-exempt organizations with respect to years beginning after December 31, 1992. The provision does not affect the ability of certain State and local government employers to maintain qualified cash or deferred arrangements that were adopted before May 6, 1986.

3. Duties of master and prototype plan sponsors (sec. 4214 of the bill)

Present Law

The Internal Revenue Service (IRS) master and prototype program is an administrative program under which trade and professional associations, banks, insurance companies, brokerage houses, and other financial institutions can obtain IRS approval of model retirement plan language and then make these preapproved plans available for adoption by their customers, investors, or association members. Rules regarding who can sponsor master and prototype programs, the prescribed format of the model plans, and other matters relating to the program are contained in revenue procedures and other administrative pronouncements of the IRS.

The IRS also maintains related administrative programs that authorize advance approval of model plans prepared by law firms and others, i.e., the regional prototype plan program and volume submitter program.

Reasons for Change

As the laws relating to retirement plans have become more complex, employers have experienced an increase in the frequency and cost of amending plans and of the burdens of

administering the plans. Master and prototype plans reduce these costs and burdens, particularly for small- to medium-sized employers, and improve IRS administration of the retirement plan rules. Today, the majority of employer-provided qualified retirement plans, including qualified cash or deferred arrangements (sec. 401(k) plans), simplified employee pensions (SEPs) and individual retirement arrangements (IRAs) are approved master and prototype plans. The Treasury and the IRS believe that the further expansion of the master and prototype program is desirable, but that statutory authority authorizing the IRS to define specifically the duties of master and prototype sponsors should be obtained before the program becomes more widely utilized.

Explanation of Provision

The bill authorizes the IRS to define the duties of organizations that sponsor master and prototype, regional prototype, and other preapproved plans, including mass submitters. These duties would become a condition of sponsoring preapproved plans. The bill is not intended to be interpreted as diminishing the IRS's administrative authority with respect to the master and prototype, regional prototype, or similar programs, including the authority to define who is eligible to sponsor prototype plans, or to create other rules relating to these programs. Rather, it is intended to create a system of sponsor accountability, subject to IRS monitoring, that will give adopters of master and prototype and other preapproved plans a level of protection, comparable to that in the regional prototype plan program, against failure of master and prototype and other plan sponsors to fulfill certain obligations.

The bill thus authorizes the IRS to prescribe duties of sponsors of prototype and other preapproved plans that include, but are not limited to, maintaining annually current lists of adopting employers and providing certain annual notices to adopting employers and to the IRS. While reflecting the IRS's own requirements in its regional prototype plan procedure, the bill does not require the IRS to mandate a master and prototype accountability system that is identical to the regional prototype plan procedure. The bill also authorizes the IRS to prescribe such other reasonable duties as are consistent with the objective of protecting adopting employers from a sponsor's failure to amend a plan in a timely manner or to communicate amendments or other notices required by the IRS's procedures.

The bill authorizes the IRS to define the duties of preapproved plan sponsors that relate to providing administrative services to the plans of adopting employers. This authorization is not intended to obligate sponsor to undertake the complete day-to-day administration of the plans they sponsor (although it does not preclude the IRS from mandating the performance of specific functions), but rather to protect employers against loss of qualification merely because they are unaware of the need to arrange for such services, or the unavailability of professional assistance from parties familiar with the sponsor's plan.

It is thus intended that, at a minimum, sponsors should (1) advise adopting employers that failure to arrange for administrative services to the plan may significantly increase the risk of disqualification and resulting sanctions, and (2) furnish employers with the name of firms that are familiar with the plan and can provide professional administrative service. This is not intended to preclude the sponsor from providing that service itself.

The bill should not be construed as creating fiduciary relationship or responsibilities under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) that would not exist in the absence of the provision.

To the extent deemed reasonably necessary to carry out the purposes of this provision of the bill, the Secretary is authorized to issue regulations that permit the relaxation of the anti-cutback rules contained in ERISA (sec. 204(g)) and the Code (sec. 411(d)(6)) when employers replace and individually designed plan with an IRS model plan, provided that the rights of participants to accrued benefits under the individually designed plan are not significantly impaired. This discretion will facilitate the shift by employers from individually designed plans to IRS model plans.

Effective Date

The provision is effective on January 1, 1993.

NONDISCRIMINATION PROVISIONS

1. Definition of highly compensated employee and family aggregation rules (sec. 4221 of the bill and secs. 401(a)(17), 404(1), and 414(q) of the Code)

Present Law

In general

For purposes of the rules applying to qualified retirement plans under the code, an employee, including a self-employed individual, generally is treated as highly compensated with respect to a year if, at any time during the year or the preceding year, the employee: (1) was a 5-percent owner of the employer; (2) received more than $93,518 in annual compensation from the employer; (3) received more than $62,345 in annual compensation from the employer and was one of the top-paid 20 percent of employees during the same year; or (4) was an officer of the employer who received compensation greater than $56,111. These dollar amounts are adjusted annually for inflation at the same time and in the same manner as the adjustments to the dollar limit on benefits under a defined benefit pension plan (sec. 415(d)). If, for any year, no officer has compensation in excess of $56,111 (indexed), then the highest paid officer of the employer for such year is treated as highly compensated employee.

An employee is not treated as in the top-paid 20 percent, as an officer, or as receiving $93,518 or $62,345 solely because of the employee's status during the current year, unless such employee also is among the 100 employees who have received the highest compensation during the year.

Election to use simplified method

Employers are permitted to elect to determine their highly compensated employees under a simplified method. Under this method, an electing employer may treat employees who received more than $62,345 in annual compensation from the employer as highly compensated employees in lieu of applying the $93,518 threshold and without regard to whether such employees are in the top-paid group of the employer. This election is available only if at all times during the year the employer maintained business activities and employees in at least 2 geographically separate areas.

Treatment of family members

A special rule applies with respect to the treatment of family members of certain highly compensated employees. Under the special rule, if an employee is a family member of either a 5-percent owner or 1 of the top 10 highly compensated employees by compensation, then any compensation paid to such family member and any contribution or benefit under the plan on behalf of such family member is aggregated with the compensation paid and contributions or benefits on behalf of the 5-percent owner or the highly compensated employee in the top 10 employees by compensation. Therefore, such family member and employee are treated as a singly highly compensated employee. An individual is considered a family member if, with respect to an employee, the individual is a spouse, lineal ascendant or descendant, or spouse of a lineal ascendant or descendant of the employee.

Similar family aggregation rules apply with respect to the $228,860 limit on compensation that may be taken into account under a qualified plan (sec. 401(a)(17)) and for deduction purposes (sec. 404(1)). However, under such provisions, only the spouse of the employee and lineal descendants of the employee who have not attained age 19 are taken into account.

Reasons for Change

Under present law, the administrative burden on employers to comply with some of the basic rules applying to qualified retirement plans outweighs the small potential benefit of the rules. For example, the various categories of highly compensated employees require employers to perform a number of complex calculations that for many employers have largely duplicative results.

Explanation of Provisions

The bill provides that an employee is highly compensated with respect to a year if the employee (1) was a 5-percent owner of the employer at any time during the year or the preceding year, or (2) had compensation for the preceding year in excess of $50,000. The $50,000 threshold is adjusted for cost-of-living increases in the same manner and at the same time (and using the same base year) as the limitations on contributions and benefits (sec. 415(d)). Under the bill, as under present law, the dollar limit in effect for 1992 is $62,345. Thus, an employee would be highly compensated in 1993 if the employee's compensation for 1992 is in excess of $62,345.

Under the bill, if no employee is a 5-percent owner or had compensation for the preceding year in excess of $50,000 (indexed), then the highest paid officer for the year is treated as a highly compensated employee. This special rule does not apply for purposes of the nondiscrimination rules applicable to elective deferrals, matching contributions, and employee contributions (secs. 401(k) and (m)), and does not apply with respect to employees of tax-exempt organizations and State and local governments (sec. 457(e)(1)).

The bill repeals the family aggregation rules.

Effective Date

The provision generally is effective for years beginning after December 31, 1993. An employer may elect not to have such amendments apply to years beginning in 1994.

2. Election to treat base pay as compensation (sec. 4222 of the bill and sec. 414(s) of the Code)

Present Law

Present law provides a definition of compensation that is to be used for nondiscrimination testing purposes (sec. 414(s)). Under this definition, compensation generally is defined as compensation used for purposes of the limits on contributions and benefits (sec. 415). Pursuant to statutory authority, final regulations provide alternative permissible definitions of compensation. The regulations permit certain items, such as

bonuses and similar payments, to be excluded from the definition of compensation.

Reasons for Change

Many plans base benefits on base pay. Thus, the committee considers it appropriate to provide statutorily that base pay is a permissible definition of compensation.

Explanation of Provision

The bill permits an employer to elect to use base pay as a permissible definition of compensation for purposes of all provisions which specifically refer to section 414(s) of the Code. It is intended that base pay is defined generally as under Treasury regulations. Thus, subject to the applicable facts and circumstances, the employer could exclude from the definition of compensation, on a consistent basis, certain types of compensation, including (but not limited to) one or more of the following: any type of additional compensation for employees working outside their regularly scheduled tour of duty (such as overtime pay, premiums for shift differential, and call-in premiums); bonuses; or reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation, and welfare benefits. It is intended that the resulting definition may not discriminate in favor of highly compensated employees. The election applies for purposes of all applicable provisions and to all employees, and may be revoked only with the consent of the Secretary.

Effective Date

The provision is effective for years beginning after December 31, 1993.

3. Modification of additional participation requirements (sec. 4223 of the bill and sec. 401(a)(26) of the Code)

Present Law

Under present law, a plan is not a qualified plan unless it benefits no fewer than the lesser of (a) 50 employees of the employer or (b) 40 percent of all employees of the employer (sec. 401(a)(26)). These requirements may not be satisfied by aggregating comparable plans, but may be applied separately to different lines of business of the employer. A line of business of the employer does not qualify as a separate line of business unless it has at least 50 employees.

Reasons for Change

The minimum participation rule was adopted in the Tax Reform Act of 1986 because the Congress believed that it was inappropriate to permit an employer to maintain multiple plans, each of which covered a very small number of employees. Although plans that are aggregated for nondiscrimination purposes are required to satisfy comparability requirements with respect to the amount of contributions or benefits, such an arrangement may still discriminate in favor of highly compensated employees.

The committee believes that it is appropriate to better target the minimum participation rule by limiting the scope of the rule to define benefit pension plans and reducing the minimum number of employees required to be covered under such a plan.

Finally, the committee believes that the arbitrary requirement that a line of business must have at least 50 employees requires application of the minimum participation rule on an employer-wide basis in some cases in which the employer truly has separate lines of business.

Explanation of Provision

The bill provides that the minimum participation rule (sec. 401(a)(26)) applies only to defined benefit pension plans. In addition, the bill provides that a defined benefit pension plan does not satisfy the rule unless it benefits no fewer than the lesser of (1) 25 employees or (2) the greater of (a) 40 percent of all employees of the employer or (b) 2 employees (1 employee if there is only 1 employee). The excludable employee rule applies as under present law. As an illustration of the operation of the modification of the minimum participation rule, assume that an employer has 150 non excludable employees. Under present law, any plan of the employer is required to cover a minimum of 50 employees. Under the bill, any defined benefit plan of the employer is required to cover a minimum of 25 employees.

In the case of an employer with only 2 employees, the minimum participation rule under the bill is satisfied only if the plan covers both employees.

The bill provides that the requirement that a line of business has at least 50 employees does not apply in determining whether a plan satisfied the minimum participation rule on a separate line of business basis.

Effective Date

The provision is generally effective for years beginning after December 31, 1991. An employer may elect to have the provision apply as if it were include din section 1112(b) of the Tax Reform Act of 1986.

4. Simplification of nondiscrimination tests applicable under sections 401(k) and (m) (sec. 4224 of the bill and secs. 401(k) and (m) of the Code)

Present Law

A profit-sharing or stock bonus plan, a pre-ERISA money purchase pension plan, or a rural cooperative plan may include a qualified cash or deferred arrangement (sec. 401(k)). Under such an arrangement, an employee may elect to have the employer make payments as contributions to a plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals. The maximum annual amount of elective deferrals that can be made by an individual is $8,728 for 1992. This dollar limit is indexed annually for inflation. A special nondiscrimination test applies to cash or deferred arrangements.

The special nondiscrimination test applicable to elective deferrals under qualified cash or deferred arrangements is satisfied if the actual deferral percentage (ADP) for eligible highly compensated employees for a plan year is equal to or less than either (1) 125 percent of the ADP of all nonhighly compensated employees eligible to defer under the arrangement, or (2) the lesser of 200 percent of the ADP of all eligible nonhighly compensated employees or such ADP plus 2 percentage points. The ADP for a group of employees is the average of the ratios (calculated separately for each employee in the group) of the contributions paid to the plan on behalf of the employee to the employee's compensation.

Employer matching contributions and after-tax employee contributions under qualified defined contribution plans are subject to a special nondiscrimination test similar to the special nondiscrimination test applicable to qualified cash or deferred arrangements.

The special nondiscrimination test is satisfied for a plan year if the actual contribution percentage (ACP) for eligible highly compensated employees does not exceed the greater of (1) 125 percent of the ACP for all other eligible employees, or (2) the lesser of 200 percent of the contribution percentage of all other eligible employees, or such percentage plus 2 percentage points. The ACP for a group of employees for a plan year is the average of the ratios (calculated separately for each employee in the group) of the sum of matching and employee contributions on behalf of each such employee to the employee's compensation for the year.

To determine the amount of excess contributions and the employees to whom they are allocated, the elective deferrals of highly compensated employees are reduced in the order of their actual deferral percentage beginning with those highly compensated employees with the highest actual deferral.

Reasons for Change

The sources of complexity generally associated with the nondiscrimination requirements for qualified cash or deferred arrangements and matching contributions are the recordkeeping necessary to monitor employee elections, the calculations involved in applying the tests, and the correction mechanism, i.e., what to do if the plan fails the tests. None of these factors are new.

The committee believes that the complexity of nondiscrimination requirements, particularly after the Tax Reform Act of 1986 changes that imposed a dollar cap ($8,728 in 1992) on elective deferrals, is not justified by the marginal additional participation of rank-and-file employees that might be achieved by the operation of these requirements. It is believed that the result that the nondiscrimination rules are intended to produce can also be achieved by creating an incentive for employers to provide 100-percent matching contributions or nonelective contributions on behalf of rank-and-file employees. The committee believes that such contributions create a sufficient inducement to rank-and-file employee participation.

In addition, the committee believes that significant simplification that a design-based safe harbor test achieves may reduce the complexity of the qualified cash or deferred arrangement requirements enough to encourage additional employers to establish such plans, thereby expanding employee access to voluntary retirement savings arrangements. The adoption of a nondiscrimination safe harbor that eliminates the testing of actual plan contributions removes a significant administrative burden that may act as a deterrent to employers who would not otherwise set up such a plan. Thus, the adoption of a simpler nondiscrimination test may encourage more employers, who do not now provide any tax-favored retirement plan for their employees, to set up such plans.

A design-based nondiscrimination test provides certainty to an employer and plan participants that does not exist under present law. Under such a test, an employer will know at the beginning of each plan year whether the plan satisfies the nondiscrimination requirements for the year.

Explanation of Provision

In general

The bill modifies the present-law nondiscrimination test applicable to elective deferrals and employer matching and after-tax employee contributions to provide that the maximum permitted actual deferral percentage for highly compensated employees for the year is determined by reference to the actual deferral percentage for nonhighly compensated employees for the preceding, rather than the current, year. In the case of the first plan year of a qualified cash or de-

ferred arrangement, the actual deferral percentage of nonhighly compensated employees for the previous year is deemed to be 3 percent or, at the election of the employer, the actual deferral percentage for such first plan year.

In addition, the bill adds alternative methods of satisfying the special nondiscrimination requirements applicable to elective deferrals and employer matching contributions. Under these safe harbor rules, a cash or deferred arrangement is treated as satisfying the actual deferral percentage test if the plan of which the arrangement is a part (or any other plan of the employer maintained with respect to the employees eligible to participate in the cash or deferred arrangement) meets (1) one of two contribution requirements and (2) a notice requirement. A plan satisfies the safe harbor with respect to matching contributions if (1) the plan meets the contribution and notice requirements under the safe harbor for cash or deferred arrangements and (2) the plan satisfies a special limitation on matching contributions. These safe harbors permit a plan to satisfy the special nondiscrimination tests through plan design, rather than through the testing of actual contributions.

The bill also modified the method of determining excess contributions under the present-law nondiscrimination test.

Safe harbor for cash or deferred arrangements

Contribution requirements.—A plan satisfies the contribution requirements under the safe harbor rule for qualified cash or deferred arrangements if the plan either (1) satisfies a matching contribution requirement or (2) the employer makes a nonelective contribution to a defined contribution plan of at least 3 percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the arrangement without regard to whether the employee makes elective contributions under the arrangement.

A plan satisfies the matching contribution requirement if, under the arrangement: (1) the employer makes a matching contribution on behalf of each nonhighly compensated employee that is equal to (a) 100 percent of the employee's elective contributions up to 3 percent of compensation and (b) 50 percent of the employee's elective contributions from 3 to 5 percent of compensation; and (2) the level of match for highly compensated employees is not greater than the match rate for nonhighly compensated employees at any level of compensation.

Alternatively, if the matching contribution requirement is not satisfied at some level of employee compensation, the requirement is deemed to be satisfied if (1) the level of employer matching contributions does not increase as employee elective contributions increase and (2) the aggregate amount of matching contributions with respect to elective contributions up to that level of compensation at least equals the amount of matching contributions that would be made if matching contributions satisfied the percentage requirements. For example, the alternative test is satisfied if an employer matches 125 percent of an employee's elective contributions up to the first 3 percent of compensation, 25 percent of elective deferrals from 3 to 4 percent of compensation, and provides no match thereafter. This is because the employer match does not increase and the aggregate amount of matching contributions is at least equal to the matching contributions required under the general safe harbor rule.

Under the safe harbor, an employee's rights to employer matching contributions or nonelective contributions used to meet the contribution requirements are required to be 100-percent vested.

An arrangement does not satisfy the contribution requirements unless the requirements are met without regard to the permitted disparity rules (sec. 401(l)) and contributions used to satisfy the contribution requirements are not taken into account for purposes of determining whether a plan of the employer satisfies the permitted disparity rules.

Employer matching and nonelective contributions used to satisfy the contribution requirements of the safe harbor rules are nonforfeitable and subject to the restrictions on withdrawals that apply to an employee's elective deferrals under a qualified cash or deferred arrangement (sec. 401(k)(2) (B) and (C)).

The matching or nonelective contribution safe harbor requirements are deemed satisfied if the employer maintains another qualified plan that meets such requirements.

Notice requirement.—The notice requirement is satisfied if each employee eligible to participate in the arrangement is given written notice within a reasonable period before any year of the employee's rights and obligations under the arrangement. This notice must be sufficiently accurate and comprehensive to apprise the employee of his or her rights and obligations and must be written in a manner calculated to be understood by the average employee eligible to participate.

Alternative method of satisfying special nondiscrimination test for matching contributions

The bill provides a safe harbor method of satisfying the special nondiscrimination test applicable to employer matching contributions. Under this safe harbor, a plan is treated as meeting the special nondiscrimination test if (1) the plan meets the contribution and notice requirements applicable under the safe harbor method of satisfying the special nondiscrimination requirement for qualified cash or deferred arrangements, and (2) the plan satisfies a special limitation on matching contributions. After-tax employee contributions are tested separately under the ACP test.

The limitation on matching contributions is satisfied if (1) the matching contributions on behalf of any employee may not be made with respect to employee contributions or elective deferrals in excess of 6 percent of compensation and (2) the level of an employer's matching contribution does not increase as an employee's contributions or elective deferrals increase.

Distribution of excess contributions

Under the bill, the total amount of excess contributions is determined in the same manner as under present law, but the distribution of excess contributions is required to be made on the basis of the amount of contribution by, or on behalf of, each highly compensated employee. Thus, under the bill, excess contributions are deemed attributable first to those highly compensated employees who have made the greatest dollar amount of elective deferrals under the plan.

For example, assume that an employer maintains a qualified cash or deferred arrangement under section 401(k). Assume further that the actual deferral percentage (ADP) for the eligible nonhighly compensated employee is 2 percent. In addition, assume the following facts with respect to the eligible highly compensated employees:

Employees	Compensation	Deferral	Deferral (percent)
A	$200,000	$7,000	3.5
B	200,000	7,000	3.5
C	70,000	7,000	10.0
D	70,000	5,250	7.5
E	70,000	2,100	3.0
F	70,000	1,750	2.5

Under these facts, the highly compensated employees' ADP is 5 percent, which fails to satisfy the special nondiscrimination requirements.

Under present law, the highly compensated employees with the highest deferral percentages would have their deferrals reduced until the ADP of the highly compensated employees is 4 percent. Accordingly, C and D would have their deferrals reduced to $4,025 (i.e., a deferral percentage of 5.75 percent). The reduction thus is $2,975 for C and $1,225 for D, for a total reduction of $4,200.

Under the bill, the amount of the total reduction is calculated in the same manner as under present law so that the total reduction remains $4,200. However, this total reduction of $4,200 is allocated to highly compensated employees based on the employees with the largest contributions. Thus, A, B, and C would each be reduced by $1,400 from $7,000 to $5,600. The ADP test would not be performed again.

Effective Date

The provision is effective for plan years beginning after December 31, 1993.

D. MISCELLANEOUS PENSION SIMPLIFICATION

1. Definition of leased employee (sec. 4231 of the bill and sec. 414(n) of the Code)

Present Law

An individual (a leased employee) who performs services for another person (the recipient) may be required to be treated as the recipient's employee for various employee benefit provisions if the services are performed pursuant to an agreement between the recipient and a third person (the leasing organization) who is otherwise treated as the individual's employer (sec. 414(n)). The individual is to be treated as the recipient's employee only if the individual has performed services for the recipient on a substantially full-trade basis for a year, and the services are of a type historically performed by employees in the recipient's business field.

An individual who otherwise would be treated as a recipient's leased employee will not be treated as such an employee if the individual participates in a safe harbor plan maintained by the leasing organization meeting certain requirements. Each leased employee is to be treated as an employee of the recipient, regardless of the existence of a safe-harbor plan, if more than 20 percent of an employer's nonhighly compensated workforce are leased.

Reasons for Change

The committee believes that the leased employee rules are complex and have unexpected and sometimes indefensible results, especially as interpreted under regulations proposed by the Secretary. For example, under the "historically performed" standard, the employees and partners of a law firm may be the leased employees of a client of the firm if they work a sufficient number of hours for the client and if it is not unusual for employers in that business field to have in-house counsel. While arguably meeting the present-law leased employee definition, the committee believes that situations such as this are outside the intended scope of the rules.

Explanation of Provision

Under the provision, the present-law historically performed test is repealed and re-

placed with a new rule defining who must be considered a leased employee. This change is made because the proposed regulations under the leased employee rules (sec. 414(n)) are overly broad in defining who may be a leased employee. Under the provision, the proposed regulations are no longer valid. One of the principal purposes for adopting the significant direction or control test is to relieve the unnecessary hardship and uncertainty created for employers in these circumstances. It is intended that the Secretary interpret and apply the new control test in a manner that is targeted to prevent clear abuses.

Under the provision, an individual is not considered a leased employee unless the individual is under the control of the recipient organization. The determination is based on all the facts and circumstances. Among the factors that are relevant in this determination are whether the recipient organization: (1) prescribes the individual's work methods; (2) supervises the individual; (3) sets the individual's working hours; and (4) sets the individual's level of compensation. Other factors that may be considered include those that are relevant for determining whether the employer is responsible for employment taxes on the compensation paid to the individual. The Secretary may designate other relevant factors. It is not necessary that all these factors indicate that the individual is under the control of the employer in order to find that such individual is a leased employer. Nor is it necessary that the recipient organization be responsible for employment taxes in order to find that the individual is a leased employee because, if the recipient organization is liable for employment taxes, the individual is an employee of the organization who generally must be taken into account. The provision does not alter the definition of a common-law employee, nor the rules that such employees are to be taken into account unless specifically excluded.

The committee does not intend the charges made by this provision to broaden the scope of the leased employee rules. Thus, to the extent an individual is not a leased employee under present law, such employee generally will not be a leased employee under the provision. For example, in those specific situations where the Internal Revenue Service has ruled that service relationships do not involve "leased employees" under the test of present law requiring the services to be of a type historically performed, in the business field of the recipient, by employees, the recipients of those rulings may continue to rely on them.

Effective Date

The provision is effective for years beginning after December 31, 1983. In applying the leased employee rules to years beginning before the effective date, it is intended that the Secretary use a reasonable interpretation of the statute to apply the leasing rules to prevent abuse.

2. Elimination of half-year requirements (sec. 4232 of the bill and secs. 72, 401, 402, 403, 4978, 219 and 408 of the Code)

Present Law

Under present law, a number of employee plan rules refer to the age of an individual at a certain time. For example, distributions under a qualified pension plan are generally required to begin no later than the April 1 following the year in which an individual attains age 70-½ (sec. 401(a)(9)). Similarly, an additional income tax on early withdrawals applies to certain distributions from qualified pension plans and IRAs prior to the time the participant or IRA owner attains age 59-½ (sec. 72(t)).

Reasons for Change

The Committee believes that changing half-year requirements to whole year requirements would make the pension rules easier to administer.

Explanation of Provision

The bill changes the half-year requirements to birthdate requirements. Those rules under present law that refer to age 59-½ are changed to refer to age 59, and those that refer to age 70-½ are changed to refer to age 70.

Effective Date

The provision applies to years beginning after December 31, 1993.

3. Cost-of-living adjustments (sec. 4233 of the bill and secs. 219, 401, 403, 408, and 415(d) of the Code)

Present Law

The rules relating to qualified plans contain a number of dollar limits that are indexed annually for cost-of-living adjustments (e.g., the dollar limit on benefits under a defined benefit plan (sec. 415(b), the limit on elective deferrals under a qualified cash or deferred arrangement (sec. 402(g), and the dollar amounts used in determining highly compensated employees (sec. 414(q)). The Secretary publishes annually a list of the amounts applicable under each provision for the year.

Reasons for Change

Due to the timing of the cost-of-living adjustments, the dollar amounts for each year are not known until after the start of the calendar year.

Explanation of Provision

The bill provides that the cost-of-living adjustment with respect to any calendar year is based on the increase in the applicable index as of the close of the calendar quarter ending September 30 of the preceding calendar year. Thus, adjusted dollar limits will be published before the beginning of the calendar year to which they apply.

In addition, the bill provides that the dollar limits determined after application of the cost-of-living adjustments are generally rounded to the nearest $1,000. Dollar limits relating to elective deferrals and elective contributions to simplified employee pensions (SEPs) are rounded to the nearest $100.

Effective Date

The provision is effective for years beginning after December 31, 1992.

4. Plans covering self-employed individuals (sec. 4234 of the bill and sec. 401(d) of the Code)

Present Law

Prior to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) different rules applied to retirement plans maintained by incorporated employers and unincorporated employers (such as partnerships and sole proprietors). In general, plans maintained by unincorporated employers were subject to special rules in addition to the other qualification requirements of the Code. Most, but not all, of this disparity was eliminated by TEFRA. Under present law, certain special aggregation rules apply to plans maintained by owner-employees that do not apply to other qualified plans (sec. 401(d) (1) and (2)).

Reasons for Change

The remaining special aggregation rules for plans maintained by unincorporated employers are unnecessary and should be eliminated. Applying the same set of rules to all types of plans would make the qualification standards easier to apply and administer.

Explanation of Provision

The bill eliminates the special aggregation rules that apply to plans maintained by self-employed individuals that do not apply to other qualified plans.

Effective Date

The provision is effective for years beginning after December 31, 1992.

5. Full-funding limitation of multiemployer plans (sec. 4235 of the bill and sec. 412 of the Code)

Present Law

Under the Internal Revenue Code, subject to certain limitations, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 150 percent of the plan's current liability, over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the actuarial value of the plan's assets (sec. 412(c)(7)).

Plans subject to the minimum funding rules are required to make an actuarial valuation of the plan not less frequently than annually.

Reasons for Change

The committee believes that it is not necessary to apply the 150-percent of current liability full funding limit to multiemployer plans. The full funding limit is intended to limit employer deductions for liabilities that have not yet accrued. Employers who participate in multiemployer plans do not have the same incentive to make excessive contributions to the plan as is the case with single-employer plans.

Explanation of Provision

The bill amends the Internal Revenue Code to provide that the 150 percent of current liability limitation does not apply to multiemployer plans. In addition, the bill repeals the Internal Revenue Code annual valuation requirement for multiemployer plans and applies the prior-law rule that valuations generally be performed at least every 3 years.

Effective Date

The provision applies to years beginning after December 31, 1991.

6. Alternative full funding limitation (sec. 4236 of the bill and sec. 412 of the Code)

Present Law

Under present law, subject to certain limitations, an employer may make deductible contributions to a defined benefit pension plan up to the full funding limitation. The full funding limitation is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 150 percent of the plan's current liability, over (2) the lesser of (a) the fair market value of the plan's assets, or (b) the actuarial value of the plan's assets (sec. 412(c)(7)).

The Secretary may, under regulations, adjust the 150-percent figure contained in the full funding limitation to take into account the average age (and length of service, if appropriate) of the participants in the plan (weighted by the value of their benefits under the plan). In addition, the Secretary is authorized to prescribe regulations that apply, in lieu of the 150 percent of current liability limitation, a different full funding limitation based on factors other than cur-

rent liability. The Secretary may exercise this authority only in a manner so that in the aggregate, the effect on Federal budget receipts is substantially identical to the effect of the 150-percent full funding limitation.

Reasons for Change

The Secretary has not yet exercised his authority with respect to the full funding limitation. The committee finds it necessary to specify a revenue-neutral way of exercising such authority.

Explanation of Provision

In general

The bill provides that an employer may elect to disregard the 150-percent limitation if each plan in the employer's control group is not top-heavy and the average accrued liability of active participants under the plan for the immediately preceding 5 plan years is at least 80 percent of the plan's total accrued liability (the "alternative full funding limitation"). The Secretary is required to adjust the 150-percent full funding limitation (in the manner specified under the bill) for employers that do not use the alternative full funding limit to ensure that the election by employers to disregard the 150-percent limit does not result in a substantial reduction in Federal revenues for any fiscal year.

Notice requirement

Under the bill, employers electing to apply the alternative limitation generally must notify the Secretary by January 1 of the calendar year preceding the calendar year in which the election period begins. Under a special transition rule, in the case of any election period beginning on or after July 1, 1992, and before January 1, 1994, the notice requirement is deemed satisfied if the Secretary is notified of the election by October 1, 1992. In addition, the Secretary is required, by January 1, 1993, to notify defined benefit plans that have not made an election to apply the alternative limitation of any adjustment to the 150-percent full funding limitation required under the provision.

To the extent a defined benefit plan sponsor makes a contribution to a defined benefit plan with respect to the transition period that exceeds the full-funding limitation, as adjusted by the Secretary for the transition period, the sponsor is required to offset the excess contribution against allowable contributions to the plan in subsequent quarters in the taxable year of the sponsor. If no subsequent contributions may be made for the taxable year, the trustee of the defined benefit plan must return the excess contribution to the sponsor in that taxable year or the subsequent taxable year.

Effective Date

The provision is effective on the date of enactment.

7. Distribution from qualified cash or deferred arrangements maintained by rural cooperatives (sec. 4237 of the bill and sec. 401(k) of the Code)

Present Law

Under present law, a qualified cash or deferred arrangement can permit withdrawals by participants only after the earlier of (1) the participant's separation from service, death, or disability, (2) termination of the arrangement, (3) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½, or (4) in the case of a profit-sharing or stock bonus plan to which section 402(a)(8) applies, upon hardship of the participant (sec. 401(k)(2)(B)). In the case of a rural cooperative qualified cash or deferred arrangement, which is part of a money purchase pension plan, withdrawals by participants cannot occur upon attainment of age 59½ or upon hardship.

Reasons for Change

It is appropriate to permit qualified cash or deferred arrangements of rural cooperatives to permit distributions to plan participants under the same circumstances as other qualified cash or deferred arrangements. Rural cooperatives could achieve the same results by modifying the structure of their plans. There is no justifiable reason to require rural cooperatives to incur the administrative costs of plan conversion when the same result can be achieved without imposing such costs.

Explanation of Provision

The bill provides that a rural cooperative plan that includes a qualified cash or deferred arrangement will not be treated as violating the qualification requirements merely because the plan permits distributions to plan participants after the attainment of age 59½[1]

Effective Date

The provision is effective as if included in the amendments made by section 1011(k)(9) of the Technical and Miscellaneous Revenue Act of 1988.

8. Limits on contribution and benefits under governmental plans (sec. 4238 of the bill and secs. 415 and 457 of the Code)

Present Law

Present law imposes limits on contributions and benefits under qualified plans based on the type of plan (sec. 415). The limits apply to plans maintained by private and public employers. Certain special rules apply to governmental plans.

In the case of a defined contribution plan, the annual additions to the plan with respect to each plan participant are limited to the lesser of (1) 25 percent of compensation, or (2) $30,000. The limit on the annual benefits payable by a defined benefit pension plan is generally the lesser of (1) 100 percent of compensation, or (2) $112,221 for 1992. The dollar limit is increased annually for inflation. The dollar limit is reduced actuarially if payment of benefits is to begin before the social security retirement age, and increased if benefits are to begin after that age.

Under special rules for plans maintained by State or local governments, such plans may provide benefits greater than those permitted by the limits on benefits applicable to plans maintained by private employers.

Reasons for Change

The limits on contributions and benefits create unique problems for plans maintained by public employers.

Explanation of Provision

The bill makes the following modifications to the limits on contributions and benefits as applied to governmental plans: (1) compensation includes employer contributions to certain employee plans under a salary reduction arrangement; (2) the 100 percent of compensation limitation does not apply; and (3) the defined benefit pension plan limitation does not apply to certain disability and survivor benefits. The bill also permits State and local government employers to maintain excess benefit plans (i.e., plans that provide benefits that cannot be provided under a qualified plan due to the limits on contributions and benefits) without regard to the limits on unfunded deferred compensation arrangements of State and local government employers (sec. 457). Benefits provided by such plans are subject to the same tax rules applicable to excess plans maintained by private employers (e.g., sec. 83).

Effective Date

The provision is effective for years beginning after the date of enactment. Governmental plans are treated as if in compliance with the requirements of section 415 for years beginning on or before the date of enactment.

9. Use of 501(c)(21) black lung trust assets to fund retiree health benefits (sec. 4239 of the bill and secs. 501(c)(21), 192(c), and 4951(f) of the Code)

Present Law

A qualified black lung benefit trust described in section 501(c)(21) of the Internal Revenue Code is exempt from federal income taxation. In addition, a deduction is allowed for contributions to a qualified black lung benefit trust to the extent such contributions are necessary to fund the trust.

Under present law, no assets of a qualified black lung benefit trust may be used for, or diverted to, any purpose other than (i) to satisfy liabilities, or pay insurance premiums to cover liabilities, arising under the Black Lung Acts, (ii) to pay administrative costs of operating the trust, or (iii) investment in U.S., State, or local securities and obligations, or in time demand deposits in a bank or insured credit union.

Under present law, excess trust assets may be paid into the national Black Lung Disability Trust Fund, or into the general fund of the U.S. Treasury.

Reasons for Change

Permitting excess assets in black lung trusts to be used to pay retiree accident and health benefits for miners will provide an additional source of funding to pay for promised health care benefits. This use of excess assets is appropriate provided there are safeguards to help ensure that sufficient funds will be available to pay for black lung benefit liabilities.

Explanation of Provision

The bill allows excess assets in qualified black lung benefit trusts to be used to pay accident and health benefits or premiums for insurance for such benefits (including administrative and other incidental expenses relating to such benefits) for retired coal miners and their spouses and dependents. The amount of assets available for such purpose is subject to a yearly limit as well as an aggregate limit. The yearly limit is the amount of assets in excess of 110 percent of the present value of the liability for black lung benefits determined as of the close of the preceding taxable year of the trust. The aggregate limit is the amount of assets in excess of 110 percent of the present value of the liability for black lung benefits determined as of the close of the taxable year of the trust ending prior to the effective date, plus earnings thereon. Each of these determinations is required to be made by an independent actuary.

The amounts used to pay retiree accident or health benefits are not includible in the income of the company, nor is a deduction allowed for such amounts.

Effective Date

The provision is effective for taxable years beginning after December 31, 1991.

[1] Age 59½ is changed to 59 under another provision of the bill, described above.

10. Penalties for failure to provide reports relating to pension payments (sec. 4240 of the bill and secs. 6652(e) and 6724 of the Code)

Present Law

Any person who fails to file an information report with the Internal Revenue Service on or before the prescribed filing date is subject to penalties for each failure. The general penalty structure provides that the amount of the penalty is to vary with the length of time within which the taxpayer corrects the failure, and allows taxpayers to correct a de minimis number of errors and avoid penalties entirely (sec. 6721). A different, flat-amount penalty applies for each failure to provide information reports to the IRS or statements to payees relating to pension payments (sec. 6652(e)).

Reasons for Change

Conforming the information-reporting penalties that apply with respect to pension payments to the general information-reporting penalty structure would simplify the overall penalty structure through uniformity and provide more appropriate information-reporting penalties with respect to pension payments.

Explanation of Provision

The bill incorporates into the general penalty structure the penalties for failure to provide information reports relating to pension payments to the IRS and to recipients. Thus, information reports with respect to pension payments would be treated in a similar fashion to other information reports.

Effective Date

The provision applies to returns and statements the due date for which is after December 31, 1992.

11. Contributions on behalf of disabled employees (sec. 4241 of the bill and sec. 415 of the Code)

Present Law

Under present law, an employer may elect to continue deductible contributions to a defined contribution plan on behalf of an employee who is permanently and totally disabled. For purposes of the limit on annual additions (sec. 415(c)), the compensation of a disabled employee is deemed to be equal to the annualized compensation of the employee prior to the employee's becoming disabled. Contributions are not permitted on behalf of disabled employees who were officers, owners, or highly compensated before they became disabled.

Reasons for Change

The committee believes it is appropriate to facilitate the provision of benefits for disabled employees, if it is done on a nondiscriminatory basis.

Explanation of Provision

The bill provides that the special rule for contributions on behalf of disabled employees is applicable without an employer election and to highly compensated employees if the defined contribution plan provides for the continuation of contributions on behalf of all participants who are permanently and totally disabled.

Effective Date

The provision applies to years beginning after December 31, 1992.

12. Affiliation requirements for employers jointly maintaining a VEBA (sec. 4242 of the bill and sec. 501(c)(9) of the Code)

Present Law

A voluntary employees' beneficiary association (VEBA) that satisfies certain requirements is entitled to tax-exempt status. The Code generally describes a VEBA as an association that provides for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual. The requirements a VEBA must comply with in order to be tax exempt are further specified in regulations.

Under Treasury regulations, membership in a VEBA is required to be limited to individuals whose eligibility is determined by reference to objective standards that constitute an employment-related common bond. Such a common bond exists if eligibility is determined by the following standards: (1) employment by a common employer (or affiliated employers); (2) coverage under one or more collective bargaining agreements; (3) membership in a labor union (or in one or more locals of a national or international labor union); or (4) employment by one or more employers in the same line of business in the same geographic locale.

Reasons for Change

VEBAs offer an effective mechanism for affiliated employers, particularly small employers, to band together for the purpose of providing certain employee benefits at lower cost than would otherwise be possible. The committee believes that the requirement under Treasury regulations that participating employers be in the same geographic locale is an arbitrary restriction on the ability of affiliated employers to maintain VEBAs.

Explanation of Provision

The bill provides that otherwise unrelated employers are treated as affiliated and, therefore, can maintain a tax-exempt VEBA if the employers (1) are in the same line of business, (2) act jointly to perform tasks which are integral to the activities of each of the employers, (3) act jointly to such an extent that the joint maintenance of a VEBA is not a major part of the joint activities, and (4) a substantial number of employers are tax exempt.

Under the bill, employers are considered affiliated, for example, under the following circumstances. The employers participating in the VEBA are in the same line of business and belong to an association that provides to its members a significant amount of each of the following services: (1) research and development relating to the members' primary activity; (2) education and training of members' employees; and (3) public relations. In addition, the employers are sufficiently similar (e.g., subject to similar regulatory requirements) that the association's service provide material assistance to all of the employers. The employers also demonstrate the importance of their joint activities by having meetings at least annually attended by substantially all of the employers. Finally, the employers maintain a common retirement plan.

On the other hand, it is not intended that the mere existence of a trade association is a sufficient basis for the member-employers to be considered affiliated, even if they are in the same line of business. It is also not sufficient if the trade association publishes a newsletter and provides significant public relations services, but only provides nominal amounts, if any, of other services integral to the employers' primary activity.

A group of employers are also not considered affiliated under the bill by virtue of the membership of their employees in a professional association.

Effective Date

The provision applies to years beginning before, on, or after the date of enactment. The provision is intended as a clarification of present law. However, it is not intended to create any inference as to whether any part of the Treasury regulations affecting VEBAs, other than the affiliated employer rule, is or is not present law.

13. Inclusion of union employees for coverage testing (sec. 4243 of the bill and secs. 410(b), 401(a)(4), and 414(r) of the Code)

Present Law

Under present law, employees covered by a collective bargaining agreement are excluded from consideration in testing whether a qualified plan satisfies the minimum coverage and nondiscrimination requirements (sec. 410(b)(3)(A)). Under regulations, such employees are counted for purposes of determining whether a line of business has at least 50 employees, the threshold number for designating a unit as a separate line of business for purposes of applying the coverage and nondiscrimination tests.

Reasons for Change

The present-law rule tests union employees separately in recognition of the collective bargaining process. The committee believes it is appropriate to permit union employees to be aggregated with other employees who are covered by the same plan.

Explanation of Provision

The bill provides that an employer can elect to include union employees who benefit under the plan on the same terms as other employees in testing whether a plan satisfies the minimum coverage and nondiscrimination tests. In addition, the bill clarifies that an employer can elect to include union employees who benefit under the plan on the same terms as other employees in applying the 50-employee test under the line of business rules.

Effective Date

The provision applies to years beginning after December 31, 1992.

14. Uniform retirement age (sec. 4244 of the bill and sec. 401(a)(4) of the Code)

Present Law

A qualified plan generally must provide that payment of benefits under the plan must begin no later than 60 days after the end of the plan year in which the participant reaches age 65. Also, for purposes of the vesting and benefit accrual rules, normal retirement age generally can be no later than age 65. For purposes of applying the limits on contributions and benefits (sec. 415), social security retirement age is generally used as retirement age. The social security retirement age as used for such purposes is presently age 65, but is scheduled to gradually increase.

Reasons for Change

Many plans base benefits on social security retirement age so that the benefits under the plan complement social security. Under present law, plans that do so may fail applicable nondiscrimination tests. The committee believes that the social security retirement age is an appropriate age for use under plans maintained by private employers.

Explanation of Provision

The bill provides that for purposes of the general nondiscrimination rule (sec. 401(a)(4)) the social security retirement age (as defined in sec. 415) is a uniform retirement age and that subsidized early retirement benefits and joint and survivor annu-

ities based on an employee's social security retirement age (as defined in sec. 415) are treated as being available to employees on the same terms.

Effective Date

The provision is effective for years beginning after December 31, 1992.

15. Special rules for plans covering pilots (sec. 4245 of the bill and sec. 410(b) of the Code)

Present Law

Under present law, employees covered by a collective bargaining agreement are excluded from consideration in testing whether a qualified retirement plan satisfies the minimum coverage and nondiscrimination requirements (sec. 410(b)(3)(A)). Similarly, in the case of plan established pursuant to a collective bargaining agreement between airline pilots and one or more employers, all employees not covered by the collective bargaining agreement are disregarded for purposes of testing whether the plan satisfies the minimum coverage and nondiscrimination requirements (sec 410(b)(3)(B)). This provision applies only in the case of a plan that provides contributions or benefits for employees whose principal duties are customarily performed aboard aircraft in flight. Thus, a collective bargained plan covering only airline pilots is tested separately for purposes of the minimum coverage requirements.

Reasons for Change

Present law treats airline pilots covered by a collective bargaining agreement separately for purposes of testing whether a pension plan satisfies the minimum coverage requirements, but requires nonunion airline pilots to be considered with an employer's other employees for coverage purposes. It is understood that pilots are required to retire earlier than other workers under Federal regulations. Thus, it is believed that all pilots must accrue their benefits over a shorter period of time, regardless of whether they are members of a union.

Explanation of Provision

The bill provides that, in the case of a plan established by one or more employers to provide contributions or benefits for air pilots employed by one or more common carriers engaged in interstate or foreign commerce or air pilots employed by carriers transporting mail for or under contract with the United States government, all employees who are not air pilots are excluded from consideration in testing whether the plan satisfies the minimum coverage requirements. In addition, the bill provides that this exception does not apply in the case of a plan that provides contributions or benefits for employees who are not air pilots or for air pilots whose principal duties are not customarily performed aboard aircraft in flight.

Effective Date

The provision is effective for five beginning after December 31, 1992.

16. National Commission on Private Pension Plans (sec. 4246 of the bill)

Reasons for Provision

The committee believes that it is appropriate to review existing Federal incentives and programs that encourage and protect private retirement savings.

Explanation of Provision

The provision establishes a National Commission on Private Pension Plans to study national retirement income policy. The Commission is directed to submit a report to the Congress by Labor Day 1994, the 20th anniversary of the enactment of the Employee Retirement Income Security Act of 1974, setting forth its findings and recommendations for increasing the level and security of private retirement savings.

The provision authorizes appropriations through fiscal year 1994 for such sums as may be necessary to carry out the provision.

17. Church pension plans (sec. 4247 of the bill and secs. 401(a)(9), 401(h), 402(g), 403(b), 404(a), 411, and 414(e) of the Code)

Present Law

Plans maintained by churches and certain church-controlled organizations are exempt from certain of the qualification requirements applicable to pension plans under the Code pursuant to the Employee Retirement Income Security Act of 1974 (ERISA). For example, such plans are not subject to ERISA's vesting, coverage, and funding requirements. Church plans may elect to waive the exemption from the qualification rules.

Reasons for Change

The committee believes that plans maintained by churches and church-controlled organizations are subject to special problems not faced by plans maintained by other types of plans and that it is appropriate to address these problems.

Explanation of Provision

The bill makes a number of changes relating to the qualification requirements as applied to church plans.

The bill provides that church plans that are subject to pre-ERISA vesting rules under present law are subject to ERISA's vesting rules in effect immediately before the enactment of the Tax Reform Act of 1986. Thus, employer-provided benefits under such plans are required to vest at least as rapidly as under a 10-year cliff vesting schedule, or under a schedule that provides ratable vesting between 5 and 15 years of service. Employee contributions must be 100 percent vested at all times.

In the case of a church plan maintained by more than one employer, if one or more organizations maintaining a church plan fails to satisfy the qualification requirements, the plan is not disqualified with respect to the other organizations maintaining the plan that meet such requirements.

The bill modifies the definition of highly compensated employee applicable to church plans by providing that a person is not considered an officer or person whose principal duties consist of supervising the work of other employee if the employee receives less than $50,000 of compensation (indexed). In addition, certain employees covered by a collective bargaining agreement (sec. 410(b)(3)(A)) are excluded.

Tax-sheltered annuity contracts (sec. 403(b)) are permitted under present law to make distributions on account of disability. The bill modifies the definition of disability so that it is the same as that used for purposes of the rule relating to cash or deferred arrangements (sec. 401(k)(2)).

The bill permits self-employed ministers to participate in the denominational church plan. Such ministers are disregarded in applying applicable nondiscrimination rules.

The bill provides that church plans do not have to maintain separate accounts under a section 401(h) account for employees who are key employees merely because they are officers with annual compensation greater than a certain amount. Any benefits provided under the account are required to be taken into account for purposes of the limits on contributions and benefits as under present law.

The bill modifies the elective catch-up provision relating to section 403(b) annuities and retirement income accounts maintained by churches by repealing the limitation on the amount of such catch-up contributions based on years of service (sec. 402(b)(8)(A)(iii)).

The bill modifies the minimum distribution rules (sec. 401(a)(9) to permit church plans to pay a benefit at year-end (the so-called "13th check") based on favorable administrative or investment experience of the plan and to increase benefits by 5 percent annually.

The bill expands the present-law exception to the age 70-½ rule for church plans so that it applies to all church plans as defined in section 414(e).

Effective Date

The vesting provision is to be effective for years beginning after December 31, 1993. The provisions relating to plans maintained by more than one employer, the definition of highly compensated employee, self-employed ministers, and the forms of benefits under the minimum distribution rules are effective for years beginning on, after, or before December 31, 1991. The provision relating to the definition of disability is effective for years beginning after December 31, 1988. The provision relating to section 401(h) accounts is effective for years beginning after March 31, 1984. The provisions relating to catch-up contributions and the age 70-½ rule are effective as if included in the provision of the Tax Reform Act of 1986 to which the provision of the bill relates.

18. Coordinated deferral limit under deferred compensation plans of State and local governments and tax-exempt organizations (sec. 4248 of the bill and sec. 457 of the Code)

Present Law

Under present law, the limit on elective deferrals to a qualified cash-or-deferred arrangement (sec. 401(k)), simplified employee pension (SEP) (sec. 408(k)), or section 501(c)(18) plan is $8,728 (indexed). The limit on contributions to a nonqualified deferred compensation plan of State and local governments and tax-exempt organizations (a sec. 457 plan) generally is $7,500.

In addition, section 457 provides a coordinated contribution limit under which qualified elective deferrals are treated as contributions to a section 457 plan for purposes of the section 457 contribution limit, so that the sum of contributions to all such plans is limited to $7,500 (fixed). Thus, an individual that participates, for example, in both a section 457 plan and a section 401(k) plan may contribute no more than a total of $7,500 to both plans. However, an individual who participates only in a 401(k) plan may contribute up to $8,728 to such plan.

Reasons for Change

An individual who participates in both a section 457 plan and a plan under which qualified elective deferrals are permitted should be permitted to defer an aggregate amount equal to the maximum that could be contributed to any of such plans alone.

Explanation of Provision

The bill provides that an individual who participates in both a section 457 plan and a section 401(k) plan, SEP, or section 501(c)(18) plan may contribute no more than a total of $8,728 (indexed) to both plans. However, contributions to the section 457 plan still cannot exceed $7,500, as under present law.

Effective Date

The provision applies to years beginning after December 31, 1992.

19. Date for adoption of plan amendments (sec. 4249 of the bill)

Present Law

Under regulations, plan amendments to reflect changes in general must be made within the remedial amendment period. Such period generally ends at the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs. The plan must be operated in accordance with the law at all times, and any plan amendment must apply retroactively to the period following the effective date of the change which it reflects.

Reasons for Change

The committee believes that plan sponsors should have adequate time to amend plan documents.

Explanation of Provision

The bill provides that any plan amendments required by the bill are not required to be made before the first plan year beginning on or after January 1, 1995, if (1) the plan is operated in accordance with the applicable provision, (2) the plan is amended to comply with the required changes no later than the first day of the first plan year beginning after December 31, 1994, and (3) the amendment is retroactive to the effective date of the applicable provision.

Effective Date

Date of enactment.

SUBTITLE C. PARTNERSHIP PROVISIONS

A. GENERAL PARTNERSHIP PROVISIONS

1. Simplified flow-through for large partnerships (sec. 4301 of the bill and new secs. 771–777 of the Code)

Present Law

Treatment of partnerships in general

A partnership generally is treated as a conduit for Federal income tax purposes. Each partner takes into account separately his distributive share of the partnership's items of income, gain, loss, deduction or credit. The character of an item is the same as if it had been directly realized or incurred by the partner. Limitations affecting the computation of taxable income generally apply at the partner level.

The taxable income of a partnership is computed in the same manner as that of an individual except that no deduction is permitted for personal exemptions, foreign taxes, charitable contributions, net operating losses, certain itemized deductions, or depletion. Elections affecting the computation of taxable income derived from a partnership are made by the partnership, except for certain elections such as those relating to discharge of indebtedness income and the foreign tax credit.

Capital gains

The net capital gain of an individual is taxed generally at the same rates applicable to ordinary income, subject to a maximum marginal rate of 28 percent. Net capital gain is the excess of net long-term capital gain over net short-term capital loss. Individuals with a net capital loss generally may deduct up to $3,000 of the loss each year against ordinary income. Net capital losses in excess of the $3,000 limit may be carried forward indefinitely.

A special rule applies to gains and losses on the sale, exchange or involuntary conversion of certain trade or business assets (sec. 1231). In general, net gains from such assets are treated as long-term capital gains but net losses are treated as ordinary losses.

A partner's share of a partnership's net short-term capital gain or loss and net long-term capital gain or loss from portfolio investments is separately reported to the partner. A partner's share of a partnership's net gain or loss under section 1231 generally is also separately reported.

Deductions

Miscellaneous itemized deductions (e.g., certain investment expenses) are deductible only to the extent that, in the aggregate, they exceed two percent of the individual's adjusted gross income.

In general, taxpayers are allowed a deduction for charitable contributions, subject to certain limitations. The deduction allowed an individual generally cannot exceed 50 percent of the individual's adjusted gross income for the taxable year. The deduction allowed a corporation generally cannot exceed 10 percent of the corporation's taxable income. Excess contributions are carried forward for five years.

A partner's distributive share of a partnership's miscellaneous itemized deductions and charitable contributions are separately reported to the partner.

Credits in general

Each partner is allowed his distributive share of credits against his taxable income. A refundable credit for gasoline used for exempt purposes is allowed. Nonrefundable credits for clinical testing expenses for certain drugs for rare diseases, for producing fuel from nonconventional sources, and for the general business credit are also allowed. The general business credit includes the investment credit (which in turn includes the rehabilitation credit), the targeted jobs credit, the alcohol fuels credit, the research credit, and the low-income housing credit.

The credits for clinical testing expenses and for the production of fuel from nonconventional sources are limited to the excess of regular tax over tentative minimum tax. Excess credits generally cannot be carried to another taxable year. The amount of general business credit allowable in a taxable year is limited to the excess of a partner's net income over the greater of (1) the tentative minimum tax for the year or (2) 25 percent of the taxpayer's net regular tax liability in excess of $25,000. The general business credit in excess of this amount is carried back three years and forward 15 years.

The benefit of the investment credit and the low-income housing credit is recaptured if, within a specified time period, the partner transfers his partnership interest or the partnership converts or transfers the property for which the credit was allowed.

Foreign taxes

The foreign tax credit generally allows U.S. taxpayers to reduce U.S. income tax on foreign income by the amount of foreign income taxes paid or accrued with respect to that income. In lieu of electing the foreign tax credit, a taxpayer may deduct foreign taxes. The total amount of the credit may not exceed the same proportion of the taxpayer's U.S. tax which the taxpayer's foreign source taxable income bears to the taxpayer's worldwide taxable income for the taxable year.

Unrelated business taxable income

Tax-exempt organizations are subject to tax on income from unrelated businesses. Certain types of income (such as dividends, interest and certain rental income) are not treated as unrelated business taxable income. Thus, for a partner that is an exempt organization, whether partnership income is unrelated business taxable income depends on the character of the underlying income. Income from a publicly traded partnership, however, is treated as unrelated business taxable income regardless of the character of the underlying income.

Special rules related to oil and gas activities

Taxpayers involved in the search for and extraction of crude oil and natural gas are subject to certain special tax rules. As a result, in the case of partnerships engaged in such activities, certain specific information is separately reported to partners.

A taxpayer who owns an economic interest in a producing deposit of natural resources (including crude oil and natural gas) is permitted to claim a deduction for depletion of the deposit as the minerals are extracted. In the case of oil and gas produced in the United States, a taxpayer generally is permitted to claim the greater of a deduction for cost depletion or percentage depletion. Cost depletion is computed by multiplying a taxpayer's adjusted basis in the depletable property by a fraction, the numerator of which is the amount of current year production from the property and the denominator of which is the property's estimated reserves as of the beginning of that year. Percentage depletion is equal to a specified percentage (generally 15 percent in the case of oil and gas) of gross income from production. Cost depletion is limited to the taxpayer's basis in the depletable property; percentage depletion is not so limited. Once a taxpayer has exhausted its basis in the depletable property, it may continue to claim percentage depletion deductions (generally referred to as "excess percentage depletion").

Certain limitations apply to the deduction for oil and gas percentage depletion. First, percentage depletion is not available to oil and gas producers who also engage (directly or indirectly) in significant levels of oil and gas retailing or refining activities (so-called "integrated oil and gas companies"). Second, the deduction for percentage depletion may be claimed by a taxpayer only with respect to up to 1,000 barrels-per-day of production. Third, the percentage depletion deduction may not exceed 100 percent of the taxpayer's net income for the taxable year from the depletable oil and gas property. Fourth, a percentage depletion deduction may not be claimed to the extent that it exceeds 65 percent of the taxpayer's pre-percentage depletion taxable income.

In the case of a partnership that owns depletable oil and gas properties, the depletion allowance is computed separately by the partners and not by the partnership. In computing a partner's basis in his partnership interest, basis is increased by the partner's share of any partnership-related excess percentage depletion deductions and is decreased (but not below zero) by the partner's total amount of depletion deductions attributable to partnership property.

Intangible drilling and development costs (IDCs) incurred with respect to domestic oil and gas wells generally may be deducted at the election of the taxpayer. In the case of integrated oil companies, no more than 70 percent of IDCs incurred during a taxable year may be deducted. IDCs not deducted are capitalized and generally are either added to the property's basis and recovered through depletion deductions or amortized on a straight-line basis over a 60-month period.

The special treatment granted oil and gas activities through the percentage depletion rules and the election to deduct IDCs may give rise to items of tax preference or (in the case of corporate taxpayers) an adjusted cur-

rent earnings ("ACE") adjustment of the alternative minimum tax.[1] With respect to percentage depletion, any excess percentage depletion constitutes an amount of tax preference.

For IDCs, the tax preference item is based on a concept of "excess IDCs." In general, excess IDCs are the excess of IDCs deducted for the taxable year over the amount of those IDCs that would have been deducted had they been capitalized and amortized on a straight-line basis over 120 months commencing with the month production begins from the related well. The amount of tax preference is then computed as the difference between the excess IDC amount and 65 percent of the taxpayer's net income from oil and gas (computed without a deduction for excess IDCs).

Taxpayers other than integrated oil companies that incur oil and gas related amounts of tax preference and ACE adjustments are permitted an energy deduction in computing alternative minimum taxable income. The energy deduction generally is comprised of various specified percentages of IDC preference (and associated ACE adjustment) related to exploratory and development drilling and to a specified portion of percentage depletion preference (and associated ACE adjustment) related to marginally-producing depletable properties. The energy deduction may not offset more than 40 percent of pre-energy deduction alternative minimum taxable income.

Passive losses

The passive loss rules generally disallow deductions and credits from passive activities to the extent they exceed income from passive activities. Losses not allowed in a taxable year are suspended and treated as current deductions from passive activities in the next taxable year. These losses are allowed in full when a taxpayer disposes of the entire interest in the passive activity to an unrelated person in a taxable transaction. Passive activities include trade or business activities in which the taxpayer does not materially participate. (Limited partners generally do not materially participate in the activities of a partnership.) Passive activities also include rental activities (regardless of the taxpayer's material participation).[2] Portfolio income (such as interest and dividends), and expenses allocable to such income, are not treated as income or loss from a passive activity.

A partnership's operations may be treated as multiple activities for purposes of the passive loss rules. In such case, the partnership must separately report items of income and deductions from each of its activities.

Income from a publicly traded partnership is treated as portfolio income under the passive loss rules. In addition, loss from such a partnership is treated as separate from income and loss from any other publicly traded partnership, and also as separate from any income or loss from passive activities.

REMICs

A tax is imposed on partnerships holding a residual interest in a real estate mortgage investment conduit (REMIC). The amount of the tax is the amount of excess inclusions allocable to partnership interests owned by certain tax-exempt organizations ("disqualified organizations") multiplied by the highest corporate tax rate.

Contribution of property to a partnership

In general, a partner recognizes no gain or loss upon the contribution of property to a partnership. However, income, gain, loss and deduction with respect to property contributed to a partnership by a partner must be allocated among the partners so as to take into account the difference between the basis of the property to the partnership and its fair market value at the time of contribution. In addition, the contributing partner must recognize gain or loss equal to such difference if the property is distributed to another partner within five years of its contribution (sec. 704(c)). Under regulations, the amount of depreciation and gain or loss that is allocated under these rules is limited to the depreciation allowable to, or gain or loss recognized by, the partnership for tax purposes with respect to the contributed property (the "ceiling rule").

Election of optional basis adjustments

In general, the transfer of a partnership interest or a distribution of partnership property does not affect the basis of partnership assets. A partnership, however, may elect to make certain adjustments in the basis of partnership property (sec. 754). Under a section 754 election, the transfer of a partnership interest generally results in an adjustment in the partnership's basis in its property for the benefit of the transferee partner only, to reflect the difference between that partner's basis for his interest and his proportionate share of the adjusted basis of partnership property (sec. 743(b)). Also under the election, a distribution of property to a partner in certain cases results in an adjustment in the basis of other partnership property (sec. 734(b)).

Terminations

A partnership terminates if either (1) all partners cease carrying on the business, financial operation or venture of the partnership, or (2) within a 12-month period 50 percent or more of the total partnership interests are sold or exchanged (sec. 708).

Reasons for Change

The requirement that each partner take into account separately his distributive share of a partnership's items of income, gain, loss, deduction and credit can result in the reporting of a large number of items to each partner. The Schedule K–1, on which such items are reported, contains space for more than 40 items. Reporting so many separately stated items is burdensome for individual investors with relatively small, passive interests in large partnerships. In many respects such investments are indistinguishable from those made in corporate stock or mutual funds, which do not require reporting of numerous separate items.

In addition, the number of items reported under the current regime makes it difficult for the Internal Revenue Service to match items reported on the K–1 against the partner's income tax return. Matching is also difficult because items on the K–1 are often modified or limited at the partner level before appearing on the partner's tax return.

By significantly reducing the number of items that must be separately reported to partners, the provision eases the reporting burden of partners and facilities matching by the IRS. Moreover, the committee understands that the Internal Revenue Service is considering restricting the use of substitute reporting forms by large partnerships. Reduction of the number of items makes possible a short standardized form.

In addition, the rules governing allocations with respect to property contributed to a partnership and the rules regarding partnership terminations are ill-suited to large partnerships, whose interests are commonly transferred. By adopting a deferred sale approach for property contributions and by reducing the possibility of partnership terminations, the provision improves the administration of the tax rules governing large partnerships.

Explanation of Provisions

In general

The bill modifies the tax treatment of a large partnership (generally, a partnership with at least 250 partners, or an electing partnership with at least 100 partners) and its partners. The bill provides that each partner take into account separately the partner's distributive share of the following items, which are determined at the partnership level: (1) taxable income or loss from passive loss limitation activities; (2) taxable income or loss from other activities (e.g., portfolio income or loss); (3) net capital gain or loss to the extent allocable to passive loss limitation activities and other activities; (4) tax-exempt interest; (5) net alternative minimum tax adjustment separately computed for passive loss limitation activities and other activities; (6) general credits; (7) low-income housing credit; (8) rehabilitation credit; (9) credit for producing fuel from a nonconventional source; and (10) creditable foreign taxes and foreign source items.[3]

Under the bill, the taxable income of a large partnership is computed in the same manner as that of an individual, except that the items described above are separately stated and certain modifications are made. These modifications include disallowing the deduction for personal exemptions, the net operating loss deduction and certain itemized deductions.[4] All limitations and other provisions affecting the computation of taxable income or any credit (except for the at risk, passive loss and section 68 itemized deduction limitations, and any other provision specified in regulations) are applied at the partnership (and not the partner) level. Thus, for example, any investment interest of the partnership is limited at the partnership level, and any carryover is made at that level.

All elections affecting the computation of taxable income or any credit generally are made by the partnership.

[1] Section 1915 of H.R. 776, as passed by the House of Representatives, and section 2015 of the Senate amendment to H.R. 776, would substantially modify the alternative minimum tax as it applies to oil and gas operations.

[2] An individual who actively participates in a rental real estate activity and holds at least a 10 percent interest may deduct up to $25,000 of passive losses. The $25,000 amount phases out as the individual's income increases from $100,000 to $150,000.

The $25,000 allowance also applies to low-income housing and rehabilitation credits (on a deduction equivalent basis), regardless of whether the taxpayer claiming the credit actively participates in the rental real estate activity generating the credit. In addition, the income phaseout range for the $25,000 allowance for rehabilitation credits is $200,000 to $250,000 (rather than $100,000 to $150,000). For interests acquired after December 31, 1989 in partnerships holding property placed in service after that date, the $25,000 deduction-equivalent allowance is permitted for the low-income housing credit without regard to the taxpayer's income.

[3] In determining the amounts required to be separately taken into account by a partner, those provisions of the large partnership rules governing computations of taxable income are applied separately with respect to that partner by taking into account that partner's distributive share of the partnership's items of income, gain, loss, deduction or credit. This rule permits partnerships to make otherwise valid special allocations of partnership items to partners.

[4] A large partnership is allowed a deduction under section 212 for expenses incurred for the production of income, subject to 70-percent disallowance, as described below. No income from a large partnership is treated as fishing or farming income.

Capital gains

Under the bill, netting of capital gains and losses occurs at the partnership level. A partner in a large partnership takes into account separately his distributive share of the partnership's net capital gain or net capital loss.[5] Such net capital gain or loss is treated as long-term capital gain or loss.

A partner's distributive share of the partnership's net capital gain is allocated between passive loss limitation activities and other activities. The net capital gain is allocated to passive loss limitation activities to the extent of net capital gain from sales and exchanges of property used in connection with such activities, and any excess is allocated to other activities. A similar rule applies for purposes of allocating any net capital loss.

Any gains and losses of the partnership under section 1231 are netted at the partnership level. Net gain is treated as long-term capital gain and is subject to the rules described above. Net loss is treated as ordinary loss and consolidated with the partnership's other taxable income.

Deductions

The bill contains two special rules for deductions. First, miscellaneous itemized deductions are not separately reported to partners. Instead, 70 percent of the amount of such deductions is disallowed at the partnership level;[6] the remaining 30 percent is allowed at the partnership level in determining taxable income, and is not subject to the two-percent floor at the partner level.

Second, charitable contributions are not separately reported to partners under the bill. Instead, the charitable contribution deduction is allowed at the partnership level in determining taxable income, subject to the limitations that apply to corporate donors.

Credits in general

Under the bill, general credits are separately reported to partners as a single item. General credits are any credits other than the low-income housing credit, the rehabilitation credit and the credit for producing fuel from a nonconventional source. A partner's distributive share of general credits is taken into account as a current year general business credit. Thus, for example, the credit for clinical testing expenses is subject to the present law limitations on the general business credit. The refundable credit for gasoline used for exempt purposes and the refund or credit for undistributed capital gains of a regulated investment company are allowed to the partnership, and thus are not separately reported to partners.

In recognition of their special treatment under the passive loss rules, the low-income housing and rehabilitation credits are separately reported.[7] In addition, the credit for producing fuel from a nonconventional source is separately reported.

The bill imposes credit recapture at the partnership level and determines the amount of recapture by assuming that the credit fully reduced taxes. Such recapture is applied first to reduce the partnership's current year credit, if any; the partnership is liable for any excess over that amount. Under the bill, the transfer of an interest in a large partnership does not trigger recapture.

Foreign taxes

The bill retains present-law treatment of foreign taxes. The partnership reports to the partner creditable foreign taxes and the source of any income, gain, loss or deduction taken into account by the partnership. Elections, computations and limitations are made by the partner.

Tax-exempt interest

The bill retains present-law treatment of tax-exempt interest. Interest on a State or local bond is separately reported to each partner.

Unrelated business taxable income

The bill retains present-law treatment of unrelated business taxable income. Thus, a tax-exempt partner's distributive share of partnership items is taken into account separately to the extent necessary to comply with the rules governing such income.

Passive losses

Under the bill, a partner in a large partnership takes into account separately his distributive share of the partnership's taxable income or loss from passive loss limitation activities. The term "passive loss limitation activity" means any activity involving the conduct of a trade or business (including any activity treated as a trade or business under sec. 469(c)(5) or (6)) and any rental activity. A partner's share of a large partnership's taxable income or loss from passive loss limitation activities is treated as an item of income or loss from the conduct of a trade or business which is a single passive activity, as defined in the passive loss rules. Thus, a large partnership generally is not required to separately report items from multiple activities.

A partner in a large partnership also takes into account separately his distributive share of the partnership's taxable income or loss from activities other than passive loss limitation activities. Such distributive share is treated as an item of income or expense with respect to property held for investment. Thus, portfolio income (e.g., interest and dividends) is reported separately and is reduced by portfolio deductions and allocable investment interest expense.

In the case of a partner holding an interest in a large partnership which is not a limited partnership interest, such partner's distributive share of any items are taken into account separately to the extent necessary to comply with the passive loss rules. Thus, for example, income of a large partnership is not treated as passive income with respect to the general partnership interest of a partner who materially participates in the partnership's trade or business.

Under the bill, income from a publicly traded partnership continues to be treated as portfolio income.

Alternative minimum tax

Under the bill, alternative minimum tax ("AMT") adjustments and preferences are combined at the partnership level. A large partnership would report to partners a net AMT adjustment separately computed for passive loss limitation activities and other activities. In determining a partner's alternative minimum taxable income, a partner's distributive share of any net AMT adjustment is taken into account instead of making separate AMT adjustments with respect to partnership items. The net AMT adjustment is determined by using the adjustments applicable to individuals (in the case of partners other than corporations), and by using the adjustments applicable to corporations (in the case of corporate partners). Except as provided in regulations, the net AMT adjustment is treated as a deferral preference for purposes of the section 53 minimum tax credit.

Discharge of indebtedness income

If a large partnership has income from the discharge of any indebtedness, such income is separately reported to each partner. In addition, the rules governing such income (sec. 108) are applied without regard to the large partnership rules. Thus, for example, the large partnership provisions do not affect section 108(d)(6), which provides that certain section 108 rules apply at the partner level, or section 108(b)(5), which provides for an election to reduce the basis of depreciable property.

REMICs

For purposes of the tax on partnerships holding residual interests in REMICs, all interests in a large partnership are treated as held by disqualified organizations. Thus, a large partnership holding a residual interest in a REMIC is subject to a tax equal to the excess inclusions multiplied by the highest corporate rate. The amount subject to tax is excluded from partnership income.

Deferred sale treatment for contributed property

In general

For all partners contributing property to a large partnership (including partners who are disqualified persons, as described below), the bill replaces section 704(c) with a "deferred sale" approach.[8] Under the bill, a large partnership is treated as if it had purchased the property from the contributing partner for its then fair market value, thus taking a fair market value basis in the property. The contributing partner's gain or loss on the contribution (the "precontribution gain or loss")[9] is deferred until the occurrence of specified recognition events. In general, the character of the precontribution gain or loss is the same as if the property had been sold to the partnership by the partner at the time of contribution. The contributing partner's basis in his partnership interest is adjusted for precontribution amounts recognized under the provision. These adjustments generally are made immediately before the recognition event.

Recognition events

Certain events occurring at either the partnership or partner level cause recognition of precontribution gain or loss. Loss is not recognized, however, by reason of a disposition to a person related (within the meaning of sec. 267(b) or sec. 707(b)(1)) to the contributing partner.

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[5] The term "net capital gain" has the same meaning as in section 1222(11). The term "net capital loss" means the excess of the losses from sales or exchanges of capital assets over the gains from sales or exchanges of capital assets. Thus, the partnership cannot offset any portion of capital losses against ordinary income.

Any excess of net short-term capital gain over net long-term capital loss is consolidated with the partnership's other taxable income and is not separately reported.

[6] The "70 percent" figure is intended to approximate the amount of such deductions that would be denied at the partner level as a result of the two-percent floor.

[7] The committee understands that the rehabilitation and low-income housing credits which are subject to the same passive loss rules (i.e., in the case of the low-income housing credit, where the partnership interest was acquired or the property was placed in service before 1990) could be reported together on the same line.

[8] In addition, new section 737 of the Code does not apply if the deferred sale rules apply.

[9] Precontribution gain is the excess of the fair market value of the contributed property at the time of contribution over the adjusted basis of such property immediately before such contribution. Precontribution loss is the excess of the adjusted basis of such property over its fair market value.

Transactions at partnership level.—The contributing partner recognizes precontribution gain or loss as the partnership claims an amortization, depreciation, or depletion deduction with respect to the property. The amount of gain (or loss) recognized equals the increase (or decrease) in the deduction attributable to changes in basis of the property occurring by reason of its contribution. Any gain or loss so recognized is treated as ordinary.

The contributing partner also generally recognizes precontribution gain or loss if the partnership disposes of the contributed property to a person other than the contributing partner. If such property is distributed to the contributing partner, its basis in the hands of the contributing partner equals its basis immediately before the contribution, adjusted for any gain or loss previously recognized on account of the deferred sales. No adjustment is made to the basis of undistributed partnership property on account of a distribution to the contributing partner.[10]

A contributing partner's deferred gain or loss *is not recognized if the partnership* disposes of the property in certain nonrecognition transactions: a like-kind exchange (sec. 1031); an involuntary conversion (sec. 1033); *or a contribution to a partnership* (sec. 721), provided the contributing partnership owns more than 50 percent of the recipient partnership.

Transactions at partner level.—A contributing partner recognizes precontribution gain or loss to the extent that he disposes of his partnership interest other than at death.[11] Such partner also recognizes precontribution gain or loss to the extent that the cash and fair market value of property (other than the contributed property)[12] distributed to him exceeds the adjusted basis of his partnership interest immediately before the distribution (determined without regard to any basis adjustment under the deemed sale rules resulting from the distribution).

The committee intends that the Secretary of the Treasury have regulatory authority to apply the deferred sale rules in the case of so-called "reverse 704(c)" situations, i.e., in cases where a partnership revalues its assets.[13]

Election of optional basis adjustments

Under the bill, a large partnership may still elect to adjust the basis of partnership assets with respect to transferee partners. The computation of a large partnership's taxable income is made without regard to the section 743(b) adjustment. As under present law, the section 743(b) adjustment is made only with respect to the transferee partner. In addition, a large partnership is permitted to adjust the basis of partnership property under section 734(b) if property is distributed to a partner, as under present law.

Terminations

The bill provides that a large partnership does not terminate for tax purposes solely because 50 percent of its interests are sold or exchanged within a 12-month period.

[10] Amounts recognized by reason of these recognition events are taken into account in the partner's taxable year in which or with which ends the partnership taxable year of the deduction or disposition.

[11] The committee intends that a deceased partner's successor in interest would not recognize any *remaining precontribution gain or loss.*

[12] If the contributed property consists of an interest in an entity, however, such interest will not be excluded from the computation to the extent that its value is attributable to property contributed to the entity after such interest was contributed to the partnership.

[13] *See* Treas. Reg. sec. 1.704-1(b)(2)(iv)(f).

Partnerships and partners subject to large partnership rules

Definition of large partnership

A "large partnership" is any partnership with at last 250 partners in a taxable year ending on or after December 31, 1993.[14] Any partnership treated as a large partnership for a taxable year is so treated for all succeeding years, even if the number of partners falls below 250. Regulations may provide, however, that if the number of partners in any taxable year falls below 100, the partnership is not treated as a large partnership. Partnerships with at least 100 partners can elect to be treated as if they had 250 partners. The election applies to the year for which made and all subsequent years and cannot be revoked without the Secretary's consent.

Special rules for certain service partnerships

A large partnership does not include any partnership if substantially all the partners are: (1) individuals performing substantial services *in* connection with the partnership's activities, or personal service corporations the owner-employees of which perform such services; (2) retired partners who had performed such services; or (3) spouses of partners who had performed such services. In addition, the term "partner" does not include any individual performing substantial services *in* connection with the partnership's activities and holding a partnership interest, or an individual who formerly performed such services and who held a partnership interest at the time the individual performed such services.

Exclusion for commodity partnerships

The large partnership rules do not apply to any partnership the principal activity of which is the buying and selling of commodities (not described in section 1221(1)), or options, futures or forwards with respect to commodities.

Special rules for partnerships holding oil and gas properties

Election to use simplified reporting

In general, a large partnership that otherwise meets the qualifications for simplified reporting is not required to report information to its partners under the rules of that regime if it is substantially engaged in oil and gas related activities. Rather, such a partnership continues to report information to its partners as under present law. The bill permits such a partnership, however, to elect to utilize the simplified reporting regime, as modified for oil and gas purposes. If an election is made for any taxable year, it will also apply for all subsequent taxable years unless revoked with the consent of the Secretary.

A partnership is considered to be substantially engaged *in oil and gas activities if at* least 25 percent of the average value of its assets during the taxable year consists of oil or gas properties.[15] In making this determination, *a partnership is treated as owning* its proportionate share of assets of any partnership in which it holds an interest.

[14] The number of partners is determined by counting only persons directly holding partnership interests in the taxable year, including persons holding through nominees; persons holding indirectly (e.g., *through another partnership) are counted. It is not* necessary for a partnership to have 250 or more partners at any one time in a taxable year for the partnership to constitute a large partnership.

[15] For this purpose, "oil or gas properties" means the mineral interests in oil or gas which are of a character with respect to which a deduction for depletion is allowable under section 611.

Simplified reporting treatment of large partnerships with oil and gas activities

The bill provides special rules for large partnerships with oil and gas activities that *operate under the simplified reporting* regime (i.e., either (1) large partnerships that are substantially engaged in oil and gas activities and which elect to use the regime, or (2) large partnerships that are not substantially engaged in oil and gas operations, but do have some oil and gas activities). These partnerships are collectively referred to *herein as "oil and gas large partnerships."* Generally, the bill provides that an oil and gas large partnership reports information to its partners under the general simplified large *partnership reporting regime described* above. To prevent the extension of percentage depletion deductions to persons excluded therefrom under present law, however, certain partners are treated as *disqualified* persons under the bill.

The treatment of a disqualified person's distributive share of any item of income, gain, loss, deduction, or credit attributable to any partnership oil or gas property is determined under the bill without regard to the special rules applicable to large partnerships. Thus, an oil and gas large partnership reports information related to oil and gas activities to a partner who is a disqualified person in the same manner and to the same extent that it reports such information to that partnership under present law. The simplified reporting rules of the bill, however, apply with respect to reporting such a partner's share of items related to non-oil and gas activities.

The bill defines two categories of taxpayers as disqualified persons. The first category encompasses taxpayers who do not qualify for the deduction for percentage depletion under section 613A (i.e., integrated oil and gas companies). The second category includes any person whose average daily production of oil and gas (for purposes of determining the depletable oil and natural gas quantity under section 613A(c)(2)) is at least 500 barrels for its taxable year in which (or with which) the partnership's taxable year ends. In making this computation, all production of domestic crude oil and natural gas attributable to the partner is taken into account, including such partner's proportionate share of any production of the large partnership.

A taxpayer that falls within a category of disqualified person has the responsibility of notifying any large partnership in which it holds a direct or indirect interest (e.g., through a pass-through entity) of its status as such. Thus, for example, if an integrated oil company owns an interest in a partnership which in turn owns an interest in an oil and gas large partnership, the company is responsible for providing the management of the large partnership information regarding its status as a disqualified person and details regarding its indirect interest in the large partnership.

Under the bill, an oil and gas large partnership computes its deduction for oil and gas depletion under the general statutory rules (*subject to certain exceptions described* below) under the assumptions that the partnership is the taxpayer and that it qualifies for the percentage depletion deduction. The amount of the depletion deduction, as well as other oil and gas related items, generally are reported to each partner (other than to partners who are disqualified persons) as components of that partner's distributive share of taxable income or loss from passive loss limitation activities.

The bill provides that in computing the partnership's oil and gas percentage depletion deduction, the 1,000-barrel-per-day limitation does not apply. In addition, an oil and gas large partnership is allowed to compute percentage depletion under the bill without applying the 65-percent-of-taxable-income limitation under section 613A(d)(1).

As under present law, an election to deduct IDCs under section 263(c) is made at the partnership level. Since the bill treats those taxpayers required by the Code (sec. 291) to capitalize 30 percent of IDCs as disqualified persons, an oil and gas large partnership may pass through a full deduction of IDCs to its partners who are not disqualified persons. In contrast to present law, an oil and gas large partnership also has the responsibility with respect to its partners who are not disqualified persons for making an election under section 59(e) to capitalize and amortize certain specified IDCs. Partners who are disqualified persons are permitted to make their own separate section 59(e) elections under the bill.

Consistent with the general reporting regime for large partnerships, the bill provides that a single AMT adjustment (under either corporate or non-corporate principles, as the case may be) is made and reported to the partners (other than disqualified persons) of an oil and gas large partnership as a separate item. This separately-reported item is affected by a number of oil-and-gas factors: the tax preference for excess percentage depletion, the tax preference for excess IDCs, the adjusted current earnings adjustment, and the energy deduction.

Since an oil and gas large partnership computes a deduction for percentage depletion under the bill, it also is required to compute the amount of tax preference for excess percentage depletion. The preference item for excess IDCs also is computed by an oil and gas large partnership. In this case, the partnership compares the amount of excess IDCs it incurs with 65 percent of its net income from oil and gas. To the extent that the excess IDC amount exceeds the partnership's 65-percent-net-income-from-oil-and-gas amount, there is an amount of tax preference for excess IDCs which is factored into the amount reported as AMT adjustments to the partners.

Under the bill, the AMT energy deduction is computed by an oil and gas large partnership. The current-law special energy deduction is limited so that it may not reduce the taxpayer's pre-energy deduction alternative minimum taxable income by more than 40 percent. Under the bill, an oil and gas large partnership is treated as the taxpayer for this purpose. Thus, the limitation on the energy deduction is applied at the partnership level using the same 40-percent threshold.

The bill provides that in making partnership-level computations, any item of income, gain, loss, deduction, or credit attributable to a partner who is a disqualified person is disregarded. For example, in computing the partnership's net income from oil and gas for purposes of determining the IDC preference to be reported to partners who are not disqualified persons as part of the AMT adjustment, disqualified persons' distributive shares of the partnership's net income from oil and gas are not to be taken into account.

Regulatory authority

The Secretary of the Treasury is granted authority to prescribe such regulations as may be appropriate to carry out the purposes of the provisions.

Effective Date

The provisions generally apply to partnership taxable years ending on or after December 31, 1993. The deferred sale provision applies to any contribution of property (other than cash) made on or after the date of enactment to a large partnership. The committee intends that no inference be drawn as to the proper treatment of contributions of appreciated or depreciated property to a partnership made prior to the effective date.

2. Simplified audit procedures for large partnerships (sec. 6302 of the bill and secs. 6240, 6241, 6242, 6245, 6246, 6247, 6249, 6251, 6252, 6255, and 6256 of the Code)

Present Law

In general

Prior to 1982, regardless of the size of a partnership, adjustments to a partnership's items of income, gain, loss, deduction, or credit had to be made in separate proceedings with respect to each partner individually. Because a large partnership sometimes had many partners located in different audit districts, adjustments to items of income, gains, losses, deductions, or credits of the partnership had to be made in numerous actions in several jurisdictions, sometimes with conflicting outcomes.

The Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") established unified audit rules applicable to all but certain small (10 or fewer partners) partnerships. These rules require the tax treatment of all "partnership items" to be determined at the partnership, rather than the partner, level. Partnership items are those items that are more appropriately determined at the partnership level than at the partner level, as provided by regulations.

Administrative proceedings

Under the TEFRA rules, a partner must report all partnership items consistently with the partnership return or must notify the IRS of any inconsistency. If a partner fails to report any partnership item consistently with the partnership return, the IRS may make a computational adjustment and immediately assess any additional tax that results.

The IRS may challenge the reporting position of a partnership by conducting a single administrative proceeding to resolve the issue with respect to all partners. But the IRS must still assess any resulting deficiency against each of the taxpayers who were partners in the year in which the understatement of tax liability arose.

Any partner of a partnership can request an administrative adjustment or a refund for his own separate tax liability. Any partner also has the right to participate in partnership-level administrative proceedings. A settlement agreement with respect to partnership items binds all parties to the settlement.

Tax Matters Partner

The TEFRA rules establish the "Tax Matters Partner" as the primary representative of a partnership in dealings with the IRS. The Tax Matters Partner is a general partner designated by the partnership or, in the absence of designation, the general partner with the largest profits interest at the close of the taxable year. If no Tax Matters Partner is designated, and it is impractical to apply the largest profits interest rule, the IRS may select any partner as the Tax Matters Partner.

Notice requirements

The IRS generally is required to give notice of the beginning of partnership-level administrative proceedings and any resulting administrative adjustment to all partners whose names and addresses are furnished to the IRS. For partnerships with more than 100 partners, however, the IRS generally is not required to give notice to any partner whose profits interest is less than one percent.

Adjudication of disputes concerning partnership items

After the IRS makes an administrative adjustment, the Tax Matters Partner (and, in limited circumstances, certain other partners) may file a petition for readjustment of partnership items in the Tax Court, the district court in which the partnership's principal place of business is located, or the Claims Court.

Statute of limitations

The IRS generally cannot adjust a partnership item for a partnership taxable year if more than 3 years have elapsed since the later of the filing of the partnership return or the last day for the filing of the partnership return.

Reasons for Change

Present audit procedures for large partnerships are inefficient and more complex than those for other large entities. The IRS must assess any deficiency arising from a partnership audit against a large number of partners, many of whom cannot easily be located and some of whom are no longer partners. In addition, audit procedures are cumbersome and can be complicated further by the intervention of partners acting individually.

Explanation of Provision

In general

The bill creates a new audit system for large partnerships. The bill defines "large partnership" the same way for audit and reporting purposes (generally partnerships with at least 250 partners) except that certain oil and gas partnerships exempted from the large partnership reporting requirements are large partnerships for the audit rules.

As under present law, large partnerships and their partners are subject to unified audit rules. The tax treatment of "partnership items" are determined at the partnership, rather than the partner, level. The term "partnership items" is defined as under present law.

Unlike present law, however, partnership adjustments generally will flow through to the partners for the year in which the adjustment takes effect. Thus, the current-year partners' share of current-year partnership items of income, gains, losses, deductions, or credits will be adjusted to reflect partnership adjustments that take effect in that year. The adjustments generally will not affect prior-year returns of any partners (except in the case of changes to any partner's distributive shares).

In lieu of flowing an adjustment through to its partners, the partnership may elect to pay an imputed underpayment. The imputed underpayment generally is calculated by netting the adjustments to the income and loss items of the partnership and multiplying that amount by the highest tax rate (whether individual or corporate). A partner may not file a claim for credit or refund of his allocable share of the payment.

Regardless of whether a partnership adjustment flows through to the partners, an adjustment must be offset if it requires another adjustment in a year after the adjusted year and before the year the offsetted adjustment takes effect. For example, if a partnership expensed a $1,000 item in year 1, and it was determined in year 4 that the item should have been capitalized and amortized ratably over 10 years, the adjustment in year 4 would be $700, apart from any interest or

penalty. (The $900 adjustment for the improper deduction would be offset by $200 of adjustments for amortization deductions.) The year 4 partners would be required to include an additional $700 in income for that year. The partnership may ratably amortize the remaining $700 of expenses in years 4–10.

In addition, the partnership, rather than the partners individually, generally is liable for any interest and penalties that result from a partnership adjustment. Interest is computed for the period beginning on the return due date for the adjusted year and ending on the earlier of the return due date for the partnership taxable year in which the adjustment takes effect or the date the partnership pays the imputed underpayment. Thus, in the above example, the partnership would be liable for 4 years' worth of interest (on a declining principal amount).

Penalties (such as the accuracy and fraud penalties) are determined on a year-by-year basis (without offsets) based on an imputed underpayment. All accuracy penalty criteria and waiver criteria (such as reasonable cause, substantial authority, etc.) are determined as if the partnership were a taxable individual. Accuracy and fraud penalties are assessed and accrue interest in the same manner as if asserted against a taxable individual

Any payment (for Federal income taxes, interest, or penalties) that a large partnership is required to make is non-deductible.

If a partnership ceases to exist before a partnership adjustment takes effect, the former partners are required to take the adjustment into account, as provided by regulations. Regulations are also authorized to prevent abuse and to enforce efficiently the audit rules in circumstances that present special enforcement considerations (such as partnership bankruptcy).

Administrative proceedings

Under the large partnership audit rules, a partner is not permitted to report any partnership items inconsistently with the partnership return, even if the partner notifies the IRS of the inconsistency. The IRS could treat a partnership item that was reported inconsistently by a partner as a mathematical or clerical error and immediately assess any additional tax against that partner.

As under present law, the IRS could challenge the reporting position of a partnership by conducting a single administrative proceeding to resolve the issue with respect to all partners. Unlike under present law, however, partners will have no right individually to participate in settlement conferences or to the request a refund.

Partnership representative

The bill requires each large partnership to designate a partner or other person to act on its behalf. If a large partnership fails to designate such a person, the IRS is permitted to designate any one of the partners as the person authorized to act on the partnership's behalf. After the IRS's designation, a large partnership could still designate a replacement for the IRS-designated partner.

Notice requirements

Unlike under present law, the IRS is not required to give notice to individual partners of the commencement of an administrative proceeding or of a final adjustment. Instead, the IRS is authorized to send notice of a partnership adjustment to the partnership itself by certified or registered mail. The IRS could give proper notice by mailing the notice to the last known address of the partnership, even if the partnership had terminated its existence.

Adjudication of disputes concerning partnership items

As under present law, an administrative adjustment could be challenged in the Tax Court, the district court in which the partnership's principal place of business is located, or the Claims Court. However, only the partnership, and not partners individually, can petition for a readjustment of partnership items.

If a petition for readjustment of partnership items is filed by the partnership, the court with which the petition is filed will have jurisdiction to determine the tax treatment of all partnership items of the partnership for the partnership taxable year to which the notice of partnership adjustment relates, and the proper allocation of such items among the partners. Thus, the court's jurisdiction is not limited to the items adjusted in the notice.

Statute of limitations

Absent an agreement to extend the statute of limitations, the IRS generally could not adjust a partnership item of a large partnership more than 3 years after the later of the filing of the partnership return or the last day for the filing of the partnership return. Special rules apply to false or fraudulent returns, a substantial omission of income, or the failure to file a return. The IRS would assess and collect any deficiency of a partner that arises from any adjustment to a partnership item subject to the limitations period on assessments and collection applicable to the year the adjustment takes effect (secs. 6248, 6501 and 6502).

Regulatory Authority

The Secretary of the Treasury is granted authority to prescribe regulations as may be necessary to carry out the simplified audit procedure provisions, including regulations to prevent abuse of the provisions through manipulation. The regulations may include rules that address transfers of partnership interests, in anticipation of a partnership adjustment, to persons who are tax-favored (e.g., corporations with net operating losses, tax-exempt organizations, and foreign partners) or persons who are expected to be unable to pay tax (e.g., shell corporations). For example, if prior to the time a partnership adjustment takes effect, a taxable partner transfers a partnership interest to a nonresident alien to avoid the tax effect of the partnership adjustment, the rules may provide, among other things, that income related to the partnership adjustment is treated as effectively connected taxable income, that the partnership adjustment is treated as taking effect before the partnership interest was transferred, or that the former partner is treated as a current partner to whom the partnership adjustment is allocated.

Effective Date

The provision applies to partnership taxable years ending on or after December 31, 1993.

3. Advance due date for furnishing information to partners (sec. 4303 of the bill and sec. 6031(b) of the Code)

Present Law

A partnership required to file an income tax return with the Internal Revenue Service must also furnish an information return to each of its partners on or before the day on which the income tax return for the year is required to be filed, including extensions. Under regulations, a partnership must file its income tax return on or before the fifteenth day of the fourth month following the end of the partnership's taxable year (on or before April 15, for calendar year partnerships). This is the same deadline by which most individual partners must file their tax returns.

Reasons for Change

Information returns that are received on or shortly before April 15 (or later) are difficult for individuals to use in preparing their tax returns (or in computing their payments) that are due on that date.

Explanation of Provision

The bill provides that a large partnership must furnish information returns to partners by the first March 15 following the close of the partnership's taxable year. Large partnerships would be only those partnerships subject to the simplified reporting rules for large partnerships, as described above.

The bill also provides that, if the partnership is required to provide copies of the information returns to the Internal Revenue Service on magnetic media, each schedule (such as each Schedule K–1) with respect to each partner is treated as a separate information return with respect to the corrective periods and penalties that are generally applicable to all information returns.

Effective Date

The provision is effective for partnership taxable years ending on or after December 31, 1993.

4. Partnership returns on magnetic media (sec. 4304 of the bill and sec. 6011 of the Code)

Present Law

Partnerships are permitted, but not required, to provide the tax return of the partnership (Form 1065), as well as copies of the schedules sent to each partner (Form K–1), to the Internal Revenue Service on magnetic media.

Reasons for Change

Most entities that file large numbers of documents with the Internal Revenue Service must do so on magnetic media. Conforming the reporting provisions for large partnerships to the generally applicable information reporting rules will facilitate integration of partnership information into already existing data systems.

Explanation of Provision

The bill authorizes the Internal Revenue Service to require large partnerships and other partnerships with 250 or more partners to provide the tax return of the partnership (Form 1065), as well as copies of the schedules sent to each partner (Form K–1), to the Internal Revenue Service on magnetic media.

Effective Date

For partnerships that are large partnerships (as defined in the preceding reporting and audit provisions), the provision is effective for partnership taxable years ending on or after December 31, 1993. For partnerships that are not large partnerships (as defined) but that have 250 or more partners, the provision is effective for partnership taxable years ending on or after December 31, 1998.

B. Partnership Proceedings Under TEFRA[1]

1. Clarify the treatment of partnership items in deficiency proceedings (sec. 4311 of the bill and sec. 6234 of the Code)

Present Law

TEFRA partnership proceedings must be kept separate from deficiency proceedings involving the partners in their individual capacities. Prior to the Tax Court's opinion in

[1]Tax Equity and Fiscal Responsibility Act of 1982.

Munro v. *Commissioner*, 92 T.C. 71 (1989), the IRS computed deficiencies by assuming that all items that were subject to the TEFRA partnership procedures were correctly reported on the taxpayer's return. However, where the losses claimed from TEFRA partnerships were so large that they offset any proposed adjustments to nonpartnership items, no deficiency could arise from a non-TEFRA proceeding, and if the partnership losses were subsequently disallowed in a partnership proceeding, the non-TEFRA adjustments might be uncollectible because of the expiration of the statute of limitations with respect to nonpartnership items.

Faced with this situation in *Munro*, the IRS issued a notice of deficiency to the taxpayer that presumptively disallowed the taxpayer's TEFRA partnership losses for computational purposes only. Although the Tax Court ruled that a deficiency existed and that the court had jurisdiction to hear the case, the court disapproved of the methodology used by the IRS to compute the deficiency. Specifically, the court held that partnership items (whether income, loss, deduction, or credit) included on a taxpayer's return must be completely ignored in determining whether a deficiency exists that is attributable to nonpartnership items.

Reasons for Change

The opinion in *Munro* creates problems for both taxpayers and the IRS. For example, a taxpayer would be harmed in the case where he has invested in a TEFRA partnership and is also subject to the deficiency procedures with respect to nonpartnership item adjustments, since computing the tax liability without regard to partnership items will have the same effect as if the partnership items were disallowed. If the partnership items were losses, the effect will be a greatly increased deficiency for the nonpartnership items. If, when the partnership proceeding is completed, the taxpayer is ultimately allowed any part of the losses, the taxpayer will receive part of the increased deficiency back in the form of an overpayment. However, in the interim, the taxpayer will have been subject to assessment and collection of a deficiency inflated by items still in dispute in the partnership proceeding. In essence, a taxpayer in such a case would be deprived of a prepayment forum with respect to the partnership item adjustments. The IRS would be harmed if a taxpayer's income is primarily from a TEFRA partnership, since the IRS may be unable to adjust nonpartnership items such as medical expense deductions, home mortgage interest deductions or charitable contribution deductions because there would be no deficiency since, under *Munro*, the income must be ignored.

Explanation of Provision

The bill is intended to overrule *Munro* and allow the IRS to return to its prior practice of computing deficiencies by assuming that all TEFRA items whose treatment has not been finally determined had been correctly reported on the taxpayer's return. This will eliminate the need to do special computations, that involve the removal of TEFRA items from a taxpayer's return, and will restore to taxpayers a prepayment forum with respect to the TEFRA items. In addition, the bill provides a special rule to address the factual situation presented in *Munro*.

Specifically, the bill provides a declaratory judgment procedure in the Tax Court for adjustments to an oversheltered return. An oversheltered return is a return that shows no taxable income and a net loss from TEFRA partnerships. In such a case, the IRS is authorized to issue a notice of adjustment with respect to non-TEFRA items, notwithstanding that no deficiency would result from the adjustment. However, the IRS may only issue such a notice if a deficiency would have arisen in the absence of the net loss from TEFRA partnerships.

The Tax Court would be granted jurisdiction to determine the correctness of such an adjustment as well as to make a declaration with respect to any other item for the taxable year to which the notice of adjustment relates, except for partnership items and affected items which require partner-level determinations. No tax would be due upon such a determination, but a decision of the Tax Court would be treated as a final decision, permitting an appeal of the decision by either the taxpayer or the IRS. An adjustment determined to be correct would thus have the effect of increasing the taxable income that would be deemed to have been reported on the taxpayer's return. If the taxpayer's partnership items were then adjusted in a subsequent proceeding, the IRS would have preserved its ability to collect tax on any increased deficiency attributable to the nonpartnership items.

Alternatively, if the taxpayer chooses not to contest the notice of adjustment within the 90-day period, the bill provides that when the taxpayer's partnership items are finally determined, the taxpayer has the right to file a refund claim for tax attributable to the items adjusted by the earlier notice of adjustment for the taxable year. Although a refund claim is not generally permitted with respect to a deficiency arising from a TEFRA proceeding, such a rule is appropriate with respect to a defaulted notice of adjustment because taxpayers may not challenge such a notice when issued since it does not require the payment of additional tax.

In addition, the bill incorporates a number of provisions intended to clarify the coordination between TEFRA audit proceedings and individual deficiency proceedings. Under these provisions, any adjustment with respect to a non-partnership item that caused an increase in tax liability with respect to a partnership item would be treated as a computational adjustment and assessed after the conclusion of the TEFRA proceeding. Accordingly, deficiency procedures would not apply with respect to this increase in tax liability, and the statute of limitations applicable to TEFRA proceedings would be controlling.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

2. Permit the IRS to rely on partnership returns to determine the proper audit procedures (sec. 4312 of the bill and sec. 6231 of the Code)

Present Law

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresidential alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

Reasons for Change

The IRS often finds it difficult to determine whether to follow the TEFRA partnership procedures or the regular deficiency procedures. If the IRS determines that there were fewer than 10 partners in the partnership but was unaware that one of the partners was a nonresident alien or that there was a special allocation made during the year, the IRS might inadvertently apply the wrong procedures and possibly jeopardize any assessment. Permitting the IRS to rely on a partnership's return would simplify the IRS' task.

Explanation of Provision

The bill permits the IRS to apply the TEFRA audit procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply. Similarly, the bill permits the IRS to apply the normal deficiency procedures if, based on the partnership's return for the year, the IRS reasonably determines that those procedures should apply.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

3. Statute of limitations (sec. 4313)

a. Suspend statute when an untimely petition is filed (sec. 4313(a) and sec. 6229 of the Code)

Present Law

In a deficiency case, section 6503(a) provides that if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, the period of limitations on assessment and collection is suspended until the decision of the Tax Court becomes final, and for 60 days thereafter. The counterpart to this provision with respect to TEFRA cases is contained in section 6229(d). That section provides that the period of limitations is suspended for the period during which an action may be brought under section 6226 and, if an action is brought during such period, until the decision of the court becomes final, and for 1 year thereafter. As a result of this difference in language, the running of the statute of limitations in a TEFRA case will only be tolled by the filing of a timely petition whereas in a deficiency case, the statute of limitations is tolled by the filing of any petition, regardless of whether the petition is timely.

Reasons for Change

Under present law, if an untimely petition is filed in a TEFRA case, the statute of limitations can expire while the case is still pending before the court. To prevent this from occurring, the IRS must make assessments against all of the investors during the pendency of the action and if the action is in the Tax Court, presumably abate such assessments if the court ultimately determines that the petition was timely. These steps are burdensome to the IRS and to taxpayers.

Explanation of Provision

The provision is designed to conform the suspension rule for the filing of petitions in TEFRA cases with the rule under section 6503(a) pertaining to deficiency cases. Under the provision, the statute of limitations in TEFRA cases would be suspended by the filing of any petition under section 6226, regardless of whether the petition is timely or valid, and the suspension will remain in effect until the decision of the court becomes final, and for one year thereafter. Hence, if the statute of limitations is open at the time that an untimely petition is filed, the limitations period will no longer continue to run and possibly expire while the action is pending before the court.

Effective Date

The provision is effective with respect to all cases in which the period of limitations

has not expired under present law as of the date of enactment.

b. Suspend statute of limitations during bankruptcy proceedings (sec. 4313(b) of the bill and sec. 6229 of the Code)

Present Law

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6503(h) provides for the suspension of the limitations period during the pendency of a bankruptcy proceeding. However, this provision only applies to the limitations periods provided in sections 6501 and 6502.

Under present law, because the suspension provision in section 6503(h) applies only to the limitations periods provided in section 6501 and 6502, some uncertainty exists as to whether section 6503(h) applies to suspend the limitations period pertaining to converted items provided in section 6229(f) when a petition naming a partner as a debtor in a bankruptcy proceeding is filed. As a result, the limitations period provided in section 6229(f) may continue to run during the pendency of the bankruptcy proceeding, notwithstanding that the IRS is prohibited from making an assessment against the debtor because of the automatic stay provisions of the Bankruptcy Code.

Reasons for Change

The ambiguity in present law makes it difficult for the IRS to adjust partnership items that convert to nonpartnership items by reason of a partner going into bankruptcy. In addition, any uncertainty may result in increased requests for the bankruptcy court to lift the automatic stay to permit the IRS to make an assessment with respect to the converted items.

Explanation of Provision

The bill clarifies that the statute of limitations is suspended for a partner who is named in a bankruptcy petition. The suspension period is for the entire period during which the IRS is prohibited by reason of the bankruptcy proceeding from making an assessment, and for 60 days thereafter. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective Date

The provision is effective with respect to all cases in which the period of limitations has not expired under present law as of the date of enactment.

c. Extend Statute of Limitations for Bankrupt TMPs (sec. 4313(c) and sec. 6229 of the Code)

Present Law

Section 6229(b)(1)(B) provides that the statute of limitations is extended with respect to all partners in the partnership by an agreement entered into between the tax matters partner (TMP) and the IRS. However, Temp. Treas. Reg. secs. 301.6231(a)(7)–1T(1)(4) and 301.6231(c)–7T(a) provide that upon the filing of a petition naming a partner as a debtor in a bankrupty proceeding, that partner's partnership items convert to nonpartnership items, and if the debtor was the tax matters partner, such status terminates. These rules are necessary because of the automatic stay provision contained in 11 U.S.C. sec. 362(a)(8). As a result, if a consent to extend the statute of limitations is signed by a person who would be the TMP but for the fact that at the time that the agreement is executed the person was a debtor in a bankruptcy proceeding, the consent would not be binding on the other partners because the person signing the agreement was no longer the TMP at the time that the agreement was executed.

Reasons for Change

The IRS is not automatically notified of bankruptcy filings and cannot easily determine whether a taxpayer is in bankruptcy, especially if the audit of the partnership is being conducted by one district and the taxpayer resides in another district, as is frequently the situation in TEFRA cases. If the IRS does not discover that a person signing a consent is in bankruptcy, the IRS may mistakenly rely on that consent. As a result, the IRS may be precluded from assessing any tax attributable to partnership item adjustments with respect to any of the partners in the partnership.

Explanation of Provision

The bill provides that unless the IRS is notified of a bankruptcy proceeding in accordance with regulations, the IRS can rely on a statute extension signed by a person who would be the tax matters partner but for the fact that said person was in bankruptcy at the time that the person signed the agreement. Statute extensions granted by a bankrupt TMP in these cases will be binding on all of the partners in the partnership. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective Date

The provision is effective for extension agreements entered into after the date of enactment.

4. Expand small partnership exception from TEFRA (sec. 4314 of the bill and sec. 6231 of the Code)

Present Law

TEFRA established unified audit rules applicable to all partnerships, except for partnerships with 10 or fewer partners, each of whom is a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item is the same as that partner's share of every other partnership item. Partners in the exempted partnerships are subject to regular deficiency procedures.

Reasons for Change

The mere existence of a C corporation as a partner or of a special allocation does not warrant subjecting the partnership and its partners of an otherwise small partnership to the TEFRA procedures.

Explanation of Provision

The bill permits a small partnership to have a C corporation as a partner or to specially allocate items without jeopardizing its exception from the TEFRA rules. However, the bill retains the prohibition of present law against having a flow-through entity (other than an estate of a deceased partner) as a partner for purposes of qualifying for the small partnership exception.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

5. Exclude partial settlements from 1-year assessment rule (sec. 4315 of the bill and sec. 6229(f) of the Code)

Present Law

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is 1 year after the date that the items become nonpartnership items. Section 6231(b)(1)(C) provides that the partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the partner enters into a settlement agreement with the IRS with respect to such items.

Reasons for Change

When a partial settlement agreement is entered into, the assessment period for the items covered by the agreement may be different than the assessment period for the remaining items. This fractured statute of limitations poses a significant tracking problem for the IRS and necessitates multiple computations of tax with respect to each partner's investment in the partnership for the taxable year.

Explanation of Provision

The bill provides that if a partner and the IRS enter into a settlement agreement with respect to some but not all of the partnership items in dispute for a partnership taxable year and other partnership items remain in dispute, the period for assessing any tax attributable to the settled items would be determined as if such agreement had not been entered into. Consequently, the limitations period that is applicable to the last item to be resolved for the partnership taxable year shall be controlling with respect to all disputed partnership items for the partnership taxable year. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective Date

The provision is effective for settlements entered into after the date of enactment.

6. Extend time for filing a request for administrative adjustment (sec. 4316 of the bill and sec. 6227 of the Code)

Present Law

If an agreement extending the statute is entered into with respect to a non-TEFRA statute of limitations, that agreement also extends the statute of limitations for filing refund claims (sec. 6511(c)). There is no comparable provision for extending the time for filing refund claims with respect to partnership items subject to the TEFRA partnership rules.

Reasons for Change

The absence of an extension for filing refund claims in TEFRA proceedings hinders taxpayers that may want to agree to extend the TEFRA statute of limitations but want to preserve their option to file a refund claim later.

Explanation of Provision

The bill provides that if a TEFRA statute extension agreement is entered into, that agreement also extends the statute of limitations for filing refund claims attributable to partnership items or affected items until 6 months after the expiration of the limitations period for assessments.

Effective Date

The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

7. Provide innocent spouse relief for TEFRA proceedings (sec. 4317 of the bill and sec. 6230 of the Code)

Present Law

In general, an innocent spouse may be relieved of liability for tax, penalties and in-

terest if certain conditions are met (sec. 6013(e)). However, existing law does not provide the spouse of a partner in a TEFRA partnership with a judicial forum to raise the innocent spouse defense with respect to any tax or interest that relates to an investment in a TEFRA partnership.

Reasons for Change

Providing a forum in which to raise the innocent spouse defense with respect to liabilities attributable to adjustments to partnership items (including penalties, additions to tax and additional amounts) would make the innocent spouse rules more uniform.

Explanation of Provision

The bill provides both a prepayment forum and a refund forum for raising the innocent spouse defense in TEFRA cases.

With respect to a prepayment forum, the bill provides that within 60 days of the date that a notice of computational adjustment relating to partnership items is mailed to the spouse of a partner, the spouse may request that the assessment be abated. Upon receipt of such a request, the assessment will be abated and any reassessment will be subject to the deficiency procedures. If an abatement is requested, the statute of limitations will not expire before the date which is 60 days after the date of the abatement. If the spouse files a petition with the Tax Court, the Tax Court will only have jurisdiction to determine whether the requirements of section 6013(e) have been satisfied. In making this determination, the treatment of the partnership items that gave rise to the liability in question will be conclusive.

Alternatively, the bill provides that the spouse of a partner may file a claim for refund to raise the innocent spouse defense. The claim must be filed within 6 months from the date that the notice of computational adjustment is mailed to the spouse. If the claim is not allowed the spouse may file a refund action. For purpose of any claim or suit under this provision, the treatment of the partnership items that gave rise to the liability in question will be conclusive.

Effective Date

The provision is effective as if included in the amendment made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

8. Determine penalties at the partnership level (sec. 4318 of the bill and sec. 6221 of the Code)

Present Law

Partnership items include only items that are required to be taken into account under the income tax subtitle. Penalties are not partnership items since they are contained in the procedure and administration subtitle. As a result, penalties may only be asserted against a partner through the application of the deficiency procedures following the completion of the partnership-level proceeding.

Reasons for Change

Many penalties are based upon the conduct of the taxpayer. With respect to partnerships, the relevant conduct often occurs at the partnership level. In addition, applying penalties at the partner level through the deficiency procedures following the conclusion of the unified proceeding at the partnership level increases the administrative burden on the IRS and can significantly increase the Tax Court's inventory.

Explanation of Provision

The bill provides that the partnership level proceeding is to include a determination of the applicability of penalties at the partnership level. However, the bill allows partners to raise any partner-level defenses in a refund forum.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

9. Clarify jurisdiction of the Tax Court (sec. 4319 of the bill and secs. 6225 and 6226 of the Code)

Present Law

Improper assessment and collection activities by the IRS during the 150-day period for filing a petition or during the pendency of any Tax Court proceeding, "may be enjoined in the proper court." Present law may be unclear as to whether this includes the Tax Court.

For a partner other than the Tax Matters Partner to be eligible to file a petition for redetermination of partnership items in any court or to participate in an existing case, the period for assessing any tax attributable to the partnership items of that partner must not have expired. Since such a partner would only be treated as a party to the action if the statute of limitations with respect to them was still open, the law is unclear whether the partner would have standing to assert that the statute of limitations had expired with respect to them.

Reasons for Change

Clarifying the Tax Court's jurisdiction simplifies the resolution of tax cases.

Explanation of Provision

The bill clarifies that an action to enjoin premature assessments of deficiencies attributable to partnership items may be brought in the Tax Court. The bill also permits a partner to participate in an action or file a petition for the sole purpose of asserting that the period of limitations for assessing any tax attributable to partnership items has expired for that person. Additionally, the bill clarifies that the Tax Court has overpayment jurisdiction with respect to affected items.

Effective Date

The provision is effective for partnership taxable years ending after the date of enactment.

10. Treatment of premature petitions filed by certain partners (sec. 4320 of the bill and sec. 6226 of the Code)

Present Law

The Tax Matters Partner is given the exclusive right to file a petition for a readjustment of partnership items within the 90-day period after the issuance of the notice of a final partnership administrative adjustment (FPAA). If the Tax Matters Partner does not file a petition within the 90-day period, certain other partners are permitted to file a petition within the 60-day period after the close of the 90-day period. There are ordering rules for determining which action goes forward and for dismissing other actions.

Reasons for Change

A petition that is filed within the 90-day period by a person who is not the Tax Matters Partner is dismissed. Thus, if the Tax Matters Partner does not file a petition within the 90-day period and no timely and valid petition is filed during the succeeding 60-day period, judicial review of the adjustment set forth in the notice of FPAA is foreclosed and the adjustments are deemed to be correct.

Explanation of Provision

The bill treats premature petitions filed by certain partners within the 90-day period as being filed on the last day of the following 60-day period under specified circumstances, thus affording the partnership with an opportunity for judicial review that is not available under present law.

Effective Date

The bill is effective with respect to petitions filed after the date of enactment.

11. Clarify bond requirement for appeals from TEFRA proceedings (sec. 4321 of the bill and sec. 7485 of the Code)

Present Law

A bond must be filed to stay the collection of deficiencies pending the appeal of the Tax Court's decision in a TEFRA proceeding. The amount of the bond must be based on the court's estimate of the aggregate deficiencies of the partners.

Reasons for Change

The Tax Court cannot easily determine the aggregate changes in tax liability of all of the partners in a partnership who will be affected by the Court's decision in the proceeding. Clarifying the calculation of the bond amount would simplify the Tax Court's task.

Explanation of Provision

The bill clarifies that the amount of the bond should be based on the Tax Court's estimate of the aggregate liability of the parties to the action (and not all of the partners in the partnership). For purposes of this provision, the amount of the bond may be estimated by applying the highest individual rate to the total adjustments determined by the Tax Court and doubling that amount to take into account interest and penalties.

Effective Date

The provision is effective as if included in the amendments made by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982.

12. Suspend interest where there is a delay in computational adjustment resulting from TEFRA settlements (sec. 4322 of the bill and sec. 6601 of the Code)

Present Law

Interest on a deficiency generally is suspended when a taxpayer executes a settlement agreement with the IRS and waives the restrictions on assessments and collections, and the IRS does not issue a notice and demand for payment of such deficiency within 30 days. Interest on a deficiency that results from an adjustment of partnership items in TEFRA proceedings, however, is not suspended.

Reasons for Change

Processing settlement agreements and assessing the tax due takes a substantial amount of time in TEFRA cases. A taxpayer is not afforded any relief from interest during this period.

Explanation of Provision

The bill suspends interest where there is a delay in making a computational adjustment relating to a TEFRA settlement.

Effective Date

The provision is effective with respect to settlements entered into after the date of enactment.

SUBTITLE D. FOREIGN PROVISIONS

1. Deferral of tax on income earned through foreign corporations and exceptions to deferral (secs. 4401–4404 of the bill and secs. 453, 532, 542, 543, 551–558, 563, 851, 954, 1246–1247, 1291–1297, and 4982 of the Code)

Present Law

Direct and indirect operations

U.S. citizens and residents and U.S. corporations (collectively, "U.S. persons") are

taxed currently by the United States on their worldwide income, subject to a credit against U.S. tax on foreign income based on foreign income taxes paid with respect to such income. Income earned by a foreign corporation, the stock of which is owned in whole or in part by U.S. persons, generally is not taxed by the United States until the foreign corporation repatriates those earnings by payment to its U.S. stockholders. Therefore, two different sets of U.S. tax rules apply to U.S. taxpayers that control business operations in foreign countries; which rules apply depends on whether the business operations are conducted directly, for example, through a foreign branch, or indirectly through a separately incorporated foreign company.[1]

U.S. persons that conduct foreign operations directly (that is, not through a foreign corporation) include income (or loss) from those operations on the U.S. tax return for the year the income is earned or the loss is incurred. The United States taxes that income currently. The foreign tax credit may reduce or eliminate the U.S. tax on that income, however.

U.S. persons that conduct foreign operations through a foreign corporation generally pay no U.S. tax on that income from those operations until the foreign corporation repatriates its earnings to the United States. The income appears on the U.S. owner's tax return for the year it comes home, and the United States imposes tax on it then. The foreign tax credit may reduce the U.S. tax.[2]

In general, two kinds of transactions, are repatriations that end deferral and trigger tax. First, in the case of any foreign corporation, an actual dividend payment ends deferral; any U.S. recipient must include the dividend income. Second, in the case of a "controlled foreign corporation" (defined below), an investment in U.S. property, such as a loan to the lender's U.S. parent or the purchase of U.S. real estate, is also treated as a repatriation that ends deferral (Code sec. 956). In addition to these two forms of repatriation, a sale of shares of a foreign corporation may trigger tax, sometimes at ordinary income tax rates (secs. 1246, 1248, and 1291).

Since 1937, the Code has set forth one or more regimes providing exceptions to the general rule deferring U.S. tax on income earned indirectly through a foreign corporation. Today the Code sets forth the following anti-deferral regimes: the controlled foreign corporation rules (secs. 951-964); the foreign personal holding company rules (secs. 551-558); passive foreign investment company (PFIC) rules (secs. 1291-1297); the personal holding company rules (secs. 541-547); the accumulated earnings tax (secs. 531-537); and rules for foreign investment companies (sec. 1246) and electing foreign investment companies (sec. 1247). The operation and application of these regimes are discussed in the following sections.

Controlled foreign corporations

General definitions

A controlled foreign corporation is defined in the Code generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only) (sec. 957).[3] Stock ownership includes not only stock owned) directly, but also all stock owned indirectly or constructively (sec. 958).

Deferral of U.S. tax on undistributed income of a controlled foreign corporation is not available for certain kinds of income (sometimes referred to as "subpart F income") under the Code's subpart F provisions. When a controlled foreign corporation earns subpart F income, the United States generally taxes the corporation's 10-percent U.S. shareholders currently on their pro rata share of the subpart F income. In effect, the Code treats those U.S. shareholders as having received a current distribution out of the subpart F income. In this case, also, the foreign tax credit may reduce the U.S. tax.

Subpart F income typically is income that is relatively movable from one taxing jurisdiction to another and that is subject to low rates of foreign tax. Subpart F income consists of foreign base company income (defined in sec. 954), insurance income (defined in sec. 953), and certain income relating to international boycotts and other violations of public policy (defined in sec. 952(a)(3)-(5)). Subpart F income does not include the foreign corporation's income that is effectively connected with the conduct of a trade or business within the United States, which income is subject to current tax in the United States (sec. 952(b)).

Foreign base company income

In general.—Foreign base company income includes five categories of income: foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income, and foreign base company oil-related income (sec. 954(a)). In computing foreign base company income, amounts of income in these five categories are reduced by allowable deductions (including taxes and interest) properly allocable, under regulations, to such amounts of income (sec. 954(b)(5)).

Foreign personal holding company income.—One category of foreign base company income is foreign personal holding company income (sec. 954(c)). For subpart F purposes, foreign personal holding company income generally includes interest, dividends, and annuities; some rents and royalties; related party factoring income; net commodities gains; net foreign currency gains; and net gains from sales or exchanges of certain other property.

This last category of net gains from sales of property generally includes the excess of gains over losses from sales and exchanges of non-income producing property and property that gives rise to interest, dividends, rents, royalties, and annuities. Thus, foreign personal holding company income includes gain on the sale of property that was held for investment purposes, but does not include gain on the sale of land, buildings, or equipment that was used by the seller in an active trade or business of the seller (Temporary Reg. sec. 1.954-2T(e)(3)). Stock and securities gains generally are treated as foreign personal holding company income. However, foreign personal holding company income does not include gains on property sales that are realized by regular dealers. Gains from the sale or exchange of property which, in the hands of the seller, is inventory property (sec. 1221(1)) are also excluded from foreign personal holding company income.

Income received by a foreign insurance company, including income derived from its investments of funds, generally is subject to taxation under section 953. (See discussion at "*Insurance income, in general*," below.) Treasury regulations specify that taxation of an insurance company's income under section 953 takes precedence over taxation of that income as foreign personal holding company income under section 954 (Proposed Treas. Reg. sec. 1.953-6(g)). When dividends, interest, or securities gains derived by a controlled foreign insurance company are not taxed under section 953, they generally are taxed as foreign personal holding company income under section 954.

Foreign personal holding company income under subpart F does not include certain dividends and interest received from a related corporation organized and operating in the same foreign country as the recipient, and certain rents and royalties received from a related corporation for the use of property within the country in which the recipient was created or organized (sec. 954(c)(3)). This exclusion, however, is restricted by a rule that takes into account the subpart F income of related-party payors. Under this rule, interest, rent, and royalty payments do not qualify for the exclusion to the extent that such payments reduce subpart F income of the payor.

Other categories of foreign base company income.—Foreign base company income also includes foreign base company sales and services income, consisting respectively of income attributable to related party purchases and sales routed through the income recipient's country if that country is neither the origin nor the destination of the goods, and income from services performed outside the country of the corporation's incorporation for or on behalf of related persons. Foreign base company income also includes foreign base company shipping income. Finally, foreign base company income generally includes "downstream" oil-related income, that is, foreign oil-related income other than extraction income.

Insurance income

In general.—Subpart F insurance income is another category of income that is subject to current taxation under subpart F (sec. 953). Subpart F insurance income includes any income attributable to the issuing (or reinsuring) of any insurance or annuity contract in connection with risks in a country other than that in which the insurer is created or organized.[4] For this purpose, a qualified insurance branch of a controlled foreign corporation may be treated as a corporation created or organized in the country of its location (sec. 964(d)).

The amount of income subject to current tax under subpart F as insurance income is the amount that would be taxed under subchapter L of the Code if it were the income of a domestic insurance company (subject to the modifications provided in sec. 953(b)). In addition, as described above, investment income associated with same-country risk insurance is also included in subpart F income as foreign personal holding company income. Thus, for an insurance controlled foreign

[1] To the extent that foreign corporations operate in the United States rather than in foreign countries, they generally pay U.S. tax like U.S. corporations.

[2] The foreign corporation itself generally will not pay U.S. tax unless it has income effectively connected with a trade or business carried on in the United States, or has certain generally passive types of U.S. source income.

[3] A controlled foreign corporation is defined differently in the case of a foreign corporation engaging in certain insurance activities (see secs. 953(c) and 957(b)).

[4] In addition, subpart F applies to income attributable to an insurance contract in connection with same-country risks as the result of an arrangement under which another corporation receives a substantially equal amount of premiums for insurance of other-country risks.

corporation, deferral generally is limited to underwriting income from same-country risk insurance.

For purposes of subpart F insurance income, a controlled foreign corporation is specially defined to include, in addition to any corporation that meets the usual test of 50-percent ownership by 10-percent shareholders (discussed above), any foreign corporation that satisfies a test of 25-percent ownership by 10-percent shareholders if more than 75 percent of the corporation's gross premium income is derived from the reinsurance or issuance of insurance or annuity contracts with respect to third-country risks (sec. 957(b)).

Related person (captive) insurance income.—In addition, subpart F insurance income that is related person insurance income generally is taxable under subpart F to an expanded category of U.S. persons (sec. 953(c)). For purposes of taking into account such income under subpart F, the U.S. ownership threshold for controlled foreign corporation status is reduced to 25 percent or more. Any U.S. person who owns (directly or indirectly) any stock in a controlled foreign corporation, whatever the degree of ownership is treated as a U.S. shareholder of such corporation for purposes of this 25-percent U.S. ownership threshold and exposed to current tax on the corporation's related person insurance income.

Certain operating rules

Income inclusion.—When a controlled foreign corporation earns subpart F income, the United States generally taxes the corporation's U.S. shareholders currently on their pro rata share of the subpart F income (sec. 951).[5] In the case of a corporation that is a controlled foreign corporation for its entire taxable year, and a U.S. shareholder that owns the same proportion of stock in the corporation throughout the corporation's taxable year, the U.S. shareholder's pro rata share of subpart F income is the amount that would have been distributed with respect to the shareholder's stock if on the last day of the corporation's taxable year the controlled foreign corporation had distributed all of its subpart F income pro rata to all of its shareholders. The pro rata share definition provides for adjustments where the corporation is a controlled foreign corporation for less than the entire year or where actual distributions are made with respect to stock the shareholder owns for less than the entire year.

In addition, the United States generally taxes the corporation's U.S. shareholders currently on their pro rata share of the corporation's increase in earnings invested in U.S. property for the taxable year.

De minimis and full inclusion rules.—None of a controlled foreign corporation's gross income for a taxable year is treated as foreign base company income or subpart F insurance income if the sum of the corporation's gross foreign base company income and gross subpart F insurance income for the year is less than the lesser of 5 percent of its gross income, or $1 million (sec. 954(b)(3)(A)). The Code provides that if more than 70 percent of a controlled foreign corporation's gross income is foreign base company income and/or subpart F insurance income, then all of its income is treated as foreign base company income or insurance income (whichever is appropriate) (sec. 954(b)(3)(B)). This 70-percent full inclusion rule does not apply, however, to income of a company that is controlled foreign corporation only for purposes of the captive insurance company provision. (See Proposed Treas. Reg. sec. 1.953-6(k).)

Exception for certain income subject to high foreign taxes.—Income otherwise subject to current taxation as foreign base company income can be excluded from subpart F if the income not in fact routed through a controlled foreign corporation in which the income bore a materially lower tax than would be due on the same income earned directly by a U.S. corporation (sec. 954(b)(4)). Subpart F employs an objective test to determine whether income that has been earned through a controlled foreign corporation in fact has been subject to less tax than it would have borne if the income had been earned directly. Under this rule, subpart F income (other than foreign base company oil-related income) does not include items of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that the income, measured under U.S. tax rules, was subject to an effective rate of foreign tax equal to at least 90 percent of the maximum U.S. corporate tax rate.

Section 954(b)(4) applies solely at the taxpayer's election. That is, the provision applies only if the taxpayer endeavors to establish to the Secretary's satisfaction that the income in question was subject to the requisite foreign tax, and the taxpayer succeeds in doing so. The Secretary may not apply the provision without the taxpayer's consent.

Treatment of investments in U.S. property.—As discussed above, a U.S. shareholder of a controlled foreign corporation generally is taxable on is pro rata share of the foreign corporation's subpart F income. In addition, a U.S. shareholder generally is taxable on its pro rata share of the foreign corporation's earnings and profits attributable to non-subpart F income to the extent of the increase for the year in such earnings that are invested in U.S. property (secs. 951(a)(1)(B) and 956). Such increase is measured by comparing the controlled foreign corporation's total amount of earnings invested in U.S property at the close of the current taxable year with the corresponding amount at the close of the preceding taxable year.

The increase for the current taxable year in the earnings of a controlled foreign corporation invested in U.S. property generally is computed by subtracting the amount of the corporation's investment in U.S. property at the end of the prior year (to the extent that amount would have been a dividend if it had been distributed) from its investment in U.S. property at the end of the current year (to the extent that amount would have been a dividend if it had been distributed).

In addition, where earnings previously taxed under sections 951(a)(1)(B) and 956 are actually distributed, without reduction of the controlled foreign corporation's investment in U.S. property, subsequent earnings are included in the U.S. shareholder's income under sections 951(a)(1)(B) and 956 with no further increase in U.S. investment. This rule is intended to account for the fact that, in effect, new savings are funding existing investments in U.S. assets, and should therefore be taxed.[6]

Distributions of previously taxed income.—Earnings and profits of a controlled foreign corporation that are (or previously have been) included in the incomes of the U.S. shareholders are not taxed again when such earnings are actually distributed to the U.S. shareholders (sec. 959(a)(1). Similarly such previously taxed income is not included in the incomes of the U.S. shareholders in the even that such earnings are invested in U.S. property (sec. 959(a)(2)). Previously taxed income actually distributed from a lower-tier controlled foreign corporation to a higher-tier controlled foreign corporation is disregarded in determining the subpart F income of the higher-tier controlled foreign corporation that is included in the income of the U.S. shareholders. In the event that stock in the controlled foreign corporation is transferred subsequent to the income inclusion but prior to the actual distribution of previously taxed income, the transferee shareholder is similarly exempt from tax on the distribution to the extent of the proven identity of shareholder interest.

Distributions by a controlled foreign corporation are allocating first to previously taxed income, then to other earnings and profits (sec. 959(c)). Therefore, a controlled foreign corporation may distribute its previously taxed income to its shareholders, resulting in no additional U.S. income taxation, before it makes any taxable dividend distributions of any current or accumulated non-subpart F earnings and profits.

Allowance of foreign tax credit.—U.S. corporate shareholders of a controlled foreign corporation who include subpart F income in their own gross incomes are also treated as having paid the foreign taxes actually paid by the controlled foreign corporation on that income, to the same general extent as if they had received a dividend distribution of that income (sec. 960). Therefore, the U.S. corporate shareholders may claim foreign tax credits for those taxes to the same general extent as if they had received a dividend. Actually distributions by a controlled foreign corporation are not treated as dividends, and thus generally do not carry further eligibility for deemed-paid foreign tax credits, to the extent that the distributions are of previously taxed income.[7]

Individual U.S. shareholders of a controlled foreign corporation who include subpart F income in their own gross incomes may elect to be taxed as corporations on their subpart F income (sec. 962). Therefore, electing individual U.S. shareholders, like corporate shareholders, may claim foreign tax credits for the foreign taxes actually paid by the controlled foreign corporation on that income to the same general extent as if they had received a dividend.

Adjustments to basis and computation of earnings and profits.—The inclusion of an amount of a controlled foreign corporation's subpart F income in the gross income of a U.S. shareholder generally results in a corresponding increase in the shareholder's basis in the stock with respect to which the subpart F income was included (sec. 961(a)). In addition, the distribution of previously taxed income to a U.S. shareholder of a controlled foreign corporation generally results in a corresponding decrease in the shareholder's basis in the stock (sec. 961(b)).

The determination of the earnings and profits (or deficit in earnings and profits) of a controlled foreign corporation follows

[5] Current taxation applies only if the foreign corporation is a controlled foreign corporation for an uninterrupted period of at least 30 days during the taxable year.

[6] "If this were not done it would be possible to retain the [U.S.] investments in the corporation and make actual distributions out of other property to the shareholders which would not be taxable to them." H.R. Rep. No. 1447, 87th Cong., 2d Sess. 64 n.1 (1962).

[7] Certain actual distributions of previously taxed income can carry further eligibility for foreign tax credits (secs. 960(a)(3) and(b)).

rules that are substantially similar to those applicable to domestic corporations (sec. 964(a)). One specific similarity is that any illegal bribes, kickbacks, or other payments that are not deductible under section 162(c) (such as payments that would be unlawful under the Foreign Corrupt Practices Act of 1977 if paid by a U.S. person) are not taken into account to reduce earnings and profits (or increase a deficit in earnings and profits).

Attribution of ownership.—In determining stock ownership for purposes of the controlled foreign corporation rules, a U.S. person generally is considered to own a proportionate share of stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, or foreign trust or estate of which the U.S. person is a shareholder, partner, or beneficiary (sec. 958(a)).

Additional rules for constructive ownership apply for purposes of determining whether or not a U.S. person is a U.S. shareholder (within the meaning of sec. 951(b), as discussed above), whether or not the foreign corporation meets the relevant definition of control (within the meaning of secs. 957(a), 957(b), or 953(c)(1), as discussed above), and whether or not two persons are related (within the meaning of sec. 954(d)(3), as discussed above), but not for purposes of including amounts in a shareholder's gross income under section 951(a). These constructive ownership rules include, among other rules, provisions treating an individual as owning stock owned, directly or indirectly, by the individual's spouse, children, grandchildren, and parents; a 10-percent shareholder of a corporation as owning its proportionate share (100 percent, in the case of a more-than-50-percent shareholder) of stock owned, directly or indirectly, by the corporation; a partner or beneficiary as owning its proportionate share (100 percent, in the case of a more-than-50-percent partner or beneficiary) of stock owned, directly or indirectly, by the partnership or estate; a corporation as owning all stock owned, directly or indirectly, by 10-percent shareholders; a partnership or estate as owning all stock owned, directly or indirectly, by its partners or beneficiaries; and the holder of an option as owning the stock subject to the option (sec. 958(b)). However, these constructive ownership rules do not operate to treat stock owned by a nonresident alien individual as owned by a U.S. citizen or a resident alien individual (sec. 958(b)(1)).

Gain from certain sales or exchanges of stock in certain foreign corporations

If a U.S. person sells or exchanges stock in a foreign corporation, or receives a distribution from a foreign corporation that is treated as an exchange of stock, and, at any time during the five-year period ending on the date of the sale or exchange, the foreign corporation was a controlled foreign corporation and the U.S. person was a 10-percent shareholder (counting stock owned directly, indirectly, and constructively), then the gain recognized on the sale or exchange is included in the shareholder's income as a dividend, to the extent of the earnings and profits of the foreign corporation which were accumulated during the period that the shareholder held stock while the corporation was a controlled foreign corporation (sec. 1248).[8] For this purpose, earnings and profits of the foreign corporation do not include amounts that had already been subject to current U.S. taxation (whether imposed on the foreign corporation itself or the U.S. shareholders), such as amounts included in gross income under section 951, amounts included in gross income under section 1247 (applicable to foreign investment companies, which are discussed below), amounts included in gross income under section 1293 (applicable to certain passive foreign investment companies, which are discussed below), or amounts that were effectively connected with the conduct of a trade or business within the United States (sec. 1248(d)). The Code provides certain special rules to adjust the proper scope and application of section 1248 (sec. 1248(e)–(i)).

Amounts subject to treatment under section 1248, in accordance with their characterization as dividends, carry deemed-paid foreign tax credits that may be claimed by corporate taxpayers under section 902.

Foreign personal holding companies

In general

Congress enacted the foreign personal holding company rules (secs. 551–558) to prevent U.S. taxpayers from accumulating income tax-free in foreign "incorporated pocketbooks." If five or fewer U.S. citizens or residents own, directly or indirectly, more than half of the outstanding stock (in vote for or value) of a foreign corporation that has primarily foreign personal holding company income, that corporation will be a foreign personal holding company. In that case, all the foreign corporation's U.S. shareholders are subject to U.S. tax on their pro rata share of the corporation's undistributed foreign personal holding company income.

Operating rules

A foreign corporation is a foreign personal holding company if it satisfies both a stock ownership requirement (sec. 552(a)(2)) and a gross income requirement (sec. 552(a)(1)). The stock ownership requirement is satisfied if, at any time during the taxable year, more than 50 percent of either (1) the total combined voting power of all classes of stock of the corporation that are entitled to vote, or (2) the total value of the stock of the corporation, is owned (directly, indirectly, or constructively) by or for five or fewer individual citizens or residents of the United States. The gross income requirement is satisfied initially if at least 60 percent of the corporation's gross income is foreign personal holding company income. Once the corporation is a foreign personal holding company, however, the gross income threshold each year will be only 50 percent until the expiration of either one full taxable year during which the stock ownership requirement is not satisfied, or three consecutive taxable years for which the gross income requirement is not satisfied at the 50-percent threshold.

Foreign personal holding company income generally includes passive income such as dividends, interest, royalties (but not including active business royalties), and rents (if rental income does not amount to 50 percent of gross income) (sec. 553(a)). It also includes, among other things, gains (other than gains of dealers) from stock and securities transactions, commodities transactions, and amounts received with respect to certain personal services contracts. If a foreign personal holding company is a shareholder in another foreign personal holding company, the first company includes in its gross income, as a dividend, its share of the undistributed foreign personal holding company income of the second foreign personal holding company.

Excluded from characterization as foreign personal holding companies are corporations that are exempt from tax under subchapter F (sections 501 and following) of the Code, as well as certain corporations that are organized and doing business under the banking and credit laws of a foreign country (sec. 552(b)).

If a foreign corporation is a foreign personal holding company, all of its undistributed foreign personal holding company income is treated as distributed as a dividend on a pro-rata basis to all of its U.S. shareholders, including U.S. citizens, residents, and corporations (sec. 551(b)). That is, though only the five largest individual shareholders count in the determination of foreign personal holding company status, all individual shareholders as well as persons other than individuals may be subject to current tax on their pro rata shares of the undistributed income of the foreign personal holding company. The undistributed foreign personal holding company income that is deemed distributed is treated as recontributed by the shareholders to the foreign personal holding company as a contribution to capital. Accordingly, the earnings and profits of the corporation are reduced by the amount of the deemed distribution (sec. 551(d)), and each shareholder's basis in his or her stock in the foreign personal holding company is increased by the shareholder's pro rata portion of the deemed distribution (sec. 551(e)).

Attribution of ownership for characterization as a foreign personal holding company

The foreign personal holding company provisions contain constructive ownership rules that determines whether a foreign corporation is more than 50 percent owned by five or fewer U.S. citizens or residents. These rules generally treat an individual as owning stock owned, directly or indirectly, by or for his or here partners, brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants. However, ownership of stock actually owned by a nonresident alien is not attributed to the alien's U.S. brothers and sisters (whether by the whole or half blood), ancestors, and lineal descendants who do not own stock in the foreign corporation. For example, a foreign corporation 40 percent of whose shares belong to a U.S. citizen and 60 percent of whose shares belong to the nonresident alien sister of the U.S. citizen will be foreign personal holding company if it meets the other criteria for foreign personal holding company status. Similarly, ownership of stock actually owned by a nonresident alien will not be attributed to the alien's U.S. partners if the alien's U.S. partners do not own, directly or indirectly, any stock in the foreign corporation and if the alien's partners do not include members of the same family as a U.S. citizen or resident who owns, directly or indirectly, any stock in the foreign corporation. For example, if the nonresident alien partner of a U.S. citizen owns 60 percent of a foreign corporation, while a second U.S. citizen (who is wholly unrelated to the first U.S. citizen and to the nonresident alien) owns the remaining 40 percent, the foreign corporation is not a foreign personal holding company.

These constructive ownership rules also apply to deem income to be foreign personal holding company income in two cases: (1) when a foreign corporation has contracted to furnish personal services that an individual who owns (or who owns constructively) 25 percent or more in value of the outstanding stock of the corporation has performed, is to perform, or may be designated to perform; and (2) when an individual who owns (or who

[8] A special limitation applies in the case of the sale or exchange by an individual of stock held as a long-term capital asset (sec. 1248(b)).

owns constructively) 25 percent or more in value of the outstanding stock of the corporation is entitled to use corporate property and when the corporation in any way receives compensation for use of that property. This latter rule prevents foreign corporations from avoiding foreign personal holding company status by generating what appear to be large amounts of rental income.

Passive foreign investment companies

The 1986 Act established an anti-deferral regime for passive foreign investment companies (PFICs) and established separate rules for each of two types of PFICs. One set of rules applies to PFICs that are "qualified electing funds," where electing U.S. shareholders include currently in gross income their respective shares of a PFIC's total earnings, with a separate election to defer payment of tax, subject to an interest charge, on income not currently received. The second set of rules applies to PFICs that are not qualified electing funds ("nonqualified funds"), whose U.S. shareholders pay tax on income realized from a PFIC and an interest charge which is attributable to the value of deferral.

Definition of passive foreign investment company

General definition.—A passive foreign investment company is any foreign corporation if (1) 75 percent or more of its gross income for the taxable year consists of passive income, or (2) 50 percent or more of the average fair market value of its assets consists of assets that produce, or are held for the production of, passive income (sec. 1296(a)).[9] Passive income for these purposes generally means income that satisfies the definition of foreign personal holding company income under subpart F (as discussed above); except as provided in regulations, however, passive income does not include certain active-business banking or insurance income, or certain amounts received from a related party (to the extent that the amounts are allocable to income of the related party which is not passive income, as discussed below) (sec. 1296(b)). Passive assets for this purpose are those assets that produce or are held for the production of passive income. Assets that are property which, in the hands of the foreign corporation, are inventory property (as defined in sec. 1221(1)), or are held by a regular dealer in that property, and are specifically identified as such inventory, are treated as nonpassive assets, even where that property generates foreign personal holding company income (as defined in sec. 954(c)), such as in the case of a securities broker-dealer that holds debt securities as inventory (Notice 88-72, 1988-1 C.B. 489, as modified by Notice 89-81, 1989-2 C.B. 399). In addition, transactions pursuant to certain securities sale and repurchase agreements (so-called "repos" and "reverses") may be characterized for tax purposes as loans rather than as sales and repurchases, and thus may give rise to interest income and expense for the parties to the transactions. The debt obligations deemed to be held, and the interest income deemed to be earned, pursuant to these agreements generally are treated as passive assets and income for purposes of the PFIC rules.

Look-through rules.—In determining whether foreign corporations that own subsidiaries are PFICs, look-through treatment is provided in certain cases (sec. 1296(c)). Under this look-through rule, a foreign corporation that owns, directly or indirectly, at least 25 percent of the value of the stock of another corporation is treated as owning a proportionate part of the other corporation's assets and income. Thus, amounts such as interest and dividends received from foreign or domestic subsidiaries are eliminated from the shareholder's income in applying the income test, and the stock or debt investment is eliminated from the shareholder's assets in applying the asset test.

In addition to the look-through rule applicable to 25-percent-owned subsidiaries, interest, dividends, rents, and royalties received from related persons that are not subject to section 1296(c) look-through treatment are excepted from treatment as passive income to the extent that, under regulations prescribed by the Secretary, those amounts are allocable to income of the payor that is not passive income (sec. 1296(b)(2)(C)).[10] As a corollary, the characterization of the assets that generate the income will follow the characterization of the income so that, for example, a loan to a related person will be treated as a nonpassive asset if the interest on the loan is treated as nonpassive income. Together, these rules provide that earnings of certain related corporations, which earnings would be excluded from foreign personal holding company income under the related-person same-country exception of subpart F (sec. 954(c)(3)) if distributed to the shareholders, are subject to look-through treatment whether or not the related party is 25-percent owned.

In addition, stock of certain U.S. corporations owned by another U.S. corporation which is at least 25-percent owned by a foreign corporation is treated as a nonpassive asset (sec. 1297(b)(3)). Under this rule, in determining whether a foreign corporation is a PFIC, stock of a regular domestic C corporation owned by a 25-percent owned domestic corporation is treated as an asset which does not produce passive income (and is not held for the production of passive income), and income derived from that stock is treated as income which is not passive income. Thus, a foreign corporation, in applying the look-through rule available to 25-percent owned corporations, is treated as owning nonpassive assets in these cases. This rule does not apply, however, if, under a treaty obligation of the United States, the foreign corporation is not subject to the accumulated earnings tax, unless the corporation agrees to waive the benefit under the treaty. This rule is designed to mitigate the potential disparate tax treatment between U.S. individual shareholders who hold U.S. stock investments through a U.S. holding company and those who hold those investments through a foreign holding company. If a foreign investment company attempts to use this rule to avoid the PFIC provisions, it will be subject to the accumulated earnings tax and, thus, the shareholders of that company essentially will be denied deferral on the earnings of the foreign company, with an effect in some ways similar to application of the PFIC provisions.

Special exceptions from PFIC classification apply to start-up companies (sec. 1297(b)(2)) and corporations changing businesses during the taxable year (sec. 1297(b)(3)). In both such cases, a corporation may have a substantially higher proportion of passive assets (and passive income, in some cases) that at other times in its history.

General rule—nonqualified funds

General rule.—United States persons who are shareholders in PFICs that are not "qualified electing funds" (or have not been qualified electing funds for all PFIC years in the holding period of the taxpayer) pay U.S. tax and an interest charge based on the value of tax deferral at the time the shareholder disposes of stock in the PFIC or on receipt of an "excess" distribution (sec. 1291). Under this rule, gain recognized on disposition of stock in a nonqualified fund or income on receipt of an "excess" distribution from a nonqualified fund is treated as ordinary income and is treated as earned pro rata over the shareholder's holding period of his or her investment. The portion treated as earned before the current year during the post-1986 period during which the foreign corporation was a PFIC is taxed at the highest applicable tax rate in effect for each respective year, and is subject to an interest charge. The interest charge is treated as interest for tax purposes. The total of such tax and interest is referred to as the "deferred tax amount."

Availability of foreign tax credits.—Distributions from nonqualified funds are eligible for direct and deemed-paid foreign tax credits (under secs. 901 and 902) under the following method. The U.S. investor first computes the total amount of creditable foreign taxes with respect to the distribution it receives. This amount includes the amount of direct foreign taxes paid by the investor with respect to the distribution (for example, any withholding taxes) and the amount of the PFIC's foreign taxes deemed paid by the investor with respect to the distribution under section 902 (if any) to the extent the direct and indirect taxes are creditable under general foreign tax credit principles and the investor chooses to claim those taxes as a credit. The investor then determines the amount of the creditable foreign taxes that are attributable to the portion of the distribution that is an excess distribution (the "excess distribution taxes"). This determination is made by apportioning the total amount of creditable foreign taxes between the amount of the distribution that is an excess distribution and the amount of the distribution that is not an excess distribution on a pro rata basis. For purposes of determining the amount of the distribution from the PFIC (and the amount of the excess distribution), the gross-up under section 78 is included in the amount of money or other property received.

The U.S. investor then allocates the excess distribution taxes ratably to each day in the holding period of its stock. To the extent the taxes are allocated to days in taxable years prior to the year in which the foreign corporation became a PFIC and to the current taxable year, the taxes are taken into account for the current year under the general foreign tax credit rules. To the extent the taxes are allocated to days in any other taxable year (that is, to days in years on which the deferred tax amount is imposed), then the foreign tax credit limitation provisions of section 904 are applied separately to those taxes. Under this rule, the taxes allocable to a particular year can reduce the increase in tax for that year on which interest is computed, but not below zero. In the event the taxes allocable to that year are in excess of

[9] A foreign corporation can elect to apply the asset test using the adjusted bases of the corporation's assets rather than the fair market value of its assets. Thus, under this election, a foreign corporation with less than 50 percent passive assets by adjusted basis will not be a PFIC (assuming the income test is not met), even if its assets are 50 percent or more passive by fair market value. The election, once made, is revocable only with the consent of the Secretary.

[10] A related person is defined by reference to the related person definition in subpart F (that is, sec. 954(d)(3)).

any increase in tax, no interest will be due, but no carryover will be allowed since the foreign tax credit limitations are applied with respect to excess distributions occurring within each taxable year.

Definition of excess distribution.—An "excess" distribution is any current year distribution in respect of a share of stock that exceeds 125 percent of the average amount of distributions in respect of the share of stock received during the 3 preceding years (or, if shorter, the total number of years of the taxpayer's holding period prior to the current taxable year) (sec. 1291(b)). The determination of an excess distribution excludes from the 3-year average distribution base that part of a prior-year excess distribution that is considered attributable to deferred earnings (i.e., that part of the excess distribution that was not allocable to pre-1986 or pre-PFIC years or to the current year). Any gain from the sale or disposition of such stock is also treated as an excess distribution.

Anti-avoidance rules.—Regulatory authority is provided to disregard any nonrecognition provision of the Code on any transfer of PFIC stock (sec. 1291(f)). For example, regulations may treat a gift of stock in a nonqualified fund to a nontaxpaying entity, such as a charity or a foreign person, as a disposition for purposes of those rules in order that the deferred tax and interest charge attributable to that stock not be eliminated. Under proposed Treasury regulations, nonrecognition provisions may apply to the gain on a transfer of stock in a nonqualified fund that would otherwise qualify for the Code's nonrecognition provisions, but only to the extent that the transferee will be subject to the deferred tax and interest charge on a subsequent distribution by the PFIC or disposition of the PFIC stock.

Coordination with regulated investment company rules.—Proposed Treasury regulations permit a regulated investment company meeting certain requirements to mark to market its gain in PFIC stock of which it is a direct or indirect shareholder.

Qualified electing funds

General rule.—A U.S. person who owns stock in a PFIC may elect that the PFIC be treated as a "qualified electing fund" with respect to that shareholder (sec. 1295), with the result that the shareholder must include currently in gross income his or her pro rata share of the PFIC's total earnings and profits (sec. 1293). This inclusion rule generally requires current payment of tax, absent a separate election to defer tax.

Qualified fund election.—The election for treatment as a qualified electing fund, which is made at the shareholder level, is available only where the PFIC complies with the requirements prescribed in Treasury regulations to determine the income of the PFIC and to ascertain any other information necessary to carry out the purposes of the PFIC provisions. The effect of the election is to treat a PFIC as a qualified electing fund with respect to each electing investor so that, for example, an electing investor will not be subject to the deferred tax and interest charge rules of section 1291 on receipt of a distribution if the election has been in effect for each of the PFIC's taxable years for which the company was a PFIC and which includes any portion of the investor's holding period.

Inclusion of income.—The amount currently included in the income of an electing shareholder is divided between a shareholder's pro rata share of the ordinary income of the PFIC and net capital gain income of the PFIC. The characterization of income, and the determination of earnings and profits, is made pursuant to general Code rules with two modifications. These modifications apply only when the qualified electing fund is also a controlled foreign corporation and the U.S. investor in the fund is also a U.S. shareholder in the controlled foreign corporation (as both terms are defined under subpart F).

Under the first modification, if the U.S. investor establishes to the satisfaction of the Secretary that an item of income derived by a fund was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of U.S. corporate tax, then that item of income is excluded from the ordinary earnings and net capital gain income of the fund for purposes of determining the U.S. investor's pro rata share of income.

Under the second modification, the qualified electing fund's ordinary earnings and net capital gain income do not include income from U.S. sources that is effectively connected with the conduct by the fund of a U.S. trade or business so long as that income is not exempt from U.S. taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

Pro rata share of income.—Pro rata share of income generally is determined by aggregating a PFIC's income for the taxable year and attributing that income ratably over every day in the PFIC's year. Electing investors then include in income for the period in which they hold stock in the PFIC their daily ownership interest in the PFIC multiplied by the amount of income attributed to each day.

As a special rule, the Code permits that, to the extent provided in regulations, if a qualified electing fund establishes to the Secretary's satisfaction that it maintains records that determine investors' pro rata shares of income more accurately than allocating a taxable year's income ratably over a daily basis (for example, by allocating a month's income ratably over a daily basis), the fund can determine the investors' pro rata shares of income on that basis. This provision is designed to allow those funds that maintain appropriate records to more accurately determine U.S. investors' pro rata shares of income, which may be important in cases where the investors own their stock for only parts of a year.

Distributions and basis adjustments.—The distribution of earnings and profits that were previously included in the income of an electing shareholder under these rules is not treated as a dividend to the shareholder, but does reduce the PFIC's earnings and profits (sec. 1293(c)). The basis of an electing shareholder's stock in a PFIC is increased by amounts currently included in income under these rules, and is decreased by any amount that is actually distributed but treated as previously taxed under section 1293(c). (sec. 1293(d)).

Availability of foreign tax credit.—Foreign tax credits are allowed against U.S. tax on amounts included in income from a qualified electing fund to the same extent, and under the same rules, as in the case of income inclusions from a controlled foreign corporation (sec. 1293(f)).

The Code provides special rules to characterize income inclusions from qualified electing funds for foreign tax credit purposes. In the case of a qualified electing fund that is also a controlled foreign corporation, where the U.S. person that has the income inclusion is a U.S. shareholder in the corporation (as defined under the subpart F rules), look-through treatment determines the foreign tax credit limitation characterization of the income inclusion. In addition, where the qualified electing fund is a noncontrolled section 902 corporation (as defined in sec. 904(d)(2)(E)) with respect to the taxpayer, the income inclusion is treated for foreign tax credit purposes as a dividend, and thus, is subject to the separate limitation applicable to those dividends. Where neither of the above conditions is satisfied, the income inclusion is characterized as passive income for foreign tax credit purposes.

Election to defer current payment of tax.—U.S. investors in qualified electing funds may generally, subject to the payment of interest, elect to defer payment of U.S. tax on amounts included currently in income but for which no current distribution has been received (sec. 1294). An election to defer tax is treated as an extension of time to pay tax for which a U.S. shareholder is liable for interest.

The disposition of stock in a PFIC generally terminates all previous extensions of time to pay tax with respect to the earnings attributable to that stock. Disposition for this purpose generally means any transfer of ownership, regardless of whether the transfer constitutes a realization or recognition event under general Code rules. For example, a transfer at death or by gift of stock in a qualified electing fund is treated as a disposition for these purposes.

Special rules applicable to both types of funds

Coordination of section 1291 with taxation of shareholders in qualified electing funds.—Gain recognized on disposition of stock in a PFIC by a U.S. investor, as well as distributions received from a PFIC in a year the PFIC is a qualified electing fund, are not taxed under the rules applicable to nonqualified funds (that is, sec. 1291) if the PFIC is a qualified electing fund for each of the fund's taxable years which begin after December 31, 1986 and which includes any portion of the investor's holding period (sec. 1291(d)(1)). Therefore, if for any taxable year beginning after December 31, 1986, a foreign corporation is a PFIC but is not a qualified electing fund with respect to the U.S. investor, gains and distributions in any subsequent year will be subject to the rules applicable to nonqualified funds. The section 1291 coordinating provision as it relates to distributions prevents a fund from retaining its annual income while it is not a qualified electing fund, and then distributing the accumulated income in a subsequent year after it becomes a qualified electing fund without incurring any interest charge.

Any U.S. person who owns stock (directly or indirectly under the attribution rules) in a PFIC which previously was not a qualified electing fund for a taxable year but which becomes one for the subsequent taxable year may elect to be taxed on the unrealized appreciation inherent in his or her PFIC stock up through the first day of the subsequent taxable year, pay all prior deferred tax and interest, and acquire a new basis and holding period in his or her PFIC investment (sec. 1291(d)(2)). Thereafter, the shareholder is subject to the rules applicable to qualified electing funds.

An alternative election is available to shareholders in a controlled foreign corporation. Under this alternative, instead of recognizing the entire gain in the value of his or her stock, a U.S. person that holds stock (directly or indirectly under the attribution rules) in a controlled foreign corporation (as defined for subpart F purposes) that is a PFIC and that becomes a qualified electing

fund can elect to include in gross income as a dividend his or her share of the corporation's earnings and profits accumulated after 1986 and since the corporation was a PFIC. Upon this election, the U.S. person's stock basis is increased by the amount included in income and the shareholder is treated as having a new holding period in his or her stock. Thereafter, the shareholder is subject to the rules applicable to qualified electing funds. The total amount treated as a dividend under the above election is an excess distribution and is to be assigned, for purposes of computing the deferred tax and interest charge, to the shareholder's stock interest on the basis of post-December 31, 1986 ownership.

Attribution of ownership.—In determining stock ownership, a U.S. person is considered to own his or her proportionate share of the stock of a PFIC owned by any partnership, trust, or estate of which the person is a partner or beneficiary (or in certain cases, a grantor), or owned by any foreign corporation if the U.S. person owns 50 percent or more of the value of the corporation's stock (sec. 1297(a)). However, if a U.S. person owns any stock in a PFIC, the person is considered to own his or her proportionate share of any lower-tier PFIC stock owned by the upper-tier PFIC, regardless of the percentage of his or her ownership in the upper-tier PFIC. Under regulations, any person who has an option to acquire stock may be treated as owning the stock.

Anti-avoidance rules.—The Code provides authority to the Secretary to prescribe regulations that are necessary to carry out the purposes of the PFIC provisions and to prevent circumvention of the interest charge (sec. 1297(d)). In addition, if a U.S. person is treated as owning stock in a PFIC by virtue of the attribution rules, regulations may treat any distribution of money or other property to the actual holder of the stock as a distribution to the U.S. person, and any disposition (whether by the U.S. person or the actual holder of the stock) which results in the U.S. person being treated as no longer owning the stock as a disposition by the U.S. person (sec. 1297(b)(5)).

Other anti-deferral regimes

Personal holding companies

In addition to the corporate income tax, the Code imposes a tax at the rate of 28 percent[11] on the undistributed income of a personal holding company (sec. 541). This tax substitutes for the tax that would have been incurred by the shareholders on dividends actually distributed by the personal holding company. A personal holding company generally is defined as any corporation (with certain specified exceptions) if (1) at least 60 percent of its adjusted gross income for the taxable year is personal holding company income, and (2) at any time during the last half of the taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals (sec. 542(a)).

This definition is very similar to that of a foreign personal holding company, discussed above, but does not depend on the U.S. citizenship or residence status of the shareholders. However, the specified exceptions to the definition of a personal holding company preclude the application of the personal holding company tax to, among others, any foreign personal holding company, most foreign corporations owned solely by nonresident alien individuals, and any PFIC (paragraphs (5), (7), and (10) of sec. 542(c)). Therefore, the personal holding company tax could apply to only a small class of foreign corporations, such as foreign corporations with at least 60 percent but less than 75 percent passive-type income, and majority owned by a group of five or fewer individuals of whom at least one is a U.S. person and at least one of whom is a nonresident alien.

Accumulated earnings tax

In addition to the corporate income tax, the Code also imposes a tax, at the rate of 28 percent, on the accumulated taxable income of any corporation (with certain exceptions) formed or availed of for the purpose of avoiding income tax with respect to its shareholders (or the shareholders of any other corporation), by permitting its earnings and profits to accumulate instead of being distributed (secs. 531, 532(a)). The specified tax-avoidance purpose generally is determined by the fact that the earnings and profits of the corporation are allowed to accumulate beyond the reasonable needs of the business (sec. 533). Like the personal holding company tax, the accumulated earnings tax acts as a substitute for the tax that would have been incurred by the shareholders on dividends actually distributed by the corporation.

The accumulated earnings tax does not apply to any personal holding company, foreign personal holding company, or PFIC (sec. 532(b)). These exceptions, along with the current inclusion of subpart F income in the gross incomes of the U.S. shareholders of a controlled foreign corporation, have resulted, in practice, in very limited application of the accumulated earnings tax to foreign corporations.

Foreign investment companies

A foreign investment company generally is defined as any foreign corporation that either is registered under the Investment Company Act of 1940 (as amended) as a management company or as a unit investment trust, or is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities or commodities or any interest (including a futures or forward contract or option) in securities or commodities, at a time when 50 percent or more of the vote or value of the stock was held (directly or indirectly) by U.S. persons (sec. 1246(b)). In the case of the sale or exchange of stock in a foreign investment company, gain on the sale generally is treated as ordinary income to the extent of the taxpayer's ratable share of the undistributed earnings and profits of the foreign investment company (sec. 1246(a)). However, if a foreign investment company so elected by December 31, 1962, it can avoid the application of section 1246 to its shareholders by annually distributing at least 90 percent of its taxable income (determined as if the foreign corporation were a domestic corporation), and complying with other information-reporting and administrative requirements as the Secretary of the Treasury deems necessary (sec. 1247).

Coordination among anti-deferral regimes

The Code provides that, if an item of income of a foreign corporation would be includable in the gross income of a U.S. shareholder both under the controlled foreign corporation rules and under the foreign personal holding company rules, that item of income is included only under the controlled foreign corporation rules (sec. 951(d)). This rule of precedence operates only to the extent that the controlled foreign corporation rules and the foreign personal holding company rules overlap on an item-by-item basis. Income includible under only one set of rules (foreign personal holding company rules or subpart F rules) is includible under that set of rules. A taxpayer taxable under subpart F on amounts other than subpart F income (on such items as withdrawals from foreign base company shipping income and investments in U.S. property) is taxable under subpart F whether or not the taxpayer is also taxable on the undistributed foreign personal holding company income of the foreign corporation under the foreign personal holding company rules.

If an item of income of a foreign corporation would be includable in the gross income of a U.S. shareholder both under the controlled foreign corporation rules and under the rules relating to the current taxation of income from certain passive foreign investment companies, that item of income is included only under the controlled foreign corporation rules (sec. 951(f)). In addition, if an item of income of a foreign corporation would be includable in the gross income of a U.S. shareholder both under the controlled foreign corporation rules and under the rules relating to the current taxation of income from electing foreign investment companies, that item of income is included only under the foreign investment company rules (sec. 951(c)). Any amount that is taxable under only one set of rules is included in gross income pursuant to that set of rules.

In the case of a foreign corporation that is both a foreign personal holding company and a passive foreign investment company, to the extent that the income of the foreign corporation would be taxable to a U.S. person both under the foreign personal holding company rules and under section 1293 (relating to current taxation of income of certain passive foreign investment companies), that income is treated as taxable to the U.S. person only under the foreign personal holding company rules (sec. 551(g)).

In the case of a PFIC that is a qualified electing fund, the amount of income treated as a dividend on a sale or exchange of stock in a controlled foreign corporation (under sec. 1248) does not include any amount of income included previously under the qualified electing fund rules to the extent that that amount of income has not been distributed from the PFIC prior to the sale or exchange of the stock. In addition, section 1248 does not apply to the sale or disposition of stock in a PFIC that is not a qualified electing fund.

In the case of a PFIC that is a qualified electing fund and that owns stock in a second-tier PFIC that is also a qualified electing fund, amounts distributed by the second-tier fund to the first-tier fund that have been included previously in income by U.S. investors—because they are deemed to own stock in the second-tier fund—are not to be included in the ordinary earnings of the first-tier fund. This rule prevents U.S. persons from including amounts in income twice. This relief provision also applies in the case of a second- (or lower-) tier PFIC that is a qualified electing fund and that is also a controlled foreign corporation. In this case, amounts that are included in a U.S. person's income under the subpart F provisions and that would have been included under the qualified electing fund provisions (but for the coordination provision of sec. 951(f)) are prevented from being included in income again under this relief provision.

[11] Section 6091(a)(4) of the bill, which is a technical correction to the Omnibus Budget Reconciliation Act of 1990, would change the personal holding company tax rate to 31 percent, to conform to the increase in the top individual tax rate from 28 to 31 percent.

In the case of a PFIC that is not a qualified electing fund, the Code eliminates the potential for double taxation by providing for proper adjustments to excess distributions for amounts that are taxed currently under the Code's other current inclusion rules. Thus, for example, excess distributions will not include any amounts that are treated as previously taxed income under section 959(a) when distributed by a controlled foreign corporation that is also a PFIC that is not a qualified electing fund.

As noted above, the personal holding company tax does not apply to any foreign personal holding company or PFIC, and the accumulated earnings tax does not apply to any personal holding company, foreign personal holding company, or PFIC.

Section 1246 does not apply to the earnings and profits of any foreign investment company for any year after 1986 if the company is a PFIC for that year (sec. 1297(b)(7)). In addition, an electing foreign investment company under section 1247 is excluded from the definition of a PFIC (sec. 1296(d)).

Reasons for Change

Some of the different anti-deferral regimes were enacted or modified at different times and reflect historically different Congressional policies. Different regimes provide different thresholds (either by type of income or asset at the foreign corporation level, or of U.S. stock ownership at the shareholder level) to their application. They provide for different mechanisms by which U.S. stockholders are denied the benefits of deferral. Some of the regimes have features directed at policy goals applicable to foreign corporations owned by U.S. corporations (e.g., the allowance of indirect foreign tax credits); others have features primarily directed at issues applicable to foreign corporations owned by U.S. individuals (e.g., the basis of property acquired from a decedent). Some regimes preserve the character of the income earned in the hands of a foreign corporation while others do not. Some provide for movement of losses between years of a single foreign corporation or between multiple corporations while others do not. While a consistent theme of these regimes is to provide current taxation for certain types of interest, dividend, rental, royalty, and other similar income, the different regimes apply different criteria to these items of income to determine their current inclusion or noninclusion. Different regimes have different ordering rules for determining which dividends from foreign corporations subject to the regimes are subject to tax on repatriation and which are untaxed distributions of previously taxed income.

Simply because of the difference among the various anti-deferral regimes, U.S. taxpayers frequently are faced with the need to consult multiple sets of anti-deferral rules when they hold stock in a foreign corporation.

Moreover, the interactions of the rules cause additional complexity. There is significant overlap among the several regimes. This overlap requires the Code to provide specific rules of priority for income inclusions among the regimes, as well as additional coordination provisions pertaining to other operational differences among the several regimes. The overlapping or multiple application of anti-deferral regimes to a single corporation can result in significant additional complexity with little or no ultimate tax consequences.

Consolidation of the several anti-deferral regimes can achieve two major types of simplification. First, by reducing the number of separate definitions of entities among the anti-deferral regimes, taxpayers can be spared the burden of understanding and complying with a multiplicity of separate anti-deferral regimes with separate definitions and requirements. Moreover, where the committee believes that operating rules of one current inclusion regime provide taxpayers with appropriate income measurement rules not contained in another regime (e.g., the qualified deficit rules present in subpart F but absent in the PFIC rules), consolidation of the operating rules permits more uniform extension of those benefits to all taxpayers subject to a current inclusion regime.

Second, from an operational perspective, the number of anti-deferral regimes that can apply to any one shareholder in a foreign corporation can be reduced to one. As discussed above, the operational differences, including the overlapping applicability of the six present-law anti-deferral regimes, is a source of complexity. Under a consolidated regime, however, deferral can be denied for many corporations (whether in full or in part) solely though the provisions of subpart F. In the case of a controlled foreign corporation, for example, being subject to the rules for full denial of deferral (such as the PFIC or foreign personal holding company provisions under present law) can, if only a single set of rules applies, result in fewer additional compliance burdens and less administrative and operational complexity.

Another source of complexity under present law is the need for shareholders of controlled foreign corporations to make "protective" current-inclusion elections in order to avoid adverse future consequences under the interest-charge method should the controlled foreign corporation also prove to be a PFIC. By replacing elective current-inclusion treatment for PFICs that are also controlled foreign corporations by mandatory current inclusion through subpart F for passive foreign corporations that are also controlled foreign corporations, a consolidated regime can eliminate both the burdens of making protective elections and the risks of failing to do so.

The committee understands that the interest-charge method of the present-law PFIC rules is a significant source of complexity both separately and in its interaction with other provisions of the Code. Even without eliminating the interest-charge method, significant simplification can be achieved by minimizing the number of taxpayers that may be subject to the method and by making certain modifications that may reduce the complexity engendered by the interest-charge method. Further, because some taxpayers have argued that they would have preferred choosing the current-inclusion method afforded by the qualified fund election, but were unable to do so because they could not obtain required corporate-level information, the committee believes that the mark-to-market system provides a fair alternative method for measuring income and imposing an appropriate level of income tax.

Explanation of Provision

In general

The bill replaces the separate anti-deferral regimes of present law with a unified set of rules providing for either partial or full elimination of deferral depending on the circumstances. The bill preserves the present-law approach under which partial current taxation is a function of the type of income earned by the foreign corporation and a level of U.S. ownership in the corporation exceeding some threshold (as currently embodied in subpart F). The bill also preserves the present-law approach under which full current taxation is a function of a type of income or assets of the corporation exceeding some threshold (as currently embodied in subpart F, the PFIC rules, and the foreign personal holding company rules). The bill eliminates regimes that are redundant or marginally applicable, and ensures that no more than one set of rules generally will apply to a shareholder's interest in any one corporation in any one year.

Generally, the bill retains the subpart F rules as the foundation of its unified anti-deferral regime (with certain modifications described below and also in item 2., following, describing secs. 4411-4413 of the bill). It includes a modified version of the PFIC rules while eliminating the other regimes as redundant to one or the other. The bill's unified anti-deferral regime sets forth various thresholds for subjecting U.S. persons to full or partial inclusions of corporate income. In addition, where deferral is eliminated by U.S. shareholder inclusions of foreign corporate-level income, the bill applies a single set of rules (the subpart F rules) for basis adjustments, characterization of actual distributions, foreign tax credits, and similar issues. As under present law, the bill in some cases affords U.S. persons owning stock in foreign corporations a choice of technique for recognizing income from the elimination of deferral. However, in a greater number of cases than under present law, the bill provides only one method of eliminating deferral.

Replacement of current law regimes for full elimination of deferral

The bill creates a single definition of a passive foreign corporation (PFC) that will unify and replace the foreign personal holding company and PFIC definitions. The rules applicable to PFCs represent a hybrid of characteristics of the foreign personal holding company rules, the PFIC rules, and the controlled foreign corporation rules (subpart F), plus a new mark-to-market regime, as well as a variety of simplifying or technical changes to rules under the existing systems. The following discussion explains the differences between the PFIC provisions of present law and the PFC provisions applicable under the bill.

A PFC is any foreign corporation if (1) 60 percent or more of its gross income is passive income, (2) 50 percent or more of its assets (on average during the year, measured by value) produce passive income or are held for the production of passive income, or (3) it is registered under the Investment Company Act of 1940 (as amended) either as a management company or as a unit investment trust.[12] As under the PFIC rules, the foreign corporation is permitted to elect to measure its assets based on their adjusted bases rather than their value.

As under present law, passive income for this purpose is defined in the bill generally as any income of a kind which would be foreign personal holding company income as defined in section 954(c), subject to the current law exceptions for banking and insurance income and the current look-through rules for certain payments from related persons (current sec. 1296(b)(2)).[13]

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[12] The committee understands that a mutual insurance company can be treated under the bill and under present law as a passive foreign corporation, notwithstanding the fact that such a company does not actually issue "stock."

[13] Thus, the bill retains the exception for income derived in the active conduct of an insurance business by a corporation which is predominantly engaged in an insurance business and which would be

The bill adds a new exception to the definition of passive income. Under the bill, to the extent that any asset is properly treated as not held for the production of passive income (and therefore is treated as not a passive asset for purposes of the assets test), all income derived from the asset is treated as active income for purposes of the income test. Ordinarily the character of an asset as passive or active depends on the income generated by that asset. However, as explained above, some assets (for example, stocks or securities held for sale to customers in the ordinary course of business by a regular dealer in such property, and properly identified as inventory property) may be treated as active even though those assets generate, among other things, passive income. It is unclear whether this was intended when the PFIC rules were enacted.[14]

The bill establishes that, to the extent an asset is properly treated as active, all of the income from that asset is treated as active for purposes of the income test. The bill is not intended to change the outcome of the application of the asset test under present law. For example, the committee does not intend to limit the IRS's authority to prescribe limits, as it did in Notice 88-22, on the cases in which assets generating what could be passive income are treated as active assets.[15] In addition, the committee intends that where one item of property is properly viewed as two separate assets, a portion of the property can be treated as a passive asset that generates passive income while another portion of the same property can be treated as a nonpassive asset that generates nonpassive income. For example, assume that a taxpayer owns a six-story office building, and occupies two floors for use in its active business while renting out the other four floors. Assume that the two floors used in the active business are properly viewed as a nonpassive asset, while the four leased floors are properly viewed as a passive asset. The committee intends that the rental income from the four leased floors in this example be treated as passive income.

The committee has been informed that dealers in stocks and securities enter into securities sale and repurchase agreements (so-called "repos" and "reverses") and engage in securities lending and borrowing transactions. For example, the committee has been informed that securities dealers may engage in offsetting repro and reverse transaction—i.e., may run a "matched book" with respect to such transactions. In addition, the committee has been informed that securities dealers enter into reverse repos and securities borrowing transactions to cover short sales and failed deliveries of securities for settlement of trades, and use repos and securities loans to finance inventory positions. As noted above, repos and reverses may be characterized for tax purposes as loans rather than as sales and repurchases, and thus may give rise to interest income and expense for the parties to the transactions.

The bill provides a netting rule with respect to repos and reverse, if entered into in connection with a "matched book" by a foreign corporation that is engaged in the active conduct of a trade or business as a dealer in securities. Under this rule, offsetting debt liabilities and assets resulting from matched repos and reverses are netted, and only the net asset position (if any) is treated as an asset held by a foreign corporation for purposes of applying the PFC definition. Similarly, the bill provides that the offsetting interest expense and income resulting from matched repos and reverses is netted and the net income, if positive, is treated as an item of gross income under the PFC definition. The reduction in gross income or assets that may result from application of this provision to a corporation does not apply for any purpose other than testing a foreign corporation for PFC status.

The Committee anticipates that Treasury regulations will provide guidance as to what constitutes a "matched book;" what repo and reverse transactions are considered to offset each other in a "matched book;" what constitutes the entry into matched book transactions in the active conduct of a trade or business of being a dealer in securities; and how the netting procedure will be carried out to arrive at amounts of gross income and assets for PFC definitional purposes.

The Committee intends that, in practice, the effect of this provision shall be only to mitigate the effect of the PFC rules on a company insofar as it is actively engaged in the business of providing the services of a financial intermediary to unrelated parties, rather than used as a vehicle for investment in stock, securities, or other financial products on behalf of its shareholders or other related parties. The committee is aware of other instances in the Code and regulations where it is necessary to draw similar distinctions, and invites the Treasury to consider whether any tests employed in those provisions are suitable in light of the purposes of provision.

For example, rules under subpart F may require a determination whether a foreign corporation is a regular dealer within the meaning of section 954(c)(1)(B) in stocks, securities, or derivative financial products during its taxable year. As another example, under the PFIC rules of present law (as under the PFC rules in the bill) a foreign corporation, to the extent provided in regulations, may be exempted from passive characterization of its interest income from the active conduct of a banking business. Guidance has been issued under this provision analogous to the guidance that might be issued under the matched-book provision. As a third example, guidance has been issued under the foreign tax credit limitation regulations for identifying financial services entities.

As in the cases of the PFIC bank rules and the foreign tax credit limitation rules on financial services entities, the committee believes that the Treasury could consider a variety of activities that may indicate the existence of an active securities business.[16]

In addition, in appropriate circumstances the Treasury might consider it relevant that a foreign corporation is or is not registered or authorized in the country in which it conducts its principal securities dealer operations to conduct the bona fide securities activities that it performs in that country, and is subject to the appropriate securities regulatory authorities of that jurisdiction.

The foregoing list of possible approaches and factors to take into account is not intended to be exclusive of other approaches or factors not mentioned. Nor is it intended to suggest that the presence of any of the factors mentioned above, or the passing or failing of any test existing under present law, must be used by Treasury to determine the outcome of the question whether a foreign corporation is engaged in the active conduct of a trade or business as a dealer in securities. The committee does not intend to limit the Treasury's discretion to fashion rules suitable to the purposes of the provision.

In addition, the committee intends that a study be conducted by the Treasury Department as to the tax treatment for purposes of the PFC rules of securities sale and repurchase transactions and securities lending and borrowing transactions, and the consequences and merits of possible changes in such tax treatment. The committee intends that the Treasury study be completed within one year after the date of enactment of the bill.

In addition, the bill provides a clarification to present law. The bill clarifies that, as indicated in the legislative history of the 1988 act, the same-country exceptions from the definition of foreign-personal holding company income in section 954(c) do not apply in determining passive income for purposes of the PFIC definition.[17]

The bill modifies the present law application of the asset test by treating certain

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subject to tax under subchapter L if it were a domestic corporation. The committee intends that in determining whether a corporation is "predominantly engaged" for this purpose, the Secretary may require a higher standard or threshold than the definition of an insurance company under Treasury Regulations section 1.801-3(a).

[14] Active asset treatment of certain securities held for sale to the public is confirmed in Notice 88-22, 1988-1 C.B. 489, 490, and S. Rep. No. 100-445, 100th Cong., 2d Sess. 231 (1988). The legislative history of the 1986 Act further suggested a view that all income from such inventory would be treated as active. "[S]ecurities held for sale to the public[] are assets that do not give rise to subpart F FPHC income by virtue of the dealer exception in sec. 954(c) * * *" Staff of the Joint Committee on Taxation, 100th cong., 1st Sess., *General Explanation of the Tax Reform Act of 1986*, at 1025 (1987).

[15] Under the Notice, for example, the IRS conditioned active asset treatment of securities inventories on compliance with an identification requirement and a reasonable needs requirement. 1988-1 C.B. at 490.

[16] Such activities might include: (a) purchasing or selling stock, debt obligations, commodity futures or other securities or derivative financial products (including notional principal contracts) from or to unrelated persons, and holding stock, debt obligations and other securities as inventory for sale to customers; (b) arranging notional principal contracts and other hedging transactions for, or entering into such transactions or any other derivative financial products with, unrelated persons who are customers; (c) arranging foreign exchange transactions for, or engaging in foreign exchange transactions with, unrelated persons who are customers; (d) underwriting issues of stocks, debt obligations or other securities under best-efforts or firm-commitment agreements with unrelated persons; (e) purchasing, selling, discounting, or negotiating on a regular basis for unrelated persons notes, drafts, checks, bill of exchange, acceptances or other evidences of indebtedness; (f) lending stocks or securities to unrelated persons; (g) providing finance leasing (which would not qualify as active leasing income under sec. 954(c)(2)(A)) to unrelated persons; (h) engaging in hedging activities directly related to bona fide securities activities described in items (a) through (g) of this list; (i) servicing mortgages; (j) investment banking activities; (k) providing financial or investment advisory services, investment management services, fiduciary services, trust services, or custodial services to unrelated persons; (l) providing margin or other financing for customers secured by securities or money market instruments, including repurchase agreements or financing in connection with any of the bona fide securities activities described in items (a) through (k) of this list; (m) disposing of any property (whether tangible or intangible, personal or real) that was used in the active conduct of the securities business, but only to the extent that the property was held in connection with a bona fide securities activity; and (n) any other activity that the Security may determine to be a bona fide securities activity that is commonly conducted by active foreign securities dealers in the ordinary course of their securities business.

[17] H.R. Rep. No. 100-795, 100th Cong., 2d Sess. 272 (1988); S. Rep. No. 100-445, 100th Cong., 2d Sess. 285 (1988)

leased property as assets held by the foreign corporation for purposes of the PFC asset test. This rule applies to tangible personal property with respect to which the foreign corporation is the lessee under a lease with a term of at least 12 months. Under the bill, the value of leased property for purposes of applying the assets test is the lesser of the fair market value of the property or the unamortized portion of the present value of the payments under the lease. Regulations are to provide for determining the unamortized portion of the present value of the payments. Present value is to be determined, under regulations, as of the beginning of the lease term, and, except as provided in regulations, by using a discount rate equal to the applicable Federal rate determined under the rules applicable to original discount instruments (sec. 1274(d)), substituting under those rules the term of the lease for the term of the debt instrument. In applying those rules, options to renew or extend the lease are not to be taken into account. Also, the special rule to be applied under section 1274(d)(2) in the case of a sale or exchange is disregarded. Property leased by a corporation is not taken into account in testing for PFC status under the asset test either if the lessor is a related person (as that term is defined under the foreign base company rules) with respect to the lessee, or if a principal purpose of leasing the property was to avoid the PFC provisions.

The bill also modifies the present law rules that provide an exception from the definition of a PFIC in the case of a company changing businesses. Under the bill, if a foreign corporation holds 25 percent or more of the stock of a second corporation that qualifies for the change-of-business exception (current sec. 1297(b)(3)), then in applying the look-through rules (current sec. 1296(c)), the first corporation may treat otherwise passive assets or income of the second corporation as active.[18]

The bill generally retains those provisions of current law the application of which depends upon whether a foreign corporation was a PFIC for years after 1986 (e.g., current sec. 1291(d)), but modifies these provisions to test whether the foreign corporation was a PFC for years after 1986. As a transitional definition, the bill provides that a foreign corporation that was treated as a PFIC for any taxable year beginning before the introduction of the bill is treated as having been a PFC for each such year.

The bill provides a new election that will allow certain passive foreign corporations to be treated as domestic corporations. A foreign corporation is eligible to make this election if (1) it would qualify for treatment as a regulated investment company (RIC) under the relevant provisions of the Code if it actually were a domestic corporation, (2) it meets such requirements as the Secretary may prescribe to ensure the collection of taxes imposed by the Internal Revenue Code on the passive foreign corporation, and (3) the electing passive foreign corporation waives all benefits which are granted by the United States under any treaty (including treaties other than tax treaties) and to which the corporation is otherwise entitled by reason of being a resident of another country. The rules governing such an election generally will be similar to those applicable to the election by a foreign insurance company to be treated as a domestic corporation under section 953(d). The rules governing the election under the PFC rules, however, will not include rules similar to the special rules applicable under section 953(d) for pre-effective-date earnings and profits (sec. 953(d)(4)(B)).

The bill provides a special rule regarding the application of the PFC rules to tax-exempt organizations that own stock in passive foreign corporations. The PFC rules, under the bill, apply to any stock held by a tax-exempt organization (under section 501) in a passive foreign corporation only to the extent that a dividend on that stock would be taken into account in determining the organization's unrelated business taxable income. To that extent, the PFC rules apply with respect to amounts taken into account in computing unrelated business taxable income in the same manner as if the organization were fully taxable. Even if a dividend on the PFC stock would not be taken into account in determining the organization's unrelated business taxable income, however, the committee intends that any U.S. corporation regardless of its tax-exempt status will be treated as a U.S. person for purposes of determining whether or not a PFC is U.S. controlled.

Tax treatment under full elimination of deferral

The benefits of deferral are eliminated with respect to the income of a PFC under three alternative methods: current inclusion, mark-to-market, or interest charge on excess distributions.

Current inclusion methods

Mandatory current inclusion.—If a passive foreign corporation is U.S. controlled, the bill will subject every U.S. person owning (directly or indirectly) stock in the PFC to income inclusions under a modified version of the controlled foreign corporation rules. If a PFC is not U.S. controlled, every U.S. person owning (directly or indirectly) 25 percent or more of the vote or value of the stock of the PFC will be subject to the same rules. Under the bill, the entire gross income of the passive foreign corporation (subject to applicable deductions) is treated as foreign base company income, and thus, is included (net of appropriate deductions) on a pro rata basis in the income of each U.S. person directly or indirectly owning stock in the PFC, under a modified application of the rules of section 951 and 961.[19] Actual distributions of earnings by such a PFC are treated similarly to distributions of previously taxed income under sections 959 and 961. These rules supersede all application of the present-law rules applicable to foreign personal holding companies, under which earnings are deemed distributed and then contributed to the capital of the foreign personal holding company.

In applying the subpart F inclusion rules to PFC inclusions, the bill applies the subpart F high-tax exception (under sec. 954(b)(4)) only to those shareholders in the PFC who are treated as "U.S. shareholders" of a controlled foreign corporation under the general rules of subpart F (i.e., those who own, whether directly, indirectly, or constructively, at least 10 percent of the voting power of the controlled foreign corporation). This limitation on the application of the controlled foreign corporation rules preserves present law to the extent that no high-tax exception is available to PFICs that are not also controlled foreign corporations. However, because the bill repeals the foreign personal holding company provisions of the Code, the effect of this high-tax exception is to increase the possibility for deferral in the case of a company that under present law meets the definitions of both a controlled foreign corporation and a foreign personal holding company.

Also in general conformity with present law, the bill permits the character of the PFC's income as either ordinary income or capital gain to be passed through to those shareholders of the PFC who are not treated as "U.S. shareholders" of a controlled foreign corporation under the general rules of subpart F (i.e., those who do not own, whether directly, indirectly, or constructively, at least 10 percent of the voting power of the controlled foreign corporation).

In addition, the bill modifies the application of subpart F to PFCs by including foreign base company income of a PFC in the income of U.S. persons without regard to otherwise applicable reductions pursuant to the export trade corporation rules (secs. 970 and 971). This modification to the application of the controlled foreign corporation rules preserves present law in that the PFIC provisions apply in full force to export trade corporations.

The committee is aware of the equity issues that have been raised with regard to the application of the PFIC rules to export trade corporations. Accordingly, the committee will schedule consideration of this matter at the earliest possible date.

A passive foreign corporation is treated under the bill as U.S. controlled for this purpose either if it would be treated as a controlled foreign corporation under the rules of subpart F, or if, at any time during the taxable year, more than 50 percent of the vote or value of the corporation's stock was owned directly or indirectly by five or fewer U.S. persons (including but not limited to individuals, and including all U.S. citizens regardless of their residence). Indirect stock ownership through foreign entities within the meaning of section 958(a)(2). In addition, for the purpose of determining whether a foreign corporation is U.S. controlled by virtue of the ownership of more than 50 percent of its stock by five or fewer U.S. persons, the constructive ownership principles of the present-law foreign personal holding company rules generally apply. In the case of pass-through entities such as partnerships, S corporations, estates, and trusts, the constructive ownership principles of the present-law foreign personal holding company rules apply except as provided in regulations. The committee contemplates that regulations may modify the constructive ownership rules, for example, in the case of a trust in which the beneficial interests may be contingent, subject to determination or adjustment within the discretion of the trustee, or otherwise variable or indeterminate.

Electric current inclusion.—A U.S. person not subject to the above mandatory current inclusion rules—that is, a U.S. person owning less than 25 percent of the stock in a PFC that is not U.S. controlled—may elect application of those rules. As under current law, the PFC is characterized as a "qualified electing fund" with respect to such a U.S. person. In the application of the elective current—inclusion rules, the passive foreign

[18]The bill retains the present law rules that provide an exception from the definition of a PFIC in the case of a start-up company (current sec. 1297(b)(2)). Under the bill, the committee intends that the start-up company exception be applied, where necessary to carry out the purposes of the PFC rules, by treating as one corporation all related foreign corporations that transferred assets to the start-up company.

[19]The treatment of PFC income as foreign base company income for purposes of subpart F is not intended to affect the application of look-through treatment of that income for purposes of the foreign tax credit limitation.

corporation is treated as a controlled foreign corporation with respect to the taxpayer, and the taxpayer is treated as a U.S. shareholder of the corporation. For foreign tax credit purposes, amounts included in the taxpayer's gross income under this modified application of the controlled foreign corporation rules are treated as dividends received from a foreign corporation which is not a controlled foreign corporation. Thus, an amount would be treated as a dividend from a noncontrolled section 902 corporation, or as passive income, depending on the shareholder's percentage ownership and status as an individual or a corporation.

The application and operation of the shareholder-level election for treatment as a qualified electing fund generally are the same as under the present-law PFIC rules. The committee intends that, in the case of PFC stock owned through a foreign partnership, a partner-level election for treatment as a qualified electing fund will be permitted (except in the case of a foreign partnership that is subject to the simplified reporting rules available to certain large partnerships under subtitle C of the bill's simplification provisions).

Mark-to-market method

Less-than-25-percent shareholders of passive foreign corporations that are not U.S.-controlled, and who do not elect current inclusion ("nonelecting shareholders"), are subject under the bill to one of two methods for taxing the economic equivalent of the PFC's current income: the mark-to-market method or the interest-charge method. The mark-to-market method does not apply to the stock of a U.S. person in any PFC that is U.S. controlled (as discussed above), to the stock of a person choosing qualified electing fund treatment, or to stock of a U.S. person who is a 25-percent shareholder (as defined above).

Under the bill, nonelecting shareholders of a PFC with marketable stock are required to mark their PFC shares to market annually. Under the mark-to-market method, the U.S. person is required to include in gross income each taxable year an amount equal to the excess (if any) of the fair market value of the PFC stock as of the close of the taxable year over the adjusted basis of the stock. In the event the adjusted basis of the stock exceeds its fair market value, the U.S. person is allowed a deduction for the taxable year equal to the lesser of the amount of the excess or the "unreversed inclusions" with respect to the stock. The bill defines the term "unreversed inclusions" to mean, with respect to any stock in a passive foreign corporation, the excess (if any) of the total amount of mark-to-market gains with respect to the stock included by the taxpayer for prior taxable years, over the amount of mark-to-market losses with respect to such stock that were allowed as deductions for prior taxable years.

The adjusted basis of stock in a passive foreign corporation is increased by the amount of mark-to-market gain included in gross income, and is decreased by the amount of mark-to-market losses allowed as deductions with respect to such stock. In the case of stock owned indirectly by the U.S. person, such as through a foreign partnership, foreign estate or foreign trust (as discussed below), the basis adjustments for mark-to-market gains and losses apply to the basis of the PFC stock in the hands of the intermediary owner, but only for purposes of the subsequent application of the PFC rules to the tax treatment of the indirect U.S. owner. In addition, similar basis adjustments are made to the adjusted basis of the property actually held by the U.S. person by reason of which the U.S. person is treated as owning PFC stock.

All amounts of mark-to-market gain on PFC stock, as well as gain on the actual sale or distribution of PFC stock, are treated as ordinary income. Similarly, ordinary loss treatment applies to the deductible portion of any mark-to-market loss on PFC stock, as well as to any loss realized on the actual sale or other disposition of PFC stock to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to that stock. These loss deductions are treated as deductions allowable in computing adjusted gross income.

The source of any amount of mark-to-market gain on PFC stock is determined in the same manner as if the amount of income were actual gain from the sale of stock in the passive foreign corporation. Similarly, the source of any amount allowed as a deduction for mark-to-market loss on PFIC stock is determined in the same manner as if that amount were an actual loss incurred on the sale of stock in the passive foreign corporation.

Definition of "marketable stock."—The mark-to-market method under the bill only applies to passive foreign corporations the stock of which is "marketable." PFC stock is treated as marketable if it is regularly traded on a qualified exchange, whether inside or outside the United States. An exchange qualifies for this treatment if it is a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or if the Secretary is satisfied that the requirements for trading on that exchange ensure that the market price on that exchange represents a legitimate and sound fair market value for the stock. The committee intends that the Secretary may adopt a definition of the term "regularly traded" that differs from definitions provided for other purposes under the Code. Further, the committee intends that the Secretary not be bound by definitions applied for purposes of enforcing other laws, including Federal securities laws. Similarly, in identifying qualified foreign exchanges for these purposes, the committee intends that the Secretary not be required to include exchanges that satisfy standards established under Federal securities laws and regulations. PFC stock is also treated as marketable, to the extent provided in Treasury regulations, if the PFC continuously offers for sale or has outstanding any stock (of which it is the issuer) that is redeemable at its net asset value in a manner comparable to a U.S. regulated investment company (RIC).

In addition, the bill treats as marketable any stock in a passive foreign corporation that is owned by a RIC that continuously offers for sale or has outstanding any stock (of which it is the issuer) that is redeemable at its net asset value. The committee believes that the RIC's determination of PFC stock value for this non-tax purpose would ensure a sufficiently accurate determination of the fair market value of PFC stock owned by the RIC. The bill also treats as marketable any stock in a passive foreign corporation that is held by any other RIC, except to the extent provided in regulations. The committee believes that even for RICs that do not make a market in their own stock, but that do regularly report their net asset values in compliance with the securities laws, inaccurate valuations may bring exposure to legal liabilities, and this exposure may ensure the reliability of the values such RICs assign to the stock they hold in PFCs. However, the committee intends that Treasury regulations will disallow mark-to-market treatment for nonmarketable stock held by any RIC that is not required to perform such a net asset valuation at the close of each taxable year, that does not publish such a valuation, or that otherwise does not provide what the Secretary regards as sufficient indicia of the reliability of its valuations under the relevant circumstances.

Coordination with RIC rules.—The bill coordinates the application of the mark-to-market method with the tax rules generally applicable to RICs. The bill treats mark-to-market gain on PFC stock as a dividend for purposes of both the 90-percent investment income test of section 851(b)(2) and the 30-percent short-short limitation of section 851(b)(3). In addition, the bill permits RICs to determine their mark-to-market gain using a fiscal year ending on October 31 of each year, solely for purposes of determining their ordinary income for purposes of the excise tax on the undistributed income of regulated investment companies (sec. 4982). Reductions in value of the PFC stock between October 31 and the end of the RIC's normal taxable year are treated, to the extent provided in regulations, as occurring in the following taxable year for purposes of computing the RIC's investment company taxable income (sec. 852(b)) and the RIC's earnings and profits (sec. 852(c)).[20]

Marketable stock not directly owned by a U.S. person.—In the case of a controlled foreign corporation (including a passive foreign corporation that is treated under the bill as a controlled foreign corporation) that owns or is treated as owning stock in a passive foreign corporation, the mark-to-market method generally is applied as if the controlled foreign corporation were a U.S. person. For purposes of the application of subpart F to the controlled foreign corporation, mark-to-market gains are treated as if they were foreign personal holding company income of the character of dividends, interest, royalties, rents or annuities, and allowable deductions for mark-to-market losses are treated as deductions allocable to that category of foreign personal holding company income. The source of such income or loss, however, is determined by reference to the actual (foreign) residence of the controlled foreign corporation.

For purposes of the mark-to-market method, any stock in a passive foreign corporation that is owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate is treated as if it were owned proportionately by its partners or beneficiaries, except as provided in regulations.[21] Stock in a passive foreign corporation that is thus treated as owned by a person is treated as actually owned by that person for the purpose of applying the constructive ownership rule at another level. In the case of a U.S. person who is treated as owning stock in a passive foreign corporation by application of this constructive ownership rule, any disposition by the U.S. person or by any other person that results in the U.S. person being treated as no longer owning the

[20] Similar rules apply under present law for currency gains of RICs (secs. 4982(e)(5), 852(b)(6), and 852(c)(2)).

[21] For this purpose, the committee intends that proportionate ownership will take into account any special or discretionary allocations of the distributions or gains with respect to stock in the passive foreign corporation.

stock in the passive foreign corporation, as well as any disposition by the person actually owning the stock of the passive foreign corporation, is treated under the bill as a disposition by the U.S. person of stock in the passive foreign corporation.

Transition to mark-to-market.—The bill provides certain transition rules for PFC stock that becomes subject to the mark-to-market method—that is, generally, marketable PFC stock with respect to which current inclusion rules do not apply. One method applies in general, another applies to PFC stock held by regulated investment companies, and a third method applies to PFC stock held by individuals who become subject to U.S. tax jurisdiction as the result of a change in residence or citizenship.

(1) The general rule applies in the case of marketable stock in a PFC that is held by the shareholder on the effective date of the bill, where the PFC was also a PFIC under present law but was not a qualified electing fund with respect to the shareholder for all post-1986 years in the taxpayer's holding period. Under this general rule, tax is imposed under the bill's mark-to-market rule on the amount of mark-to-market gain representing the stock's appreciation (if any) in the first post-effective date year. In addition, if the stock has not depreciated in the first post-effective date year, tax may be imposed on the full amount of mark-to-market gain representing the stock's appreciation prior to the effective date, as if the stock had been sold at the end of the last pre-effective-date year and taxed subject to present law's interest-charge method.

If on the other hand the stock has not appreciated during the first post-effective date year, tax is imposed only on the amount of the net mark-to-market gain representing the stock's appreciation between the beginning of the taxpayer's holding period and the last day of the first post-effective date year. In either case, the difference between the fair market value of the PFC stock at the close of the first taxable year under the bill and the shareholder's adjusted basis in the PFC stock, less the amount of that difference (if any) that represents appreciation during that first taxable year, is treated pursuant to the interest-charge method as having accrued ratably over the shareholder's holding period (ending prior to that first taxable year) in the stock of the PFC.

Both the amount of pre-effective-date appreciation included in gross income (in this case, generally the portion of appreciation treated as having accrued before 1987), and the amount excluded from gross income (but subject to the "deferred tax amount" under the interest-charge method) are treated as an unreversed inclusion for purposes of the application of the mark-to-market method in future years.

In addition, the bill provides an election to defer the payment of tax (similar to the election for qualified electing funds to defer the payment of tax under present law's section 1294) imposed as a result of the recognition of the pre-effective-date gain. Under the bill, this election is treated as terminated to the extent a future mark-to-market loss deducted is allocable to the unreversed inclusion for pre-effective-date appreciation. This election is also terminated to the extent of any distribution received by the shareholder that would be an excess distribution under the interest-charge rules if those rules applied to the stock. In either case, the bill contemplates that regulations will provide rules for determining the appropriate proportion of the deferred tax for which the extension will terminate. As under present law, any direct or indirect loan by the PFC to the shareholder is treated as a distribution for purposes of determining the extent to which the extension remains in effect. Also, the extension generally is terminated upon disposition of the PFC stock. To the extent provided in regulations, however, a disposition of PFC stock in a nonrecognition transaction does not terminate the extension; rather, the person acquiring the PFC stock succeeds to the transferor's treatment of the PFC stock under the mark-to-market rules.

(2) Regulated investment companies are subject to a special transition rule for the PFC stock they hold on the bill's effective date. Instead of applying the interest-charge method to the amount of pre-effective-date appreciation, RICs include the full amount of pre-effective-date appreciation under the mark-to-market method, and pay a separate nondeductible interest charge. No election to defer the payment of tax is available.

(3) In the case of a shareholder of PFC with marketable stock who becomes subject to the tax jurisdiction of the United States as a result of a change in residence or citizenship, no U.S. tax applies under the mark-to-market method or under the interest-charge method to the appreciation of the stock's value prior to the time that the shareholder becomes subject to the tax jurisdiction of the United States. The bill implements this rule by treating the greater of (i) the fair market value of the PFC stock at the time that the shareholder enters U.S. tax jurisdiction, or (ii) the shareholder's basis in the PFC stock, as the shareholder's basis in the PFC stock solely for purposes of the mark-to-market method.

Interest-charge method

Nonelecting shareholders[22] of a PFC with stock that is not marketable are subject to the interest-charge method, based on the PFIC interest-charge method that is currently provided in Code section 1291, with certain modifications.

First, although allowable foreign tax credits may reduce a U.S. person's net U.S. tax liability on an excess distribution, the interest charge computed on that excess distribution is computed, under the bill, without regard to reductions in net U.S. tax liability on account of direct foreign tax credits.

The PFIC provisions of present law, to the extent provided in regulations, impose recognition of gain in the case of a transfer of interest-charge PFIC stock in a transaction that would otherwise qualify for the nonrecognition provisions of the Code. The bill imposes that result as a general rule, except as otherwise provided in Treasury regulations. As noted above, under proposed Treasury regulations nonrecognition provisions may apply to the gain, but only to the extent that the transferee will be subject to the interest-charge method on a subsequent distribution by the PFC or disposition of the PFC stock.

In addition, the bill requires that proper adjustment be made to the basis of property, held by the U.S. person through which the U.S. person is treated as owning stock in the passive foreign corporation.

The PFIC provisions of present law apply rules for the attribution of ownership of PFIC stock to U.S. persons, including a rule that attributes PFIC stock owned by a corporation to any person who owns, directly or indirectly, 50 percent or more of the value of the stock of the corporation. Under the bill, the 50-percent threshold applies not only to stock owned directly or indirectly, but also to stock treated as owned by application of the family attribution rules of the personal holding company provisions (sec. 544(a)(2)).

The PFIC provisions of present law provide special rules for the application of the interest-charge method in the case of PFIC stock held by an U.S. person through an intermediary entity. These rules describe the dispositions that are treated as dispositions of PFIC stock by the U.S. person, and include rules to eliminate the possibility of double taxation (sec. 1297(b)(5)). The bill clarifies, that, under regulations, these rules apply to any transaction that results in the U.S. person being treated as no longer owning the PFC stock, as well as any disposition of the PFC stock by the entity actually owning the PFC stock. These rules apply regardless of whether the transaction involves a disposition of the PFC stock, and regardless of whether the parties to the transaction include the U.S. person, the entity actually owning the PFC stock, or some other entity. For example, these rules apply to the issuance of additional stock by an intermediary corporation to an unrelated party in a case where, by increasing the total outstanding stock of the intermediary corporation, the transaction causes the U.S. person to fall below the ownership threshold for indirect ownership of the PFC stock. The bill also clarifies that an income inclusion under the interest-charge method takes precedence over an income inclusion under subpart F resulting from the same disposition. The second clarification ensures that the interest charge is imposed without regard to the structure of the transaction.

Under the bill, the interest-charge method applies to any stock in a passive foreign corporation unless either the stock is marketable (and therefore the mark-to-market method applies) as of the time of the distribution of disposition involved, or the stock in the passive foreign corporation was subject to the current inclusion method (under the bill or under prior law) for each taxable year beginning after December 31, 1986 which includes any portion of the taxpayer's holding period in the PFC stock. In the event that PFC stock, not subject to the current inclusion method, becomes marketable during the taxpayer's holding period, the interest-charge method applies to any distributions and dispositions during the year in which the stock becomes marketable, as well as to the mark-to-market gain (if any) as of the close of that year. In the event that PFC stock was initially marketable, and later becomes unmarketable and subject to the interest-charge method, the taxpayer's holding period in the PFC for purposes of the interest-charge method is treated as beginning on the first day of the first taxable year beginning after the last taxable year for which the mark-to-market method applies to the taxpayer's stock in the PFC.

Under the bill, as under the present-law PFIC rules, stock in a foreign corporation generally is treated as PFC stock if, at any time during the taxpayer's holding period of that stock, the foreign corporation (or any predecessor) is a passive foreign corporation subject to the interest-charge method (current sec. 1297(b)(1)). (This rule is sometimes referred to as the "once-a-PFIC-always-a-PFIC" rule.) Under present law this rule generally does not affect a taxpayer holding stock in a foreign corporation if at all times during the holding period of the taxpayer with respect to the stock when the foreign

[22] All citizens (and residents) of the United States are included, irrespective of residence in a U.S. commonwealth or possession.

corporation (or any predecessor) is a PFIC, qualified electing fund treatment applies with respect to the taxpayer. Under the bill, the similar once-a-PFC-always-a-PFC rule does not apply if during the taxpayer's entire holding period with respect to the stock when the foreign corporation (or any predecessor) is a PFC, either (a) mark-to-market treatment applies, (b) mandatory current inclusion of income applies (either because the corporation is U.S. controlled or because the taxpayer is a 25-percent shareholder), or (c) elective current inclusion of income applies.[21] Thus, for example, a shareholder of a controlled foreign corporation is subject to current inclusion with respect to all the corporation's income in any year for which the corporation is a PFC, but is subject to current inclusion only to the extent provided under subpart F in any year for which the controlled foreign corporation is not a PFC.

The bill also provides for full basis adjustment for partnerships and S corporations that own stock in a passive foreign corporation subject to the interest-charge method. Although tax is imposed on a distribution or disposition under the interest-charge method without including the distribution or disposition in gross income, thus precluding the natural basis adjustments for amounts included in gross income, the bill grants regulatory authority for appropriate basis adjustments to partnerships and S corporations based on the amount of income subject to tax under the interest-charge method and thereby excluded from gross income.

The bill includes a broad grant of regulatory authority, as does the present-law PFIC statute. In addition, the bill specifies that necessary or appropriate regulations under the PFC rules may include regulations providing that gross income should be determined without regard to the operation of the interest-charge method for such purposes as may be specified in the regulations. Such regulations may relieve pressure on many aspects of the Code that result from the operation of the interest-charge method other than through gross income. In addition, the bill specifies that necessary or appropriate PFC regulations may include regulations dealing with changes in residence status or citizenship by shareholders in passive foreign corporations (e.g., a resident alien becoming a nonresident, or a nonresident U.S. Citizen renouncing U.S. Citizenship). The committee intends that no inference be drawn from this explicit regulatory authority as to the Secretary's authority to issue similar regulations under the authority of the PFIC provisions of present law.

Modification or repeal of other antideferral regimes

While the bill includes in the passive foreign corporation rules most of the provisions that it preserves from the present-law PFIC, foreign personal holding company, and foreign investment company regimes, the bill modifies subpart F in one respect to reflect a present-law provision of the foreign personal holding company rules (sec. 553(a)(5)). The bill treats as foreign personal holding company income for subpart F purposes an amount received under a personal service contract if a person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract. The bill similarly treats as foreign personal holding company income for subpart F purposes any amount received from the sale or distribution or disposition of such a contract. This rule applies only if at some time during the taxable year 25 percent or more of the value of the corporation's stock is owned (directly, indirectly, or constructively) by or for the individual who may be designated to perform the services.[21] Income from such personal service contracts is not, however, treated as passive for foreign tax credit purposes.

The bill repeals the foreign personal holding company provisions, the PFIC provisions (except as modified and preserved as the passive foreign corporation provisions), and the foreign investment company provisions. The bill also excludes all foreign corporations from the application of the accumulated earnings tax and the personal holding company tax. The committee understands that the purposes of all the anti-deferral regimes are adequately served by the passive foreign corporation provisions as set forth in the bill, in conjunction with the controlled foreign corporation provisions as modified by the bill.

In addition, the bill denies installment sales treatment for any installment obligation arising out of a sale of stock in a passive foreign corporation that is subject to the interest-charge regime.

As a conforming amendment to the special rules applicable to RICs holding PFC stock, the bill confirms that the income of a RIC from either a controlled foreign corporation or a PFC, which income is derived from the active conduct of the business of investing in stocks or securities, is a type of income that counts toward meeting the 90-percent investment income test of section 851(b)(2).

In addition, as a conforming amendment to the elimination of the present-law PFIC rules, distributions from a PFC of amounts that previously were included in a shareholder's income under the elective current-inclusion rules of present law are treated, under the bill, as previously taxed income under the subpart F rules (sec. 959).

Effective Date

The provision generally is effective for taxable years of U.S. Persons beginning after December 31, 1992, and taxable years of foreign corporations ending with or within such taxable years of U.S. Persons.

The denial of installment sales treatment is effective for sales or dispositions after December 31, 1992.

The bill does not affect the determination of the basis of any stock that was acquired from a decedent in a taxable year beginning before January 1, 1993.

2. Treatment of controlled foreign corporations (secs. 4411-4413 of the bill and secs. 951, 952, 959, 960, 961, 964, and 1248 of the Code)

Present Law

Treatment of controlled foreign corporation earnings

In general

A U.S. shareholder generally treats dividends from a controlled foreign corporation as ordinary income from foreign sources that carries both direct and indirect foreign tax credits. Under look-through rules, the income and credits are subject to those foreign tax credit limitations which are consistent with the character of the income of the foreign corporation.

Several Code provisions result in similar tax treatment of a U.S. shareholder if it either disposes of the controlled foreign corporation stock, or the controlled foreign corporation realizes certain types of income (including income with respect to lower-tier controlled foreign corporations). First, under section 1248, gain resulting from the disposition by a U.S. person of stock in a foreign corporation that was a controlled foreign corporation with respect to which the U.S. person was a U.S. shareholder in the previous five years is treated as a dividend to the extent of allocable earnings.

Second, a controlled foreign corporation has subpart F income when it realizes gain on disposition of stock and, ordinarily, when it receives a dividend. Under sections 951 and 960, such subpart F income may result in taxation to the U.S. shareholder similar (but not identical) to that on a dividend from the controlled foreign corporation. In addition to provisions for characterizing income and credits in these situations, the Code also provides certain rules that adjust basis, or otherwise result in modifying the tax consequences of subsequent income, to account for these and other subpart F income inclusions.

Third, when in exchange for property any corporation (including a controlled foreign corporation) acquires stock in another corporation (including a controlled foreign corporation) controlled by the same persons that control the acquiring corporation, earnings of the acquiring corporation (and possibly the acquired corporation) may be treated under section 304 as having been distributed as a dividend to the seller.

For foreign tax credit separate limitation purposes, a controlled foreign corporation is not treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation and except as provided in regulations, the recipient of the distribution was a U.S. shareholder in such corporation.[1] The consequence of not being treated as a section 902 corporation is application of the so-called "look-through" rule. That is, dividends paid

[21] In the case of a PFC that was a PFIC prior to the effective date of the bill, even if the PFC is subject to either mark-to-market treatment or mandatory current inclusion, the once-a-PFC-always-a-PFC rule applies unless the PFIC was subject to elective current inclusion for the entire portion of the taxpayer's holding period prior to the effective date of the bill. In the case of a PFC that was *not* a PFIC prior to the effective date of the bill, the application of the once-a-PFC-always-a-PFC rule is determined without regard to the portion of the taxpayer's holding period prior to the effective date of the bill.

[21] This rule was included in the definition of foreign personal holding company income for purposes of subpart F prior to the amendments included in the 1986 Act.

[1] Under proposed regulations recently issued by the IRS, if a controlled foreign corporation distributes a dividend to an upper-tier controlled foreign corporation or to a United States shareholder that owns directly or indirectly more than 90 percent of the total combined voting power of the controlled foreign corporation at the time of the distribution, and the dividend is attributable to earnings and profits accumulated during a period in which the distributing corporation was a controlled foreign corporation but the 90 percent or more United States shareholder was not a United States shareholder of the corporation, the dividend generally would be treated as a dividend from a noncontrolled section 902 corporation. (Prop. Treas. Reg. sec. 1.904-4(g)(3)(ii)).

by such controlled foreign corporation to its U.S. shareholder are characterized for separate limitation purposes by reference to the character of the underlying earnings of the controlled foreign corporation.

Lower-tier controlled foreign corporations

For purposes of applying the separate foreign tax credit limitations, receipt of a dividend from a lower-tier controlled foreign corporation by an upper-tier controlled foreign corporation may result in a subpart F income inclusion for the U.S. shareholder that is treated as income in the same limitation category as the income of the lower-tier controlled foreign corporation. The income inclusion of the U.S. shareholder may carry deemed-paid credits for foreign taxes paid by the lower-tier controlled foreign corporation, and the basis of the U.S. shareholder in the stock of the first-tier controlled foreign corporation is increased by the amount of the inclusion. If, on the other hand, the upper-tier controlled foreign corporation sells stock of a lower-tier controlled foreign corporation, then the gain generally is also included in the income of the U.S. shareholder as subpart F income and the U.S. shareholder's basis in the stock of the first-tier controlled foreign corporation is increased to account for the inclusion, but the inclusion is not treated for foreign tax credit limitation purposes by reference to the nature of the income of the lower-tier controlled foreign corporation. Instead it generally is treated as passive income.

If subpart F income of a lower-tier controlled foreign corporation is included in the gross income of a U.S. shareholder, no provision of present law allows adjustment of the basis of the upper-tier controlled foreign corporation's stock in the lower-tier controlled foreign corporation.

Subpart F inclusions in year of disposition

The subpart F income earned by a foreign corporation during its taxable year is taxed to the person who are U.S. shareholders of the corporation on the last day, in that year, on which the corporation is a controlled foreign corporation. In the case of a U.S. shareholder who acquired stock in a controlled foreign corporation during the year, such inclusions are reduced by all or a portion of the amount of dividends paid in that year by the foreign corporation to any person other than the acquirer with respect to that stock. The reduction is the lesser of the amount of dividends with respect to such stock received by other persons during the year or the amount determined by multiplying the subpart F income for the year by the proportion of the year during which the acquiring shareholder did not own the stock.

Distributions of previously taxed income

If in a year after the year of a subpart F income inclusion, a U.S. shareholder in the controlled foreign corporation receives a distribution from the corporation, the distribution may be deemed to come first out of the corporation's previously taxed income and, therefore, may be excluded from the U.S. shareholder's income. However, a distribution by a foreign corporation to a domestic corporation of earnings and profits previously taxed under subpart F is treated as an actual dividend, solely for purposes of determining the indirect foreign tax credit available to the domestic corporation (sec. 960(a)(3)).

In addition, the domestic corporation is permitted to increase its foreign tax credit limitation in the year of the distribution of previously taxed earnings and profits in an amount equal to the excess of the amount by which its foreign tax credit limitation for the year of the subpart F inclusion was increased as a result of that inclusion, over the amount of foreign taxes which were allowable as a credit in that year and which would not have been so allowable but for the subpart F inclusion (sec. 960(b)). The increase in the foreign tax credit limitation may not, however, exceed the amount of the foreign taxes taken into account under this provision with respect to the distribution of previously taxed earnings and profits. In order for this rule to apply, the domestic corporation either must have elected to credit foreign taxes in the year of the subpart F inclusion or must not have paid or accrued any foreign taxes in such year, and it must elect the foreign tax credit in the year of the distribution of previously taxed earnings and profits.

Treatment of United States source income earned by a controlled foreign corporation

As a general rule, subpart F income does not include income earned from sources within the United States if the income is effectively connected with the conduct of a U.S. trade or business by the controlled foreign corporation. This general rule does not apply, however, if the income is exempt from, or subject to a reduced rate of, U.S. tax pursuant to a provision of a U.S. treaty.

Reasons for Change

The committee believes that complexities have been caused by uncertainties and gaps in the statutory schemes for taxing gains on dispositions of stock in controlled foreign corporations as dividend income or subpart F income. These uncertainties and gaps may prompt taxpayers to refrain from behavior that would otherwise be the result of rational business decisions, for fear of excessive tax—for example, double corporate-level taxation of income. In many cases, concerns about excessive taxation can be allayed, but only at the cost of avoiding the simpler and more rational economic behavior in favor of tax-motivating planning.

The committee understands that, as a general matter, other aspects of the tax system may have interfered with rational economic decision making by promoting taxpayers to engage in tax-motivated planning in order to eliminate taxation in cases where income is in fact earned. Some such characteristics of the tax system have in the past been altered by Congress in order to reduce excessive interference by the tax system in labor, investment, and consumption decisions of taxpayer.[2] The committee believes that in the context of tax simplification, it generally is appropriate to reduce complexities caused by aspects of the rules governing controlled foreign corporations that provide for nonuniform tax results from dividends, on the one hand, and stock disposition proceeds to the extent earnings and profits underlie those proceeds, on the other.

In light of the bill's provisions extending section 1248 treatment of dispositions of stock in lower-tier companies, the committee believes it appropriate to repeal the limitation on look-through treatment (for foreign tax credit separate limitation purposes) of dividends from controlled foreign corporations to U.S. shareholders out of earnings from periods in which the payor was a controlled foreign corporation but the dividend recipient was not a U.S. shareholder of the controlled foreign corporation. By extending section 1248 treatment to dispositions of stock in lower-tier companies, the committee believes that earnings and profits (and related foreign tax credits) of lower-tier controlled foreign corporations cannot readily be transferred from the control of one U.S. taxpayer to another. Moreover, the committee believes that repeal of this limitation on look-through treatment will avoid significant complexity that would otherwise be engendered by practical application of the limitation.

The committee understands that the present-law provisions which permit an indirect foreign tax credit and an increased foreign tax credit limitation to be claimed in the event of a distribution of previously taxed earnings by a controlled foreign corporation are particularly difficult to administer. This difficulty arises because taxpayers are required to compute and keep track of excess foreign tax credit limitation accounts with respect to subpart F income inclusions on a foreign corporation by foreign corporation basis, as well as on a year by year basis. Additional complexities arise as taxpayers are required, as a result of distributions, to trace earnings and profits up chains of foreign corporations. The committee believes that affording regulatory authority to modify and simplify these rules may result in alleviating some of the system-wide recordkeeping and computations involved, without undermining the operation of the provision.

Explanation of Provisions

In general

The bill makes a number of modifications in the treatment of income derived from the disposition of stock in a controlled foreign corporation. The bill provides deemed dividend treatment for gains on dispositions of lower-tier controlled foreign corporations. Where the lower-tier controlled foreign corporation previously earned subpart F income, the bill permits the amount of gain taxed to the U.S. shareholder to be adjusted for previous income inclusions. Where proceeds from the sale of stock to a controlled foreign corporation that previously has earned subpart F income would be treated as a dividend under the principles of section 304, the bill expressly permits exclusion of the deemed section 304 dividend from taxation to the extent of the previously taxed earnings and profits of the controlled foreign corporation from which the property was deemed to be distributed. (Appropriate basis adjustments also are permitted to be made.) Where a controlled foreign corporation (whether or not it is a lower-tier controlled foreign corporation) earns subpart F income in a year in which a U.S. shareholder sells its stock, in a transaction that does not result in the foreign corporation ceasing to be a controlled foreign corporation, the bill contains statutory language providing for a proportional reduction in the taxation of the subpart F income in that year to the acquiring U.S. shareholder.

The bill contains three additional provisions related to controlled foreign corporations. First, the bill repeals the limitation on look-through treatment (for foreign tax credit separate limitation purposes) of dividends from controlled foreign corporations to U.S. shareholders out of earnings from periods in which the payor was a controlled foreign corporation, but the dividend recipient was not a U.S. shareholder of the controlled foreign corporation. Second, the bill provides regulatory authority to develop a simplified mechanism for computing indirect foreign tax credits and increases in foreign

[2] See, e.g., Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess. *General Explanation of the Tax Reform Act of 1986* at 6 et seq. (1987) ("General Reasons for the Act").

tax credit limitations resulting upon certain distributions by controlled foreign corporations of previously taxed earnings and profits. Third, the bill clarifies the effect of a treaty exemption or reduction of the branch profits tax on the determination of subpart F income.

Lower-tier controlled foreign corporations

Characterization of gain on stock disposition

The bill provides that if a controlled foreign corporation is treated as having gain from the sale or exchange of stock in a foreign corporation, the gain is treated as a dividend to the same extent that it would have been so treated under section 1248 if the controlled foreign corporation were a U.S. person. This provision, however, does not affect the determination of whether the corporation whose stock is sold or exchanged is a controlled foreign corporation.

Thus, for example, if a U.S. corporation owns 100 percent of the stock of a foreign corporation, which owns 100 percent of the stock of a second foreign corporation, then under the bill, any gain of the first corporation upon a sale or exchange of stock of the second corporation is treated as a dividend for purposes of subpart F income inclusions to the U.S. shareholder, to the extent of earnings and profits of the second corporation attributable to periods in which the first foreign corporation owned the stock of the second foreign corporation while the latter was a controlled foreign corporation with respect to the U.S. shareholder.

As another example, assume that the U.S. corporation has always owned 40 percent of the voting stock and 60 percent of the value of all of the stock of a foreign corporation, which has always owned 40 percent of the voting stock and 60 percent of the value of all of the stock of a second foreign corporation. All the other stock of the foreign corporations has always been owned by foreign individuals unrelated to the U.S. corporation. In this case, the second foreign corporation has never been a controlled foreign corporation. Therefore, none of the gain of the first corporation upon a sale of stock of the second corporation is treated as a dividend.

Gain on disposition of stock in a related corporation created or organized under the laws of, and having substantial part of assets in a trade or business in, the same foreign country as the gain recipient, even if recharacterized as a dividend under the bill, is not therefore excluded from foreign personal holding company income under the same-country exception that applies to actual dividends.

The bill provides that for purposes of this provision, a controlled foreign corporation is treated as having sold or exchanged stock if, under any provision of subtitle A of the Code, the controlled foreign corporation is treated as having gain from the sale or exchange of such stock. Thus, for example, if a controlled foreign corporation distributes to its shareholder stock in a foreign corporation, and the distribution results in gain being recognized by the controlled foreign corporation under section 311(b) as if the stock were sold to the shareholder for fair market value, the bill makes clear that for purposes of this provision, the controlled foreign corporation is treated as having sold or exchanged the stock.

The bill also repeals a provision added to the Code by the Technical and Miscellaneous Revenue Act of 1988[3] (the "1988 Act") which, except as provided by regulations, requires a recipient of a distribution from a controlled foreign corporation to have been a United States shareholder of that controlled foreign corporation for the period during which the earnings and profits which gave rise to the distribution were generated in order to avoid treating the distribution as one coming from a *noncontrolled section 902 corporation*. Thus, under the bill, a controlled foreign corporation is not treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation, whether or not the recipient of the distribution was a U.S. shareholder of the corporation when the earnings and profits giving rise to the distribution were generated.

Adjustments to basis of stock

The bill also provides that when a lower-tier controlled foreign corporation earns subpart F income, and stock in that corporation is later disposed of by an upper-tier controlled foreign corporation, the resulting income inclusion of the U.S. shareholders are, under regulations, adjusted to account for previous inclusions, in a manner similar to the adjustments currently provided to the basis of stock in a first-tier controlled foreign corporation. Thus, just as the basis of a U.S. shareholder in a first-tier controlled foreign corporation rises when subpart F income is earned and falls when previously taxed income is distributed, so as to avoid double taxation of the income on a later disposition, the committee intends that by regulation the subpart F income from gain on the disposition of a lower-tier controlled foreign corporation generally would be reduced by income inclusions of earnings that were not subsequently distributed by the lower-tier controlled foreign corporation. The committee intends that the Secretary will have sufficient flexibility in promulgating regulations under this provision to permit adjustments only in those cases where, by virtue of the historical ownership structure of the corporations involved, the Secretary is satisfied that the inclusions for which adjustments can be made can be clearly identified.

For example, assume that a U.S. person is the owner of all of the stock of a first-tier controlled foreign corporation which, in turn, is the sole shareholder of a second-tier controlled foreign corporation. In year 1, the second-tier controlled foreign corporation earns $100 of subpart F income which is included in the U.S. person's gross income for that year. In year 2, the first-tier controlled foreign corporation disposes of the second-tier controlled foreign corporation's stock and recognizes $300 of income with respect to the disposition. All of that income would constitute subpart F foreign personal holding company income. Under the bill, the Secretary is granted regulatory authority to reduce the U.S. person's year 2 subpart F inclusion by $100—the amount of year 1 subpart F income of the second-tier controlled foreign corporation that was included, in that year, in the U.S. person's gross income. Such an adjustment would, in effect, allow for a step-up in the basis of the stock of the second-tier controlled foreign corporation to the extent of its subpart F income previously included in the U.S. person's gross income.

As another example, assume the same facts as in the preceding paragraph except that in year 2, the first-tier controlled foreign corporation distributes the stock of the second-tier controlled foreign corporation to the U.S. person. Assume that as a result of the distribution, the first-tier controlled foreign corporation recognizes taxable income of $300 under section 311(b). This income represents subpart F income, $100 of which is due to no adjustment having been made to the basis of the second-tier controlled foreign corporation's stock for its year 1 subpart F income. The bill contemplates that in such a situation, the $300 of subpart F income would be reduced under regulations to $200 to account for the year 1 subpart F income inclusion.

Subpart F inclusions in year of disposition

If a U.S. shareholder acquires the stock of a controlled foreign corporation from another U.S. shareholder during a taxable year of the controlled foreign corporation in which it earns subpart F income, the bill reduces the acquirer's subpart F inclusion for that year by a portion of the amount of the dividend deemed (under sec. 1248) to be received by the transferor. The portion by which the inclusion is reduced (as is currently the case if a dividend was paid to the previous owner of the stock) would not exceed the lesser of the amount of dividends with respect to such stock deemed received (under sec. 1248) by other persons during the year or the amount determined by multiplying the subpart F income for the year by the proportion of the year during which the acquiring shareholder did not own the stock.

Avoiding double inclusions in other cases

The bill clarifies the appropriate scope of regulatory authority with respect to the treatment of cross-chain section 304 dividends out of the earnings of controlled foreign corporations that were previously included in the income of a U.S. shareholder under subpart F. The bill contemplates that in such a case, the Secretary in his discretion may by regulation treat such dividends as distributions of previously taxed income, with appropriate basis adjustments. The committee also anticipates that other occasions may arise where the exercise of similar regulatory authority may be appropriate to avoid double income inclusions, or an inclusion or exclusion of income without a corresponding basis adjustment. Therefore, the bill states that, in addition to cases involving section 304, the Secretary may by regulation modify the application of subpart F in any other case where there would otherwise be a multiple inclusion of any item of income (or an inclusion or exclusion without an appropriate basis adjustment) by reason of the structure of a U.S. shareholder's holdings in controlled foreign corporations or by reason of other circumstances. The bill is not intended to create any inference as to the application of present law in these cases.

Foreign tax credit in year of receipt of previously taxed income

With respect to the present-law provisions which permit a foreign tax credit to be claimed in the case of a distribution of previously taxed income, the bill provides authority for Treasury regulations to establish a simplified method for computing the increase in foreign tax credit limitation that results from the application of these provisions. The committee understands that the Secretary has regulatory flexibility in the determination of the amount of creditable foreign taxes on or with respect to the accumulated earnings and profits of a foreign corporation from which a distribution of previously taxed income is made, which were not deemed paid by the domestic corporation in a prior taxable year.

The bill makes clear that the regulations may require taxpayers to use any simplified methods so established, rather than making the use of such methods elective by taxpayers. The bill does not mandate, however,

[3] P.L. 100-647, sec. 1012(a)(10).

that regulations provide such simplified methods, or in the case that such methods are provided, that they be made uniformly applicable to all taxpayers.

For example, in certain situations the Treasury Secretary might deem it appropriate not to require taxpayers to trace specific items of previously taxed income of specific controlled foreign corporations and to associate those items with specific amounts of excess foreign tax credit limitations. Rather, regulations might allow for some sort of simplified approach for accounting for excess limitation amounts (allocated to the various foreign tax credit separate limitation categories from which they originally arose) and for utilization of portions of these amounts upon distributions of previously taxed income from the same categories.

Treatment of United States income earned by a controlled foreign corporation

The bill provides that an exemption or reduction by treaty of the branch profits tax that would be imposed under section 884 on a controlled foreign corporation does not affect the general statutory exemption from subpart F income that is granted for U.S. source effectively connected income. For example, assume a controlled foreign corporation earns income of a type that generally would be subpart F income, and that income is earned from sources within the United States in connection with business operations therein. Further assume that repatriation of that income is exempted from the U.S. branch profits tax under a provision of an applicable U.S. income tax treaty. The bill provides that, notwithstanding the treaty's effect on the branch tax, the income is not treated as subpart F income as long as it is not exempt from U.S. taxation (or subject to a reduced rate of tax) under any other treaty provision.

Effective Dates

Lower-tier controlled foreign corporations

The provision treating gains on dispositions of stock in lower-tier controlled foreign corporations as dividends under section 1248 principles applies to gains recognized on transactions occurring after date of enactment. The provision that expands look-through treatment, for foreign tax credit limitation purposes, of dividends from controlled foreign corporations, is effective for distributions after date of enactment.

The provision providing for regulatory adjustments to U.S. shareholder inclusions, with respect to gains of controlled foreign corporations from dispositions of stock in lower-tier controlled foreign corporations that previously had subpart F income, is effective for determining inclusions for taxable years of U.S. shareholders beginning after December 31, 1992. Thus, the bill permits regulatory adjustments to an inclusion occurring after the effective date to account for previous subpart F income inclusions occurring both prior to and subsequent to the effective date of the provision.

Subpart F inclusions in year of disposition

The provision permitting dispositions of stock to be taken into consideration in determining a U.S. shareholder's subpart F inclusion for a taxable year is effective with respect to dispositions occurring after date of enactment.

Distributions of previously taxed income

The provision allowing the Secretary to make regulatory adjustments to avoid double inclusions in cases such as those to which section 304 applies takes effect on date of enactment.

Foreign tax credit in year of receipt of previously taxed income

The provision granting regulatory authority to establish simplified methods for determining the amount of increase in foreign tax credit limitation resulting from a distribution of previously taxed income is effective as of the date of enactment.

Treatment of United States source income earned by a controlled foreign corporation

The provision concerning the effect of treaty exemptions from or reductions of the branch profits tax on the determination of subpart F income is effective for taxable years beginning after December 31, 1986.

3. Translation of foreign taxes into U.S. dollar amounts (sec. 4421 of the bill and secs. 905(c) and 986(a) of the Code)

Present Law

Translation of foreign taxes

Foreign income taxes paid in foreign currencies are required to be translated into U.S. dollar amounts using the exchange rate as of the time such taxes are paid to the foreign country or U.S. possession (sec. 986(a)(1)). This rules applies equally to foreign taxes paid directly by U.S. taxpayers, which are creditable only in the year paid or accrued (or during a carryover period), and to foreign taxes paid by foreign corporations that are deemed paid by a U.S. corporation receives a dividend or income inclusion.

Redetermination of foreign taxes

For taxpayers who utilize the accrual basis of accounting for determination creditable foreign taxes, accrued and unpaid foreign tax liabilities denominated in foreign currencies are translated into U.S. dollar amounts at the exchange rate as of the last day of the taxable year of accrual.[4] In certain cases where a difference exists between the dollar value of accrued foreign taxes and the dollar value of those taxes when paid, a redetermination (or adjustment) or foreign taxes is required.[5] Generally, such an adjustment may be attributable to one of three causes. One such cause would be a refund to foreign taxes. Second, a foreign tax redetermination may be required because the amount of foreign currency units actually paid differs from the amount of foreign currency units accrued. These first two cases generally give rise to a so-called "section 905(c) regular adjustment." Third, a redetermination may arise due to fluctuations in the value of the foreign currency relative to the dollar between the date of accrual and the date of payment giving rise to a so-called "section 905(c) translation adjustment."

As a general matter, a redetermination of foreign tax paid or accrued directly by a U.S. person requires notification of the Internal Revenue Service and a redetermination of U.S. tax liability for the taxable year for which the foreign tax was claimed as a credit. Exceptions to this rule apply for de minimis amounts for foreign tax redeterminations.[6] In the case of redeterminations of foreign taxes that qualify for the deemed-paid foreign tax credit under sections 902 and 960, taxpayers generally are required to make appropriate adjustments to the pools of earnings and profits and foreign taxes.[7]

Reasons for Change

If each foreign income tax payment is required to be translated at a separate daily exchange rate for the day of the payment, the number of currency exchange rates that are relevant to foreign tax credit calculations varies directly with the frequency of foreign income tax payments. Where U.S. corporations are deemed to pay a portion of the "pool" of foreign taxes paid by foreign corporations, the correct amount of tax in the pool is the product of each tax payment times the relevant translation rate. The longer the period between the time the income is earned and the time it is repatriated to the U.S. corporation (or otherwise included in the U.S. corporation's income), the greater the period over which the amounts to tax payments and translation rates are relevant to the determination of net U.S. tax liability.

The committee believes that the record-keeping, verification, and examination burdens—both on the IRS and on taxpayers—association with the advantages of deferral and the foreign tax credit (including the indirect credit) are not insignificant. For example, if events that happened in one year affected only the return filed for that year, and each tax return was affected only by events that happened in the year for which that return was filed, then presumably tax-related records would need to be maintained only between the time the taxable year began and the year that the assessment period for that year expired. On the other hand, for example, if income earned in years 1 through 5 is taxed in year 6, then the amount of documentation relevant to the year-6 return potentially is increased five-fold, and the period over which the information must be maintained is at least five years longer.

U.S. persons who pay foreign income taxes directly and choose the benefits of the foreign tax credit have always been required to maintain detailed foreign tax payment documentation, including exchange rate data for the dates on which they paid foreign income taxes, and U.S. corporations that operate through foreign corporations have been required to maintain documentation regarding the earnings and foreign tax payments of the foreign corporations.[8] Some have argued, however, that relief is warranted for taxpayers that would otherwise bear the combined currency translation responsibilities applicable to direct foreign taxpayers with the extended recordkeeping responsibilities applicable to taxpayers that receive the benefits of deferral.

The committee believes that an appropriate response to this combination of burdens is to permit regulatory modification of the "time of payment" concept, in such a way that preserves the uniformity of treatment of branches and foreign subsidiaries of U.S. taxpayers, but permits recourse to reasonably accurate average translation rates for the period in which the tax payments are made. Simplification may be provided in this way by reducing, sometimes substantially, the number of translation calculations that are required to be made. There may be situations in which the use of an average exchange rate over a specified time period, to be applied to all tax payments made in that currency during that period, would provide results not substantially different than those that would be derived under present law. This could result, for example, where the value of a foreign currency as it relates to the U.S. dollar does not fluctuate significantly over the specified period.

[4] Temp. Treas. Reg. sec. 1.905T(b)(1).
[5] Temp. Treas. Reg. sec. 1.905-3T(c).
[6] Temp. Treas. Reg. sec. 1.905-3T(d)(1).
[7] Temp. Treas. Reg. sec. 1.905-3T(d)(2); Notice 90-26, 1990-1 C.B. 336.
[8] Also, note that in *Commissioner v. American Metal Co.*, 221 F.2d 134, 141 (2d. Cir.), *cert. denied*, 350 U.S. 979 (1955), where a foreign corporation kept its books in U.S. dollars, foreign taxes were translated as of their payment date.

In addition, the committee believes that in certain cases, taxpayers who are on the accrual basis of accounting for purposes of determining creditable foreign taxes should be permitted to translate those taxes into U.S. dollar amounts in the year to which those taxes relate, and should not be required to make adjustments or redeterminations to those translated amounts, if actual tax payments are made—within a reasonably short period of time—after the close of such year. Moreover, the committee believes that it is appropriate to mandate the use of an average exchange rate for the taxable year with respect to which such foreign taxes relate for purposes of translating those taxes. On the other hand, the committee believes that a foreign tax not paid within a reasonably short period after the close of the year to which the taxes relate should not be treated as a foreign tax for such year; in such a case permitting the foreign tax credit for that year is less a mechanism for preventing double taxation, and more one resulting in the avoidance of all tax. By drawing a bright line between those foreign tax payment delays that do and do not require a redetermination, the committee believes that a reasonable degree of certainty and clarity will be added to the law in this area. The committee anticipates that in most cases, the combination of translating accrued taxes in this manner and exempting certain translation differences from redetermination should significantly alleviate present-law complexities, but should not provide results that are materially different from those that would appropriately be reached under present law.

One of the fundamental premises behind the amendments enacted in 1986 with respect to the translation of foreign taxes was that foreign taxes paid by foreign corporations should be translated in the same manner as foreign taxes paid by foreign branches of U.S. persons. In keeping with that premise, the committee believes that any provision to allow the use of average exchange rates for this purpose or to allow for translation in years to which accrued taxes relate should be made equally applicable to foreign branches and subsidiaries.

Explanation of Provision

In general

The bill sets forth two sets of operating rules for the translation of foreign taxes. The first set establishes new rules for the translation of certain accrued foreign taxes. The other set modifies the rules of present law for translating all other foreign taxes.

Translation of foreign taxes

Translation of certain accrued foreign taxes

With respect to taxpayers who take foreign income taxes into account when accrued for purposes of determining the foreign tax credit, the bill generally permits foreign taxes to be translated at the average exchange rate for the taxable year to which such taxes relate. If tax in excess of the accrued amount is actually paid, such excess amount would be translated using the exchange rate in effect as of the time of payment.

This set of rules does not apply (1) to taxpayers that are not on the accrual basis for determining creditable foreign taxes, (2) with respect to taxes of an accrual-basis taxpayer that are actually paid in a taxable year prior to the year to which they relate, or (3) to the extent provided in regulations, to tax payments denominated in a currency determined to be an inflationary currency in accordance with such regulations. The committee intends that the Secretary will have discretion to define "inflationary" for this purpose so as to take into account the particular need under this provision to avoid distortions in the computation of the foreign tax credit. In addition, as discussed in detail below, this set of rules does not apply to, and thus a redetermination of foreign tax is required for, any foreign income tax paid after the date two years after the close of the taxable year to which such taxes relate.

For example, assume that in year 1 a taxpayer accrues 1,000 units of foreign tax that relate to year 1. Further assume that as of the end of year 1 the tax is unpaid and the currency involved is not treated as inflationary by the Secretary for translation purposes. In this case, the bill provides that the taxpayer would translate 1,000 units of accrued foreign tax into U.S. dollars at the average exchange rate for year 1.[9] If the 1,000 units of tax were paid by the taxpayer in either year 2 or year 3, no redetermination of foreign tax would be required. If, any portion of the tax so accrued remained unpaid as of the end of year 3, however, the taxpayer would be required to redetermine its foreign tax accrued in year 1 to account for the accrued but unpaid tax.

As another example, assume a taxpayer accrues 1,000 units of foreign tax in year 2, but pays the tax in year 1. Also assume that the tax relates to year 2. In this case, the taxpayer would translate the tax using the exchange rate as of the time the tax is paid (i.e., using the applicable year 1 exchange rate) since the tax is paid in a year prior to the year to which it relates.

As an illustration of what is meant by the taxable year to which taxes relate, assume that a foreign corporation is charged by a foreign government with an income tax of 100 units for 1993. Assume that the currency involved is not treated as inflationary by the Secretary for translation purposes under the bill. Due to a contest between the foreign government and the corporation that ends in 1994, the 100 units of tax are not paid until 1994. Assume that under the U.S. rules governing accrual, the foreign tax accrues for 1993 but does not do so until 1994.[10] Under the bill, the taxes will be translated at the rate in effect for 1993, because the taxes relate to 1993, even though they did not accrue until 1994. If instead the contest was over, and the taxes were accrued and paid, in 1996, the translation rate used would be that of 1993, rather than 1993 because 1993 is more than 2 years after the end of 1993. Now assume that the contest was over in 1996, but the taxes were deposited in 1994 and not accrued until 1996. These taxes are paid before the beginning of the year in which the taxes were accrued (1993), but after the year to which the taxes related (1993). Thus, under the bill, the taxes may be translated at the rate for the year (1993) to which the taxes relate. If the taxes are instead paid in 1996, under the bill they will be translated at the relevant rate for 1996 because 1996 is more than 2 years after the end of 1993.

As an additional illustration of what is meant under the bill as the taxable year to which taxes relate, assume that a foreign corporation accrues a foreign income tax of 100 units of noninflationary currency for 1993. Further assume that the actual amount of foreign tax liability of the foreign corporation for 1993 is 110 units, all of which is paid in 1994. Under the bill, the 110 units of foreign tax are translated at the rate in effect for 1993 because the taxes relate to 1993, even though the total tax liability for that year was not actually accrued by the taxpayer in 1993.

Finally, assume that under foreign law, a foreign income tax liability accrues in 1998 under a long-term contract method of accounting, but advance deposits of that liability accruing in 1998 are made in each of the years 1993 through 1997. The committee intends that if the payments in 1993 through 1997 are treated as relating to 1998, these payments are nevertheless to be translated at the relevant rates for 1993 through 1997. Although the bill provides a rule for translation of the taxes in this case, no change is intended as to the application of present law accounting rules determining the year for which the taxes are eligible for credit or deduction for U.S. income tax purposes.

Translation of all other foreign taxes

Foreign taxes not eligible for application of the preceding rules generally are translated into U.S. dollars using the exchange rates as of the time such taxes are paid. The bill grants the Secretary of the Treasury authority to issue regulations that would allow foreign tax payments made by a foreign corporation or by a foreign branch of a U.S. person to be translated into U.S. dollar amounts using an average U.S. dollar exchange rate for a specified period. The committee anticipates that the applicable average exchange rate would be the rate as published by a qualified source of exchange rate information for the period during which the tax payments were made.

Redetermination of foreign taxes

As revised by the bill, section 905(c) requires foreign tax redeterminations to occur in three cases: (1) if accrued taxes when paid (in foreign currency) differ from the amounts claimed (in foreign currency) as credits by the taxpayer, (2) if accrued taxes are not paid before the date two years after the close of the taxable year to which such taxes relate, and (3) if any tax paid is refunded in whole or in part. Thus, for example, the bill provides that if at the close of the second taxable year after the close of the accrual year any tax so accrued has not yet been paid, a foreign tax redetermination under section 905(c) is required for the amount of such unpaid tax. That is, the accrual of any tax that is unpaid as of that date would be retroactively denied. In cases where a redetermination is required, as under present law, the bill specifies that the taxpayer must notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. No inference is intended as to when a redermination is required under present law for accrued but unpaid foreign taxes.

The bill provides that in the case of accrued taxes not paid within the date two years after the close of the taxable year to which such taxes relate, whether or not such taxes were previously accrued, any such taxes if subsequently paid are taken into account for the taxable year in which paid, and no redermination with respect to the original year of accrual is required on account of such payment. In such a case, those taxes would be translated into U.S. dollar amounts using the exchange rates in effect for the period during which such taxes are paid. Nothing in the bill is intended to change present law as to the length of time after the year to which the redermination relates within which redermination may be made or required.[11]

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[9] The same result would occur if the 1,000 units of tax were both accrued and paid in year 1.

[10] See, e.g., Rev. Rul. 84-125, 1984-2 C.B. 125.

[11] *See* sec. 6501(c)(5). *See also, e.g., Pacific Metals Corp. v. Commissioner*, 1 T.C. 1028 (1943); *Texas Co. (Caribbean) Ltd. v. Commissioner*, 12 T.C. 925 (1949).

Effective Date

This section of the bill generally is effective for taxes paid (in the case of taxpayers using the cash basis for determining the foreign tax credit) or accrued (in the case of taxpayers using the accrual basis for determining the foreign tax credit) in taxable years beginning after December 31, 1991. The bill's changes to the foreign tax redermination rules apply to taxes which relate to taxable years beginning after December 31, 1991. Thus, for example, the bill's amendments to the redermination rules do not apply to a foreign tax that relates to a taxable year beginning in or before 1991, even though it does not properly accrue until a taxable year beginning after December 31, 1991.

4. Foreign tax credit limitation under the alternative minimum tax (sec. 4422 of the bill and sec. 59(a) of the Code)

Present law

Computing foreign tax credit limitations requires the allocation and apportionment of deductions between items of foreign source and U.S. source income. Foreign tax credit limitations must be computed both for regular tax purposes and for purposes of the alternative minimum tax (AMT). Consequently, after allocating and apportioning deductions for regular tax foreign tax credit limitation purposes, additional allocations and apportionments generally must be performed in order to compute the AMT foreign tax credit limitation.

Reasons for Change

The process of allocating and apportioning deductions for purposes of calculating the regular and AMT foreign tax credit limitations can be complex. Taxpayers that have allocated and apportioned deductions for regular tax foreign tax credit purposes generally must reallocate and reapportion the same deductions for AMT foreign tax credit purposes, based on assets and income that reflect AMT adjustments (including depreciation). However, the differences between regular taxable income and alternative minimum taxable income are often relevant primarily to U.S. source income. As a result of the combined effects of these differences, the committee believes that foreign source alternative minimum taxable income generally will not differ significantly from foreign source regular taxable income. By permitting taxpayers to use foreign source regular taxable income in computing their AMT foreign tax credit limitation, the bill eliminates the need to reallocate and reapportion every deduction.

Explanation of Provision

The bill permits taxpayers to elect to use as their AMT foreign tax credit limitation fraction the ratio of foreign source regular taxable income to entire alternative minimum taxable income, rather than the ratio of foreign source alternative minimum taxable income to entire alternative minimum taxable income. Foreign source regular taxable income may be used, however, only to the extent it does not exceed entire alternative minimum taxable income. In the event that foreign source regular taxable income does exceed entire alternative minimum taxable income, and the taxpayer has income in more than one foreign tax credit limitation category, the committee intends that the foreign source taxable income in each such category generally shall be reduced by a pro rata portion of that excess.

The election under the bill is available only in the first taxable year beginning after December 31, 1992, for which the taxpayer claims an AMT foreign tax credit. A taxpayer will be treated, for this purpose, as claiming an AMT foreign tax credit for any taxable year for which the taxpayer chooses to have the benefits of the foreign tax credit, and in which the taxpayer is subject to the alternative minimum tax or would be subject to the alternative minimum tax but for the availability of the AMT foreign tax credit. The election applies to all subsequent taxable years, and may be revoked only with the permission of the Secretary of the Treasury.

Effective Date

The provision applies to taxable years beginning after December 31, 1992.

5. Inbound and outbound transfers (secs. 4423 and 4424 of the bill and secs. 367, 1057, and 1491–1494 of the Code)

Present Law

Outbound transfers

Corporate nonrecognition provisions

Certain types of exchanges relating to the organization, reorganization, and liquidation of a corporation can be made without recognition of gain to the corporation involved or to its shareholders. In 1932 Congress enacted an exception to the nonrecognition rules, which became section 367 of the 1954 Code, for the case where such an exchange involves a foreign corporation. The legislative history indicates that the exception was enacted in order to prevent tax avoidance that might have otherwise occurred upon the transfer of appreciated property outside U.S. tax jurisdiction.[1] Under that provision, in determining the extent to which gain (but not loss) was recognized in these exchanges, a foreign corporation was not considered a corporation unless it was established to the satisfaction of the IRS that the exchange was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

The Code now provides that if a U.S. person transfers property to a foreign corporation in connection with certain corporate organizations, reorganizations, or liquidations, the foreign corporation will not, for purposes of determining the extent to which gain is recognized on such transfer, be considered to be a corporation (sec. 367(a)(1)). Various exceptions to the operation of this rule are provided, including a broad grant of authority to provide exceptions by regulation. The statutory language has changed substantially since 1932, but it has retained in large part its primary operative result—that of treating a foreign corporation as not a corporation. Since corporate status is essential to qualify for the tax-free organization, reorganization, and liquidation provisions, failure to satisfy the requirements of section 367 could result in the recognition of gain to the participant corporations and shareholders.

Excise tax on transfers to a foreign entity

At the same time that Congress enacted the original predecessor of current section 367, Congress also enacted an excise tax on outbound transfers that might not constitute income tax recognition events even after imposition of the anti-avoidance income tax rule adopted for corporate transactions. As in the case of the corporate nonrecognition override provision, the purpose of the excise tax was to check transfers of property in which there was a large appreciation in value to foreign entities for the purpose of avoidance of taxes on capital gains.[2] Therefore, as in the case of the corporate provision, the excise tax generally has been imposed only in certain cases where it has been believed necessary or appropriate to preserve U.S. tax on appreciated assets.

Under present law, the excise tax generally applies on transfers of property by a U.S. person to a foreign corporation—as paid-in surplus or as a contribution to capital—or to a foreign estate, trust, or partnership.[3] The tax is 35 percent of the amount of gain inherent in the property transferred, but not recognized for income tax purposes at the time of the transfer (sec. 1491). For income tax purposes, the basis of the property whose appreciation and transfer triggers the tax is not increased to account for imposition of the tax.

The excise tax does not apply in certain cases where the transferee is exempt from U.S. tax under Code sections 501–505 (sec. 1492(1)). In addition, the excise tax does not apply in some cases where income tax rules governing outbound transfers apply, either by their terms or by the election of the taxpayer. Thus, the excise tax does not apply to a transfer described in section 367, or to a transfer not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles similar to the principles of section 367 (sec. 1492(2)).

In addition, a taxpayer may elect (under regulations prescribed by the Secretary) to treat a transfer described in section 1491 as a sale or exchange of the property transferred and to recognize as gain (but not loss) in the year of the transfer the excess of the fair market value of the property transferred over the adjusted basis (for determining gain) of the property in the hands of the transferor (sec. 1057; Treas. Reg. sec. 7.0), to the extent that gain is recognized pursuant to the election in the year of the transfer. The transfer is not subject to the excise tax, and the basis of the property in the hands of the transferee will be increased by the amount of gain received (sec. 1492(3)). The legislative history of the elective income recognition provision indicates that the making of an election which has as one of its principle purposes the avoidance of Federal income taxes is not permitted.[4]

The excise tax is due at the time of the transfer (sec. 1494(a)). Under regulations, the excise tax may be abated, remitted, or refunded if the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367 (sec. 1494(b)).

Inbound corporate transfers

Although the legislative history of the 1932 Act indicated a concern with outbound transfers, the statutory standard for determining that a transaction did not have as one of its principal purposes tax avoidance evolved through administrative interpretation into a requirement that, in the case of transfers into the United States by a foreign corporation, tax-free treatment generally would be permitted only if the U.S. tax on accumulated earnings and profits was paid.

[1] H.R. Rep. No. 708, 72d Cong., 1st Sess. 20 (1932).
[2] *Id.* at 52.

[3] The Internal Revenue Service has in the past wavered on the question whether this tax applies to a transfer to a foreign trust with respect to which the transferor is treated as the owner under the grantor trust rules. Compare Rev. Rul. 69-850, 1969-2 C.B. 168 (holding that such a transfer is subject to tax under section 1491); with Rev. Rul. 87-61, 1987-2 C.B. 219 (revoking Rev. Rul. 69-450, and holding that such a transfer is *not* subject to tax under section 1491).

[4] Staff of the Joint Committee on Taxation, 94th Cong., 2d Sess., General Explanation of the Tax Reform Act of 1976, at 226 (1976).

For example, in 1968, the IRS issued guidelines (Rev. Proc. 68-23, 1968-1 C.B. 821) as to when favorable rulings "ordinarily" would be issued. As a condition of obtaining a favorable ruling with respect to certain transactions, the section 367 guidelines required the taxpayer to agree to include certain items in income (the amount to be included was called the section 367 toll charge). For example, if the transaction involved the liquidation of a foreign corporation into a domestic parent corporation, a favorable ruling was issued if the domestic parent agreed to include in its income as a dividend for the taxable year in which the liquidation occurred the portion of the accumulated earnings and profits of the foreign corporation which were properly attributable to the domestic corporation's stock interest in the foreign corporation (Rev. Proc. 68-23, sec. 3.01(1); see also sec. 3.03(1)(b)).

Absence of a toll charge on accumulated earnings of a foreign corporation upon liquidation or asset reorganization into a U.S. corporation clearly would permit avoidance of tax. For example, if a U.S. corporation owns 100 percent of the stock of a U.S. subsidiary, no tax is imposed either on a dividend from the subsidiary to the parent (sec. 243) or the liquidation of the subsidiary into the parent (secs. 332 and 337). In each case, the earnings of the subsidiary already have been subject to U.S. tax jurisdiction, and the liquidation provisions allow nonrecognition of gain inherent in appreciated property of the subsidiary. On the other hand, if a U.S. corporation owns 100 percent of the stock of a foreign subsidiary, earnings of the subsidiary generally are not subject to current U.S. tax. Instead, tax generally is imposed on a dividend from the subsidiary to the parent, net of creditable foreign taxes. If a liquidation of the subsidiary could be accomplished tax-free under the Code, U.S. tax on its earnings would be avoided; more generally, the parent would be able to succeed to the basis and other tax attributes of the foreign corporation without having subjected to U.S. tax jurisdiction the earnings that gave rise to those tax attributes.

Outbound transfers since the Tax Reform Act of 1976

For purposes of the transactions described above, section 367 (and its predecessors) remained largely unchanged between 1932 and 1976. In 1976, however, a number of problems caused Congress to revise section 367. One result of the 1976 revision was to separate the provision into 2 sets of rules: one set dealing with outbound transfers, where the statutory aim is to prevent the removal of appreciated assets or inventory from U.S. tax jurisdiction prior to their sale (sec. 367(a)), and the other set dealing with both transfers into the United States and those which are exclusively foreign (sec. 367(b)).

Section 367(b) now provides, in part, that in the case of certain exchanges in connection with which there is no transfer of property described in section 367(a)(1), a foreign corporation will be considered to be a corporation except to the extent provided in regulations which are necessary or appropriate to prevent the avoidance of Federal income taxes.

Although it is clear that absence of a toll charge on accumulated earnings of a foreign corporation upon liquidation or reorganization into a U.S. corporation leads to avoidance of tax, and Congress in 1976 noted without disapproval the adoption of IRS positions that would prevent the avoidance of tax in these cases,[5] neither section 367(b) as revised in 1976, or its predecessors, were drafted in such a way that directly causes tax to be imposed on foreign earnings.

For example, assume that a U.S. corporation owns 100 percent of the stock of a liquidating foreign corporation, and, pursuant to regulations under section 367(b), the foreign corporation is not treated as a corporation for purposes of section 332. In that case, the U.S. corporation would be required under the Code to recognize the difference between the basis and the value of its stock in the foreign corporation. That gain, however, may be more or less than the accumulated earnings of the foreign corporation attributable to the period when the U.S. corporation owned the stock of the foreign corporation.

Perhaps as a result, neither the present temporary regulations nor the recently proposed regulations under section 367(b) mandate a tax based on the accumulated earnings of a foreign corporation that liquidates or reorganizes into a U.S. corporation. The temporary regulations allow the taxpayer to elect treatment of the foreign corporation as a corporation if the tax on earnings is paid. If the taxpayer chooses not to make the election, the foreign corporation is not treated as a corporation under the relevant nonrecognition provision (e.g., sec. 332, 354), but is treated as a corporation for other purposes, such as for purposes of the basis rules (secs. 334, 358, 362), and carryover provisions (sec. 381) (Temp. Treas. Reg. secs. 7.367(b)-5(b) and 7.367(b)-7(c)(2)). The proposed regulations generally require that the foreign corporation be treated as a corporation, and permit the taxpayer to elect either to pay the tax on earnings, or to pay tax on the gain; but if the latter option is chosen, adjustments must be made to either net operating loss carryovers, capital loss carryovers, or asset bases (Proposed Treas. Reg. sec. 1.367(b)-3(b)(2)).

Reasons for Change

Outbound transfers

The excise tax was intended to prevent U.S. taxpayers from transferring appreciated property to foreign entities in attempts to avoid the payment of a capital gains tax. During the 60 years since its enactment, the excise tax potentially due on a transfer has only roughly approximated the income tax consequences that would have flowed from gain recognition. In some cases the excise tax has been much harsher than that income tax.[6] Nevertheless, it is and has been the case that any taxpayer could properly avoid the excise tax by subjecting itself to the income tax. The committee understands that in some cases taxpayers are subject to the excise tax only because of inadvertent failure to elect to be subject to income tax. The committee understands that in order to defeat the tax avoidance possibilities of outbound transfers, in appropriate cases taxpayers need be subject to income tax on transfers of appreciated property to foreign entities, but not an excise tax.

Some have argued that partnership and trust provisions added to the Code since 1932 generally obviate any need for either the excise tax or any new alternative provision. The committee does not agree. Implementation of many of those provisions requires regulations that may or may not exist, and may or may not adequately prevent the tax avoidance that prompted enactment of the excise tax. The committee believes that other statutes, while representing an improvement over pre-1932 law from the standpoint of preventing abuses, do not in all cases represent an adequate backstop where there is a failure to elect gain recognition or application of section 367 principles.

Inbound transfers

The committee believes that the uncertainty surrounding the IRS authority to impose conditions on the treatment of a foreign corporation as a corporation, in cases other than outbound transfers, is not suited to prevent the avoidance of tax through the use of foreign corporations in the most straightforward fashion.

For example, assume that a U.S. corporation establishes a 100 percent-owned foreign corporation with capital of $100 cash. Assume that the foreign corporation spends $50 on operating assets and $50 on investment assets, and that the operating assets generate $100 of earnings and profits. Assume that the value and tax basis of operating assets maintained by the company remains at $50, while the value of the investment assets declines to $25, so that the stock in the foreign corporation is worth $175. Upon liquidation of the foreign corporation, assume that the taxpayer could avail itself of a gain limitation. Potentially, the taxpayer might achieve a double deduction of the $25 loss on the investment; once by sheltering $25 of earnings from taxation on repatriation, and again when the loss on the investment asset is realized upon disposition of that asset.[7]

The committee understands that the ambiguity of the statute in this case may foster complexity. For example, in the absence of regulations, the statute authorizes treatment of the foreign corporation as a corporation, and non-taxation of any earnings of the foreign corporation. To prevent this clear avoidance of tax, the IRS is authorized to provide for a different treatment of the foreign corporation by regulations. On one hand, it could be argued that the most the IRS can do in this case is to treat the transaction as if section 332 did not exist (resulting in gain recognition to the parent of $75). On the other hand, it could be argued that the Secretary is authorized to mandate the treatment of the foreign corporation as a corporation, subject to whatever regulations are necessary or appropriate to prevent the avoidance of tax on the repatriated earnings. One result of the ambiguity is a recently proposed regulation under which $75 of the earnings are taxed upon the liquidation, with the remaining $25 of earnings subject to future tax through a mandatory reduction of certain tax attributes, such as bases in the operating assets. The committee believes that requiring full taxation of the repatriated earnings is reasonable as a matter of the historic function of section 367 to prevent tax avoidance in inbound cases, and that such tax-avoidance can be prevented more directly and simply by explicitly authorizing the IRS to dispense with the gain limitation in appropriate cases.

Explanation of Provisions

Outbound transfers

The bill repeals the excise tax on outbound transfers. In its place, the bill requires the full recognition of gain on a transfer of property by a U.S. person to a foreign corpora-

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[5] E.g., Staff of the Joint Comm. on Taxation, 94th Cong., 2d Sess., General Explanation of the Tax Reform Act of 1976, at 264 (1976).

[6] When the excise tax was enacted, the income tax on capital gains of individuals was 12.5 percent; the excise tax was 25 percent (Revenue Act of 1932, secs. 101 and 901).

[7] Cf. Tech. Advice Memo. 9003005 (Sept. 28, 1989).

tion as paid-in surplus, or as a contribution to capital, or to a foreign estate, trust, or partnership.[8] The Secretary may, however, in lieu of applying this full recognition rule, provide regulations under which principles similar to the principles of section 367 shall apply to any such transfer. Moreover, the Secretary may provide rules under which recognition of gain will not be triggered by section 1491 in cases where the Secretary is satisfied that application of other Code rules (such as those relating to partnerships or trusts) will prevent the avoidance of tax consistent with the purposes of the bill. Full recognition of gain can also be avoided in the case of a transfer described in section 367. The committee anticipates that prior to the promulgation of regulations, the Secretary generally will continue to permit taxpayers to elect the application of principles similar to the principles of section 367, provided the election is made by the time for filing the income tax return for the taxable year of the transfer.

Inbound transfers

The bill provides that in the case of certain corporate organizations, reorganizations, and liquidations described in section 332, 351, 354, 355, 356, or 361 in which the status of a foreign corporation as a corporation is a condition for nonrecognition by a party to the transaction, income shall be recognized to the extent provided in regulations prescribed by the Secretary which are necessary or appropriate to prevent the avoidance of Federal income taxes. This provision is limited in its application, under the bill, so as not to apply to a transaction in which the foreign corporation is not treated as a corporation under section 367(a)(1). Thus, the bill permits the IRS to provide by regulations for recognition of income, without regard to the amount of gain that would be recognized in the absence of the relevant nonrecognition provision listed above. As under current law, such regulations will be subject to normal court review as to whether they are necessary or appropriate for the prevention of avoidance of Federal income taxes.

In addition, the bill clarifies that rules for income recognition under section 367(b) may also be applied in a case involving a transfer literally described in section 367(a)(1), where necessary or appropriate to prevent the avoidance of Federal income taxes.[9]

Effective Date

The provision that amends the outbound rules and repeals the excise tax applies to transfers after date of enactment. The provision that amends section 367(b) applies to transfers after December 31, 1993.

SUBTITLE E. OTHER INCOME TAX PROVISIONS

A. SUBCHAPTER S CORPORATION PROVISIONS

1. Determination of whether an S corporation has one class of stock (sec. 4501 of the bill and sec. 1361 of the Code)

Present Law

Under present law, a small business corporation eligible to be an S corporation may not have more than one class of stock. Differences in voting rights are disregarded in determining whether a corporation has more than one class of stock. In addition, certain debt instruments may not be treated as a second class of stock for purposes of this rule.

On October 5, 1990, the Treasury Department issued proposed regulations[1] providing that a corporation has more than one class of stock if all of the outstanding shares of stock do not confer identical rights to distribution and liquidation proceeds, regardless of whether any differences in rights occur pursuant to the corporate charter, articles or bylaws, by operation of State law, by administrative action, or by agreement. The proposed regulations also provided that, notwithstanding that all outstanding shares of stock confer identical rights to distribution and liquidation proceeds, a corporation has more than one class of stock if the corporation makes non-conforming distributions (i.e., distributions that differ with respect to timing or amount with respect to each share of stock), with limited exceptions for certain redemptions and certain differences in the timing of distributions. The proposed regulations were to apply to taxable years beginning after December 31, 1992.

On August 8, 1991, the Treasury Department issued revised proposed regulations replacing the proposed regulations described above. The regulations were issued as final regulations on May 29, 1992 (Treasury Decision 8419). These regulations provide that a corporation is treated as having only one class of stock if all outstanding shares of stock confer identical rights to distribution and liquidation proceeds. Under the revised regulations, any distributions that differ in timing or amount are to be given appropriate tax effect in accordance with the facts and circumstances. These regulations generally apply to taxable years beginning after May 28, 1992.

Reasons for Change

The provision promotes simplification by clarifying that a corporation will not be ineligible to be an S corporation by reason of having more than one class of stock where the corporation has not issued shares of different classes (disregarding differences in voting rights) and applicable State corporate law does not provide for differing rights to distributions and liquidation proceeds.

Explanation of Provision

The bill provides that a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds. Applicable State law, taking into account legally enforceable rights under the corporate charter, articles or bylaws, administrative action, and agreements relating to distributions or liquidation proceeds with respect to shares, determines whether the outstanding shares confer different rights to distributions or liquidation proceeds.

Where an S corporation in fact makes distributions which differ as to timing or amount, the bill in no way limits the Internal Revenue Service from properly characterizing the transaction for tax purposes. For example, if a distribution is properly characterized as compensation, the Service could require it to be so treated for tax purposes. Similarly, if a payment appearing as compensation should be properly characterized as a distribution, the Service could require it to be so treated for purposes of computing taxable income.

Effective Date

The provision applies to taxable years beginning after December 31, 1982.

2. Authority to validate certain invalid elections (sec. 4502 of the bill and sec. 1362 of the Code)

Present Law

Under present law, if the Internal Revenue Service determines that a corporation's Subchapter S election is inadvertently terminated, the Service can waive the effect of the terminating event for any period if the corporation timely corrects the event and if the corporation and shareholders agree to be treated as if the election had been in effect for that period. Present law does not grant the Internal Revenue Service the ability to waive the effect of an inadvertent invalid Subchapter S election.

In addition, under present law, a small business corporation must elect to be an S corporation no later than the 15th day of the third month of the taxable year for which the election is effective. The Internal Revenue Service may not validate a late election.

Reasons for Change

The bill promotes simplification by giving the Secretary the flexibility to validate an invalid S election where the failure to properly elect S status was inadvertent or untimely.

Explanation of Provision

Under the bill, the authority of the Internal Revenue Service to waive the effect of an inadvertent termination is extended to allow the Service to waive the effect of an invalid election caused by an inadvertent failure to qualify as a small business corporation or to obtain the required shareholder consents (including elections regarding qualified subchapter S trusts), or both. It is intended that the Internal Revenue Service be reasonable in granting waivers of inadvertent invalid elections so that a corporation whose election was inadvertently invalid would be treated as an S corporation as if the election had been effective.

The bill also allows the Internal Revenue Service to treat a late Subchapter S election as timely where the Service determines that there was reasonable cause for the failure to make the election timely. It is intended that the Internal Revenue Service adopt a standard similar to the standard currently set forth in Treasury regulation sec. 1.9100–1 in applying this provision.

Effective Date

The provision applies to taxable years beginning after December 31, 1982.[2]

3. Treatment of distributions by S corporations during loss year (sec. 4503 of the bill and secs. 1366 and 1368 of the Code)

Present Law

Under present law, the amount of loss an S corporation shareholder may take into account for a taxable year cannot exceed the sum of shareholder's adjusted basis in his or her stock of the corporation and the adjusted basis in any indebtedness of the corporation to the shareholder. Any excess loss is carried forward.

Any distribution to a shareholder by an S corporation generally is tax-free to the shareholder to the extent of the shareholder's adjusted basis of his or her stock. The shareholder's adjusted basis is reduced by the tax-free amount of the distribution. Any distribution in excess of the shareholder's adjusted basis is treated as gain from the sale or exchange of the stock.

Under present law, income (whether or not taxable) and expenses (whether or not de-

[8] By converting the excise tax to a recognition rule for income tax purposes, the committee does not intend to affect the outcome of the question, should the Internal Revenue Service choose to revisit it, of whether tax may be incurred upon a transfer of appreciated property to a foreign trust with respect to which the transferor is treated as the owner under the grantor trust rules.

[9] See Temp. Treas. Reg. sec. 7.367(b)-4(b); Proposed Treas. Reg. sec. 1.367(a)-3(a).

[1] Proposed Treasury Regulation sec. 1.1361-1(l)(2).

[2] This is the effective date of the present-law provision regarding inadvertent terminations.

ductible), serve, respectively, to increase and decrease an S corporation shareholder's basis in the stock of the corporation. These rules appear to require that the adjustments to basis for items of both income and loss for any taxable year apply before the adjustment for distributions applies.[3]

These rules limiting losses and allowing tax-free distributions up to the amount of the shareholder's adjusted basis are similar in certain respects to the rules governing the treatment of losses and cash distributions by partnerships. Under the partnership rules (unlike the S corporation rules), for any taxable year, a partner's basis is first increased by items of income, then decreased by distributions, and finally is decreased by losses for that year.[4]

In addition, if the S corporation has accumulated earnings and profits,[5] any distribution in excess of the amount in an "accumulated adjustments account" will be treated as a dividend (to the extent of the accumulated earnings and profits). A dividend distribution does not reduce the adjusted basis of the shareholder's stock. The "accumulated adjustments account" generally is the amount of the accumulated undistributed post-1982 gross income less deductions.

Reasons for Change

The provision promotes simplification by conforming the S corporation rules regarding distribution to the partnership rules and by eliminating uncertainty regarding the treatment of distributions made during the year.

Explanation of Provision

The bill provides that the adjustments for distributions made by an S corporation during a taxable year are taken into account before applying the loss limitation for the year. Thus, distributions during a year reduce the adjusted basis for purposes of determining the allowable loss for the year, but the loss for a year does not reduce the adjusted basis for purposes of determining the tax status of the distributions made during that year.

The bill also provides that in determining the amount in the accumulated adjustment account for purposes of determining the tax treatment of distributions made during a taxable year by an S corporation having accumulated earnings and profits, net negative adjustments (i.e., the excess of losses and deductions over income) for that taxable year are disregarded.

The following examples illustrate the application of these provisions:

Example 1.—X is the sole shareholder of A, a calendar year S corporation with no accumulated earnings and profits. X's adjusted basis in the stock of A on January 1, 1992, is $1,000 and X holds no debt of A. During the taxable year, A makes a distribution to X of $600, recognizes a capital gain of $200 and sustains an operating loss of $900. Under the bill, X's adjusted basis in the A stock is increased to $1,200 ($1,000 plus $200 capital gain recognized) pursuant to section 1368(d) to determine the effect of the distribution. X's adjusted basis is then reduced by the amount of the distribution to $600 ($1,200 less $600) to determine the application of the loss limitation of section 1366(d)(1). X is allowed to take into account $500 of A's operating loss, which reduces X's adjusted basis to zero. The remaining $300 loss is carried forward pursuant to section 1366(d)(2).

Example 2.—The facts are the same as in Example 1, except that on January 1, 1991, A has accumulated earnings and profits of $500 and an accumulated adjustments account of $200. Under the bill, because there is a net negative adjustment for the year, no adjustment is made to the accumulated adjustments account before determining the effect of the distribution under section 1368(c).

As to A, $200 of the $600 distribution is a distribution of A's accumulated adjustments account to zero. The remaining $400 of the distribution is a distribution of accumulated earnings and profits ("E&P") and reduces A's E&P to $100. A's accumulated adjustments account is then increased by $200 to reflect the recognized capital gain and reduced by $900 to reflect the operating loss, leaving a negative balance in the accumulated adjustment account on January 1, 1993, of $700 (zero plus $200 less $900).

As to X, $200 of the distribution is applied against A's adjusted basis of $1,200 ($1,000 plus $200 capital gain recognized) reducing X's adjusted basis to $1,000. The remaining $400 of the distribution is taxable as a dividend and does not reduce X's adjusted basis. Because X's adjusted basis is $1,000, the loss limitation does not apply to X, who may deduct the entire $900 operating loss. X's adjusted basis is then decreased to reflect the $900 operating loss. Accordingly, X's adjusted basis on January 1, 1993, is $100 ($1,000 plus $200 less $200 less $900).

Effective Date

These provisions apply to distributions made in taxable years beginning after December 31, 1991.

4. Treatment of S corporation as shareholders in C corporations (sec. 4504(a) of the bill and sec. 1371 of the Code.

Present Law

Present law contains several provisions relating to the treatment of S corporations as corporations generally for purposes of the Internal Revenue Code.

First, under present law, the taxable income of an S corporation is computed in the same manner as in the case of an individual (sec. 1363(b)). Under this rule, the provisions of the Code governing the computation of taxable income which are applicable only to corporations, such as the dividends received deduction, do not apply to S corporations.

Second, except as otherwise provided by the Internal Revenue Code and except to the extent inconsistent with subchapter S, subchapter C (i.e., the rules relating to corporate distributions and adjustments) applies to an S corporation and its shareholders (sec. 1371(a)(1)). Under this second rule, provisions such as the corporate reorganization provisions apply to S corporations. Thus, a C corporation may merge into an S corporation tax-free.

Finally, an S corporation in its capacity as a shareholder of another corporation is treated as an individual for purposes of subchapter C (sec. 1371(a)(2)). The Internal Revenue Service has taken the position that this rule prevents the tax-free liquidation of a C corporation into an S corporation because a C corporation cannot liquidate tax-free when owned by an individual shareholder.[6] Thus, a C corporation may elect S corporation status tax-free or may merge into an S corporation tax-free but may not liquidate into an S corporation tax-free.[7] Also, the Service's reasoning would also prevent an S corporation from making an election under section 338 where a C corporation was acquired by an S corporation.

Reasons for Change

The provision promotes simplification by treating similar transactions in a similar manner for tax purposes.

Explanation of Provision

The bill repeals the rule that treats an S corporation in its capacity as a shareholder of another corporation as an individual. Thus, the liquidation of a C corporation into an S corporation will be governed by the generally applicable subchapter C rules, including the provisions of sections 332 and 337 allowing the tax-free liquidation of a corporation into its parent corporation. Following a tax-free liquidation, the built-in gains of the liquidating corporation may later be subject to tax under section 1374 upon a subsequent disposition. An S corporation will also be eligible to make a section 338 election (assuming all the requirements are otherwise met), resulting in immediate recognition of all the acquired C corporation's gains and losses (and the resulting imposition of a tax).

The repeal of this rule does not change the general rule governing the computation of income of an S corporation. For example, it does not allow an S corpration, or its shareholders, to claim a dividends received deduction with respect to dividends received by the S corporation, or to treat any item of income or deduction in a manner inconsistent with the treatment accorded to individual taxpayers.

No inference is intended regarding the present-law treatment of these transactions.

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

5. S corporations permitted to hold subsidiaries (sec. 4504(b) of the bill and sec. 1361 of the Code)

Present Law

Under present law, an S corporation may not be a member of an affiliated group of corporations (other than by reason of ownership in certain inactive corporations). The legislative history indicates that this rule was adopted to prevent the filing of consolidated returns by a group which includes an S corporation.[8]

Reasons for Change

The provision promotes simplification by eliminating a barrier to using the S corporation form of entity and providing more appropriate treatment of corporations with subsidiaries, i.e., the prohibition of filing a consolidated return if S corporate status is elected rather than disqualification of the S election.

Explanation of Provision

The bill repeals the rule that an S corporation may not be a member of an affiliated group of corporations. Thus, an S corporation will be allowed to own up to 100 percent of the stock of a C corporation. However, an S corporation cannot be included in a group filing a consolidated return.

Under the bill, if an S corporation holds 100 percent of the stock of a C corporation that, in turn, holds 100 percent of the stock of another C corporation, the two C corporations may elect to file a consolidated return (if otherwise eligible), but the S corporation may not join in the election.

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[3] See section 1368(d)(1)(A); H. Rep. 97-826, p. 17; S. Rep. 97-640, p. 18; Prop. Treas. Reg. sec. 1.1367-1(c).

[4] Treas. Reg. sec. 1.704-1(d)(2); Rev. Rul. 66-94, 1966-1 C.B. 166.

[5] An S corporation may have earnings and profits from years prior to its subchapter S election or from pre-1983 subchapter S years.

[6] See PLR 8818049, (Feb. 10, 1988).

[7] A tax is imposed with respect to LIFO inventory held by a C corporation becoming an S corporation.

[8] See S. Rpt. No. 1983 (85th Cong., 2d Sess., 1958), p. 88.

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

6. Elimination of pre-1983 earnings and profits of S corporations (sec. 4504(c) of the bill)

Present Law

Under present law, the accumulated earnings and profits of a corporation are not increased for any year in which an election to be treated as an S corporation is in effect. However, under the subchapter S rules in effect before revision in 1982, a corporation electing subchapter S for a taxable year increased its accumulated earnings and profits if its earnings and profits for the year exceeded both its taxable income for the year and its distributions out of that year's earnings and profits. As a result of this rule, a shareholder may later be required to include in his income the accumulated earnings and profits when it is distributed by the corporation. The 1982 revision to subchapter S repeal this rule for earnings attributable to taxable years beginning after 1982 but did not do so for previously accumulated S corporation earnings and profits.

Reasons for Change

The provision promotes simplification by eliminating the need to keep records of certain generally small amounts of earnings arising before 1983.

Explanation of Provision

The bill provides that if a corporation is an S corporation for its first taxable year beginning after December 31, 1991, the accumulated earnings and profits of the corporation as of the beginning of that year are reduced by the accumulated earnings and profits (if any) accumulated in any taxable year beginning before January 1, 1983, for which the corporation was an electing small business corporation under subchapter S. Thus, such a corporation's accumulated earnings and profits will be solely attributable to taxable years for which an S election was not in effect. This rule is generally consistent with the change adopted in 1982 limiting the S shareholder's taxable income attributable to S corporation earnings to his share of the taxable income of the S corporation.

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

7. Treatment of items of income in respect of a decedent held by an S corporation (sec. 4504(d) of the bill and sec. 1367 of the Code)

Present Law

Income in respect of a decedent (IRD) generally consists of items of gross income that accrued during the decedent's lifetime but were not yet includable in the decedent's income before his death under his method of accounting. IRD is includable in the income of the person acquiring the right to receive such item. A deduction for the estate tax attributable to an item of IRD is allowed to the person who includes the item in gross income (sec. 691(c)).

The cost or basis of property acquired from a decedent is its fair market value at the date of death (or alternate valuation date if that date is elected for estate tax purposes). This basis often is referred to as a "stepped-up basis". Property that constitutes a right to receive IRD does not receive a stepped-up basis.

The basis of a partnership interest of corporate stock acquired from a decedent generally is stepped-up at death. Under Treasury regulations, the basis of a partnership interest acquired from a decedent is reduced to the extent that is value is attributable to items constituting IRD.[9] Although S corporation income is included in the income of the shareholders in a manner similar to the inclusion of partnership income in the income of the partners, no comparable regulation provides for a reduction in the basis of stock of an S corporation acquired from a decedent where the S corporation holds items of IRD on the date of death of a shareholder. Thus, under present law, the treatment of an item of IRD held by an S corporation is unclear.

Reasons for Change

The provision promotes simplification by eliminating the uncertainty of present law, and by treating items of IRD held by a taxpayer directly, through a partnership, or through an S corporation in a similar manner.

Explanation of Provision

The bill provides that a person acquiring stock in an S corporation from a decedent will treat as IRD his pro rata share of any item of income of the corporation which would have been IRD if that item had been acquired directly from the decedent. Where an item is treated as IRD, a deduction for the estate tax attributable to the item generally will be allowed under the provisions of section 691(c). The stepped-up basis in the stock will be reduced by the extent to which the value of the stock is attributable to items consisting of IRD. This basis rule is comparable to the present-law partnership rule.

No inference is intended regarding the present-law treatment of IRD in the case of S corporations.

Effective Date

The provision applies with respect to decedents dying after date of enactment of the bill.

8. Certain trusts eligible to hold stock in S corporations (sec. 4505 of the bill and secs. 641 and 1361 of the Code)

Present Law

Under present law, trusts other than grantor trusts, voting trusts, certain testamentary trusts (for a 60-day or two-year period) and "qualified subchapter S trusts" may not be shareholders in a S corporation. A "qualified subchapter S trust" is a trust which is required to have only one current income beneficiary (for life). All the income (as defined for local law purposes) must be currently distributed to that beneficiary. The beneficiary is treated as the owner of the portion of the trust consisting of the stock in the S corporation.

Reasons For Change

The committee believes that a trust that provides for income to be distributed to (or accumulated for) individuals should be allowed to hold S. corporation stock. This will allow a person to establish a trust to hold S corporation stock and "spray" income among family members (or others) who are beneficiaries of the trust.

Explanation of Provision

In general

The bill allows stock in an S corporation to be held by certain trusts ("electing small business trust"). In order to qualify for this treatment, all beneficiaries of the trust must be individuals or estates (including the bankruptcy estate of an individual). No interest in the trust may be acquired by purchase. For this purpose, "purchase" means any acquisition of property with a cost basis (determined under section 1012). Thus, interests in the trust must be acquired by reason of gift, bequest, etc.

A trust must elect to be treated as an electing small business trust. An election applies to the taxable year for which made and can be revoked only with the consent of the Secretary of the Treasury or his delegate.

Each potential current beneficiary of the trust is counted as a shareholder for purposes of the 35-shareholder limitation (or if there were no potential current beneficiaries, the trust is treated as the shareholder). A potential current income beneficiary means any person, with respect to the applicable period, who is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust. Where the trust disposes of all the stock in an S corporation, any person who first becomes so eligible during the 60 days before the disposition shall not be treated as a potential current beneficiary.

A qualified subchapter S trust with respect to which an election under section 1361(d)(2) is in effect, and an exempt employee's described in section 401(a) are not eligible to qualify as an electing small business trust.

Treatment of items relating to S corporation stock

The portion of the trust which consists of stock in one or more S corporations is treated as a separate trust for purposes of computing the income tax attributable to the S corporation stock held by the trust. The trust is taxed at the highest individual rate (currently 31 percent) on this portion of the trust's income. The taxable income attributable to this portion includes (i) the items of income, loss, or deduction allocated to it as an S corporation shareholder under the rules of subchapter S, (ii) gain or loss from the sale of the S corporation stock, and (iii) to the extent provided in regulations, any state or local income taxes and administrative expenses of the trust properly allocable to the S corporation stock. Otherwise allowable capital losses are allowed only to the extent of capital gains.

In computing the trust's income tax on this portion of the trust, no deduction is allowed for amounts distributed to beneficiaries, and no deduction or credit is allowed for any item other than the items described above. This income is not included in the distributable net income of the trust, and thus is not included in the beneficiaries' income. No item relating to the S corporation stock may be apportioned to any beneficiary.

On the termination of all or any portion of an electing small business trust the loss carryovers or excess deductions referred to in section 642(h) are to be taken into account by the entire trust, subject to the usual rules on termination of the entire trust.

Treatment of remainder of items held by trust

In determining the tax liability with regard to the remaining portion of the trust, the items taken into account by the subchapter S portion of the trust are disregarded. Although distributions from the trust are deductible in computing the taxable income on this portion of the trust, under the usual rules of subchapter J, the trust's distributable net income does not include any income attributable to the S corporation stock.

Effective Date

The provision applies to taxable years beginning after the date of enactment.

[9] Treas. Reg. sec. 1.742-1.

B. ACCOUNTING PROVISIONS

1. Modifications to the look-back method for long-term contracts (sec. 4511 of the bill and sec. 460 of the Code)

Present Law

Taxpayers engaged in the production of property under a long-term contract generally must compute income from the contract under the percentage of completion method. Under the percentage of completion method, a taxpayer must include in gross income for any taxable year an amount that is based on the product of (1) the gross contract price and (2) the percentage of the contract completed as of the end of the year. The percentage of the contract completed as of the end of the year is determined by comparing costs incurred with respect to the contract as of the end of the year with the estimated total contract costs.

Because the percentage of completion method relies upon estimated, rather than actual, contract price and costs to determine gross income for any taxable year, a "look-back method" is applied in the year a contract is completed in order to compensate the taxpayer (or the Internal Revenue Service) for the acceleration (or deferral) of taxes paid over the contract term. The first step of the look-back method is to reapply the percentage of completion method using actual contract price and costs rather than estimated contract price and costs. The second step generally requires the taxpayer to recompute its tax liability for each year of the contract using gross income as reallocated under the look-back method. If there is any difference between the recomputed tax liability and the tax liability as previously determined for a year, such difference is treated as a hypothetical underpayment or overpayment of tax to which the taxpayer applies a rate of interest equal to the overpayment rate, compounded daily.[1] The taxpayer receives (or pays) interest if the net amount of interest applicable to hypothetical overpayments exceeds (or is less than) the amount of interest applicable to hypothetical underpayment.

The look-back method must be reapplied for any item of income or cost that is properly taken into account after the completion of the contract.

The look-back method does not apply to any contract that is completed within two taxable years of the contract commencement date and if the gross contract price does not exceed the lesser of (1) $1 million or (2) one percent of the average gross receipts of the taxpayer for the preceding three taxable years. In addition, a simplified look-back method is available to certain pass-through entities and, pursuant to Treasury regulations, to certain other taxpayers. Under the simplified look-back method, the hypothetical underpayment or overpayment of tax for a contract year generally is determined by applying the highest rate of tax applicable to such taxpayer to the change in gross income as recomputed under the look-back method.

Reasons for Change

Present law may require multiple applications of the look-back method with respect to a single contract or may otherwise subject contracts to the look-back method even though the amounts necessitating the look-back computations are de minimis relative to the aggregate contract income. In addition, the use of multiple interest rates complicates the mechanics of the look-back method.

Explanation of Provision

Election not to apply the look-back method for de minimis amounts

The bill provides that a taxpayer may elect not to apply the look-back method with respect to a long-term contract if for each prior contract as determined using estimated contract price and costs is within 10 percent of the cumulative taxable income (or loss) as determined using actual contract price and costs.

Thus, under the election, upon completion of a long-term contract, a taxpayer would be required to apply the first step of the look-back method (the reallocation of gross income using actual, rather than estimated, contract price and costs), but would not be required to apply the additional steps of the look-back method if the application of the first step resulted in de minimis changes to the amount of income previously taken into account for each prior contract year.

The election applies to all long-term contracts completed during the taxable year for which the election is made and to all long-term contracts completed during subsequent taxable years, unless the election is revoked with the consent of the Secretary of the Treasury.

Example 1.—A taxpayer enters into a three-year contract and upon completion of the contract, determines that annual net income under the contract using actual contract price and costs is $100,000, $150,000, and $250,000, respectively, for Years 1, 2, and 3 under the percentage of completion method. An electing taxpayer need not apply the look-back method to the contract if it had reported cumulative net taxable income under the contract using estimated contract price and costs of between $90,000 and $110,000 as of the end of Year 1; and between $225,000 and $275,000 as of the end of Year 2.

Election not to reapply the look-back method

The bill provides that a taxpayer may elect not to reapply the look-back method with respect to a contract if, as of the close of any taxable year after the year the contract is completed, the cumulative taxable income (or loss) under the contract is within 10 percent of the cumulative look-back income (or loss) as of the close of the most recent year in which the look-back method was applied (or would have applied but for the other de minimis exception described above). In applying this rule, amounts that are taken into account after completion of the contract are not discounted.

Thus, an electing taxpayer need not apply or reapply the look-back method if amounts that are taken into account after the completion of the contract are de minimis.

The election applies to all long-term contracts completed during the taxable year for which the election is made and to all long-term contracts completed during subsequent taxable years, unless the election is revoked with the consent of the Secretary of the Treasury.

Example 2.—A taxpayer enters into a three-year contract and reports taxable income of $12,250, $15,000 and $12,750, respectively, for Years 1 through 3 with respect to the contract. Upon completion of the contract, cumulative look-back income with respect to the contract is $40,000, and 10 percent of such amount is $4,000. After the completion of the contract, the taxpayer incurs additional costs of $2,500 in each of the next three succeeding years (Years 4, 5, and 6) with respect to the contract. Under the bill, an electing taxpayer does not reapply the look-back method for Year 4 because the cumulative amount of contract taxable income ($37,500) is within 10 percent of contract look-back income as of the completion of the contract ($40,000). However, the look-back method must be applied for Year 5 because the cumulative amount of contract taxable income ($35,000) is not within 10 percent of contract look-back income as of the completion of the contract ($40,000). Finally, the taxpayer does not reapply the look-back method for Year 6 because the cumulative amount of contract taxable income ($32,500) is within 10 percent of contract look-back income as of the last application of the look-back method ($35,000).

Interest rates used for purposes of the look-back method

The bill provides that for purposes of the look-back method, only one rate of interest is to apply for each accrual period. An accrual period with respect to a taxable year begins on the day after the return due date (determined without regard to extensions) for the taxable year and ends on such return due date for the following taxable year. The applicable rate of interest is the overpayment rate in effect for the calendar quarter in which the accrual period begins.

Effective Date

The provisions apply to contracts completed in taxable years ending after the date of enactment.

2. Simplified method for applying uniform cost capitalization rules (sec. 4512 of the bill and sec. 263A of the Code)

Present Law

In general, the uniform cost capitalization rules require taxpayers that are engaged in the production of real or tangible personal property or in the purchase and holding of property for resale to capitalize or include in inventory the direct costs of the property and the indirect costs that are allocable to the property. In determining whether indirect costs are allocable to production or resale activities, taxpayers are allowed to use various methods so long as the method employed reasonably allocates indirect costs to production and resale activities.

Reasons for Change

The uniform cost capitalization rules require taxpayers to determine for each taxable year the costs of each administrative, service, or support function or department that are allocable to production or resale activities. If a taxpayer does not elect any of the simplified methods provided in Treasury regulations, this allocation may be unduly burdensome and costly.

Explanation of Provision

The bill authorizes (but does not require) the Treasury Department to issue regulations that allow taxpayers in appropriate circumstances to determine the costs of any administrative, service, or support function or department that are allocable to production or resale activities by multiplying the total amount of costs of any such function or department by a fraction, the numerator of which is the amount of costs of the function or department that was allocable to production or resale activities for a base period and the denominator of which is the total amount of costs of the function or department for the base period. It is anticipated that the regulations will provide that the base period is to begin no earlier than 4 tax-

[1] The overpayment rate equals the applicable Federal short-term rate plus two percentage points. This rate is adjusted quarterly by the IRS. Thus, in applying the look-back method for a contract year, a taxpayer may be required to use five different interest rates.

able years prior to the taxable year with respect to which this simplified method applies.

Effective Date

The provision applies to the taxable years beginning after the date of enactment of the bill. Thus, the regulations may permit the use of the simplified method for taxable years beginning after this date. The simplified method, however, may not be used for any taxable year that begins prior to the date that the Treasury Department publishes regulations that authorize the use of the simplified method and set forth the requirements that must be satisfied in order for the method to be used.

3. Treatment of certain amounts received by operators of licensed cotton warehouses (sec. 4513 of the bill and sec. 451 of the Code)

Present Law

A C corporation (other than a farm corporation) generally may not use the cash method of accounting if the corporation had average annual gross receipts for the 3-year period ending with the prior taxable year of more than $5,000,000. Corporations that are denied the use of the cash method of accounting generally must use an accrual method of accounting.

Reasons for Change

The committee believes that the use of an accrual method of accounting by operators of licensed cotton warehouses requires such taxpayers to pay tax on income related to the performance of certain services before the taxpayers are legally able to collect the fees for such services. Thus, the committee believes that it is appropriate to allow operators of licensed cotton warehouses to elect to defer the recognition of certain income, provided that they pay an interest charge with respect to the deferral.

Explanation of Provision

Income recognition

The bill allows the election of a special rule in the case of any taxpayer that is an operator of a licensed cotton warehouse and uses an accrual method of accounting to compute taxable income. Under the election, the taxpayer is not required to accrue amounts to be received for processing or storing cotton at the licensed cotton warehouse until such amounts are actually received. For this purpose, the term "licensed cotton warehouse" means any warehouse for the storage of cotton that is licensed under the United States Warehouse Act (7 U.S.C. 241, et seq.) or under any similar State law.

Interest charge

In addition, under the election, if any deferred amount is received during any taxable year, the tax liability of the taxpayer for the taxable year will be increased by an interest charge with respect to the deferred amount. The interest charge with respect to the deferred amount will be determined: (1) on the amount of the tax for such taxable year which is attributable to the deferred amount; (2) for the period beginning on the due date for the taxable year of the deferral and ending on the due date for the taxable year in which such deferred amount is received; and (3) by using the Federal short-term rate in effect under section 1274 as of the due date for the taxable year in which such deferred amount is received (compounded semiannually).

The term "deferred amount" means any amount that is includible in gross income for the taxable year but that would have been under includible in gross income for a prior taxable year but for this bill. The "taxable year of deferral" is the taxable year for which the deferred amount would have been includible in gross income but for this bill. The term "due date" means the date prescribed for filing the return of tax (without regard to extensions) for the taxable year.

The interest charge payable will be taken into account in computing the amount of any deduction allowable as interest paid or accrued during the taxable year that the interest charge is payable. In addition, the interest charge will not be treated as a tax for purposes of determining the taxpayer's regular tax liability under section 26.

Election

The bill will apply to a taxpayer only if the taxpayer makes an election to apply the bill. The election shall be made in a time and manner as prescribed by the Secretary of the Treasury. If made, the election will apply to the taxable year for which made and all subsequent years unless revoked with the consent of the Secretary.

Effective Date

The bill applies to amounts accrued in taxable years beginning after December 31, 1991.

C. TAX-EXEMPT BOND PROVISIONS

Overview

Interest on State and local government bonds generally is excluded from gross income for purposes of the regular individual and corporate income taxes if the proceeds of the bond are used to finance direct activities of these governmental units (Code sec. 103).

Unlike the interest on governmental bonds, described above, interest on private activity bonds generally is taxable. A private activity bond is a bond issued by a State or local governmental unit acting as a conduit to provide financing for private parties in a manner violating either (a) a private business use and payment test or (b) a private loan restriction. However, interest on private activity bonds is not taxable if (a) the financed activity is specified in the Code and (b) at least 95 percent of the net proceeds of the bond issue is used to finance the specified activity.

Issuers of State and local government bonds must satisfy numerous other requirements, including arbitrage restrictions (for all such bonds) and annual State volume limitations (for most private activity bonds) for the interest on their bonds to be excluded from gross income.

1. Simplification of arbitrage rebate requirement for governmental bonds (sec. 4521 of the bill and sec. 148 of Code)

Present Law

Subject to limited exceptions, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. No rebate is required if the gross proceeds of an issue are spent for the governmental purposes of the borrowing within the six months after issuance.

The six-month exception is deemed to be satisfied by issuers of governmental bonds (other than tax and revenue anticipation notes) and qualified 501(c)(3) bonds if (1) all gross proceeds that than an amount not exceeding the lesser of five percent of $100,000 are so spent within six months and (2) the remaining gross proceeds are spent within one year after the bonds are issued.

Reasons for Change

The principal Federal policy concern underlying the arbitrage rebate requirement is to limit the subsidy provided by tax-exempt bonds to amounts that are necessary to finance current governmental purposes by discouraging the earlier or larger than necessary issuance of tax-exempt bonds to profit by investing funds borrowed as low-cost tax-exempt rates in higher yielding taxable investments. The committee believes that if at least 95 percent of the proceeds of an issue are spent within six months, and the remainder within one year, opportunities for such arbitrage profit are significantly limited.

Explanation of Provisions

The $100,000 limit on proceeds that may remain unspent after six months for certain governmental and qualified 501(c)(3) bonds otherwise exempt from the rebate requirement is deleted. Thus, if at least 95 percent of the proceeds of these bonds is spent within six months after their issuance, and the remainder is spent within one year, the six-month exception is deemed to be satisfied.

Effective Date

This provision applies to bonds issued after the date of its enactment.

2. Simplification of compliance with 24-month arbitrage rebate exception for construction bonds (sec. 4522 of the bill and sec. 148 of the Code)

Present Law

In general, arbitrage profits from investing bond proceeds in investments unrelated to the governmental purpose of the borrowing must be rebated to the Federal Government. An exception is provided for certain construction bond issues if the bonds are governmental bonds, qualified 501(c)(3) bonds, or exempt-facility private activity bonds for governmentally owned property.

This exception is satisfied only if the available construction proceeds of the issue are spent at least at specified rates during the 24-month period after the bonds are issued. The exception does not apply to bond proceeds invested as part of a bona fide debt service fund or certain other investments (e.g., sinking funds), and after the 24-month expenditure period, to amounts invested as part of a reasonably required reserve or replacement fund. Issuers of these construction bonds also may elect to comply with a penalty regime in lieu of rebating if they fail to satisfy the exception's spend requirements.

Reason for Change

Bond proceeds invested in a bona fide debt service fund generally must be spent at least annually for current debt service. The short-term nature of investments in such funds results in only limited potential for generating arbitrage profits. If the spending requirements of the 24-month rebate exception are satisfied, the administrative complexity of calculating rebate on these proceeds outweighs the other Federal policy concerns addressed by the rebate requirement.

Explanation of Provision

This bill exempts earnings on bond proceeds invested in bona fide debt service funds from the arbitrage rebate requirement if the spending requirements of the 24-month exception are otherwise satisfied.

Effective Date

This provision applies to bonds issued after the date of its enactment.

3. Simultaneous issuance of certain discrete issues not aggregated (sec. 4523 of the bill and sec. 148 of the Code)

Present Law

In certain cases, the Treasury Department treats multiple issues of tax-exempt bonds

paid from substantially the same source of funds as a single issue in applying the Code's tax-exempt bond restrictions when the bonds are issued within a relatively short period of time.

Reasons for Change

Requiring issues that simultaneously issue discrete issues of tax and revenue anticipation notes ("TRANs") and other governmental bonds to separate issuance of these bonds by 31 days adds administrative complexity and increases their costs of issuance.

Explanation of Provision

The bill provides that discrete issues of governmental bonds issued simultaneously will not be treated as a single issue in cases where one of the issues is a TRAN reasonably expected to satisfy the arbitrage rebate safe harbor of section 148(f)(4)(B)(iii).

Effective Date

This provision applies to bonds issued after the date of its enactment.

No inference is intended by this effective date as to the proper treatment of any bonds issued before the date of the provision's enactment.

4. Expand exception to pro rata disallowance of bank interest expense related to investment in tax-exempt bonds (sec. 4524 of the bill and sec. 265 of the Code)

Present Law

Banks and other financial institutions generally are denied a deduction for the portion of their interest expense (e.g., interest paid to depositors) that is attributable to investment in tax-exempt bonds acquired after August 7, 1986. This disallowance is computed using a pro-rata formula that compares the institution's average adjusted basis in tax-exempt bonds acquired after that date with the average adjusted basis of all assets of the institution.

An exception to this pro-rata disallowance rule is permitted for governmental bonds and qualified 501(c)(3) bonds issued by or on behalf of governmental units that issue no more than $10 million of such bonds during a calendar year (the "small-issuer exception").

Reasons for Change

Bonds issued by smaller governmental units are exempt from the general restrictions on banks and other financial institutions deducting costs of acquiring and carrying tax-exempt investments because banks are sometimes the only potential purchasers for bonds of these smaller governmental units. The committee believes that increasing the current $10 million annual issuance limit for eligible governments is appropriate. Further, expanding the exception to bonds of pools lending exclusively to qualified borrowers will expand the demand for the bonds of these smaller governments.

Explanation of Provision

The bill increases from $10 million to $25 million the amount of governmental and qualified 501(c)(3) bonds that an entity may issue annually while qualifying those bonds for the small-issuer exception to the general bank interest disallowance rule.

The bill also provides that pooled financing tax-exempt bonds (other than private activity bonds) may qualify for the small-issuer exception if—

(a) all of the proceeds of the pooled financing bonds (net of issuance costs associated with the bonds) are used exclusively to acquire from the issuer thereof bonds ("acquired bonds") eligible for the small-issuer exception,

(b) the acquired bonds are not designated under section 265(b)(3)(B)(i)(III) as "bank qualified" for purposes of the small-issuer exception; [1]

(c) the weighted average maturity of the pooled financing bonds does not exceed the weighted average maturity of the acquired bonds; and

(d) the issuer of the pooled financing bonds designates those bonds as "bank qualified" under section 265(b)(3)(I)(B)(III).

Effective Date

The provision is effective for bonds issued and acquired in calendar years beginning after December 31, 1992.

5. Modification of rules governing qualified 501(c)(3) bonds (sec. 4525 of the bill and secs. 141–150, 265, and 56 of the Code)

Present Law

Interest on State and local government bonds generally is excluded from income if the bonds are issued to finance direct activities of these governments (sec. 103). Interest on bonds issued by these governments to finance activities of other persons, e.g., private activity bonds, is taxable unless a specific exception is included in the Code. One such exception is for private activity bonds issued to finance activities of private, charitable organizations described in Code section 501(c)(3) ("section 501(c)(3) organizations") when the activities do not constitute an unrelated trade or business (sec. 141(e)(1)(G)).

Classification of section 501(c)(3) organization bonds as private activity bonds

Before enactment of the Tax Reform Act of 1986, States and local governments and section 501(c)(3) organizations both were defined as "exempt persons," under the Code bond provisions, and their bonds generally were subject to the same requirements. As exempt persons, section 501(c)(3) organizations were not treated as "private" persons, and their bonds were not "industrial development bonds" or "private loan bonds" (the predecessor categories to current private activity bonds).

Under present law, a bond is a private activity bond if its proceeds are used in a manner violating either (a) a private business test or (b) a private loan test. The private business test is a conjunctive two-pronged test. First, the test limits private business use of governmental bonds to no more than 10 percent of the proceeds.[2] Second, no more than 10 percent of the debt service on the bonds may be derived from private business users of the proceeds. The private loan test limits to the lesser of five percent or $5 million the amount of governmental bond proceeds that may be used to finance loans to persons other than governmental units.

Special restrictions on tax-exception for section 501(c)(3) organization bonds

As stated above, present law treats section 501(c)(3) organizations as private persons; thus, bonds for their use may only be issued as *private activity "qualified 501(1)(3) bonds,"* subject to the restrictions of Code section 145. The most significant of these restrictions limits the amount of outstanding bonds from which a section 501(c)(3) organization may benefit to $150 million. In applying this "$150 million limit," all section 501(c)(3) organizations under common management or control are treated as a single organization. The limit does not apply to bonds for hospital facilities, defined to include only acute care, primarily inpatient, organizations. A second restriction limits to no more than five percent the amount of the net proceeds of a bond issue that may be used to finance any activities (including all costs of issuing the bonds) other than the exempt purposes of the section 501(c)(3) organization.

Legislation enacted in 1988 imposed low-income tenant occupancy restrictions on existing residential rental property that is acquired by section 501(c)(3) organizations in tax-exempt-bond-financed transactions. These restrictions require that a minimum number of the housing units comprising the property of 50 percent (60 percent in certain cases) of area median income for periods of up to 15 years. These same low-income tenant occupancy requirements apply to for-profit developers receiving tax-exempt private activity bond financing.

Other restrictions

Several restrictions are imposed on private activity bonds generally that do not apply to bonds used to finance State and local government activities. Many of these restrictions also apply to qualified 501(c)(3) bonds.

No more than two percent of the proceeds of a bond issue may be used to finance the costs of issuing the bonds, and these monies are not counted in determining whether the bonds satisfy the requirement that at least 95 percent of the net proceeds of each bond issue be used for the exempt activities qualifying the bonds for tax-exemption.

The weighted average maturity of a bond issue may not exceed 120 percent of the average economic life of the property financed with the proceeds.

A public hearing must be held and an elected public official must approve the bonds before they are issued (or the bonds must be approved by voter referendum).

If property financed with private activity bonds is converted to a use not qualifying for tax-exempt financing, certain loan interest penalties are imposed.

Both governmental and private activity bonds are subject to numerous other Code restrictions, including the following:

(a) The amount of arbitrage profits that may be earned on tax-exempt bonds is strictly limited, and most such profits must be rebated to the Federal Government.

(b) Banks may not deduct interest they pay to the extent of their investments in most tax-exempt bonds.

(c) Finally, interest on private activity bonds, other than qualified 501(c)(3) bonds, is a preference item in calculating the alternative minimum tax.

Reasons for Change

The committee believes a distinguishing feature of American society is the singular degree to which the United States maintains a private, non-profit sector of private higher education and other charitable institutions in the public service. The committee believes it is important to assist these private institutions in their advancement of the public good. The committee finds particularly inappropriate the restrictions of present law which place these section 501(c)(3) organizations at a financial disadvantage relative to substantially identical governmental institutions. For example, a public university generally has unlimited access to tax-exempt bond financing, while a private, non-profit university is subject to a $150 million

[1] The acquired bonds are taken into account in determining how many bonds are reasonably expected to be issued by the borrowers from the pool in the calendar year in which they are issued

[2] No more than 5 percent of bond proceeds may be used in a private business use that is unrelated to the governmental purpose of the bond issue. The 10-percent debt service test, described below, likewise is reduced to 5 percent in the case of such "disproportionate" private business use.

limitation on outstanding bonds from which it may benefit. The committee is concerned that this and other restrictions inhibit the ability of America's private, non-profit institutions to modernize their educational facilities. The committee believes the tax-exempt bond rules should treat more equally State and local governments and those private organizations which are engaged in similar actions advancing the public good.

Explanation of Provision

The bill would amend the tax-exempt bond provisions of the Code to conform generally the treatment of bonds for section 501(c)(3) organizations to that provided for bonds issued to finance direct State or local government activities. Certain restrictions, described below, that have been imposed on qualified 501(c)(3) bonds (but not on governmental bonds) since 1986, and that address specialized policy concerns, are retained.

Repeal of private activity bond classification for bonds for section 501(c)(3) organizations

The concept of an "exempt person" that existed under the Code bond provisions before 1986, is reenacted. An exempt person is defined as (a) a State or local governmental unit or (b) a section 501(c)(3) organization, when carrying out its exempt activities under Code section 501(a). Thus, bonds for section 501(c)(3) organizations will no longer be classified as private activity bonds. Financing for unrelated business activities of such organizations will continue to be treated as a private activity for which tax-exempt financing is not authorized.

As exempt persons, section 501(c)(3) organizations will be subject to the same limits as States and local governments on using their bond proceeds to finance private business activities or to make private loans. Thus, no more than 10 percent of the bond proceeds[3] may be used in a business use of a person other than an exempt person if the Code private payment test is satisfied, and no more than five percent ($5 million if less) may be used to make loans to such "nonexempt" person.

Repeal of most additional special restrictions on section 501(c)(3) organization bonds

Present Code section 145, which establishes additional restrictions on qualified 501(c)(3) bonds, is repealed, along with the restriction on bond-financed costs of issuance for section 501(c)(3) organization bonds (sec. 147(h)). This eliminates the $150-million-per-organization limit on nonhospital bonds for section 501(c)(3) organizations.

Retention of certain specialized requirements for section 501(c)(3) organization bonds

As stated above, the bill retains certain specialized restriction on bonds for section 501(c)(3) organizations. First, the bill retains the requirement that existing residential rental property acquired by a section 501(c)(3) organization in a tax-exempt-bond-financed transaction satisfy the same low-income tenant requirements as similar housing financing for for-profit developers. Second, the bill retains the present-law maturity limitations applicable to bonds for section 501(c)(3) organizations, and the public approval requirements applicable generally to private activity bonds. Third, the bill continues to apply the penalties on changes in use of tax-exempt-bond-financed section 501(c)(3) organization property to a use not qualified for such financing.

[3]This limit would be reduced to five percent in the case of disproportionate private use as under the present-law governmental bond disproportionate private use limit.

Finally, the bill makes no amendments, other than technical conforming amendments, to the tax-exempt bond preference, or the provisions generally disallowing interest paid by banks on monies used to acquire or carry tax-exempt bonds.

Effective Date

The bill applies to bonds issued after December 31, 1992.

6. Authority for Treasury Department to exempt certain taxpayers from tax-exempt interest reporting requirement (sec. 4526 of the bill and sec. 6012 of the Code)

Present Law

Present law requires all individuals to report on their income tax returns the amount of interest on State and local government bonds they receive.

Reasons for Change

The Treasury Department should be authorized to exempt taxpayers from requirements to compile and report information on income tax returns if the Secretary determines that such information is not useful to the administration of the tax laws.

Explanation of Provision

The bill authorizes the Treasury Department to provide exceptions from the requirement that taxpayers report interest on state and local government bonds on their Federal income tax returns in cases where the Secretary determines that such information is not useful to the administration of the tax laws.

Effective Date

This provision is effective for taxable years beginning after the date of enactment.

7. Bonds for the United Nations (sec. 4527 of the bill)

Present Law

Interest on State and local government bonds generally is excluded from income for purposes of the regular individual and corporate income taxes if the proceeds of the bonds are used to finance direct activities of these governmental units. Present law also excludes the interest on State and local government bonds ("private activity bonds") when a governmental unit incurs debt as a conduit to provide financing for private parties, if the financed activities are specified in the Internal Revenue Code (the "Code"). Tax-exempt bonds may not be issued to finance private activities not specified in the Code.

Private activity bonds are bonds (1) more than 10 percent of the proceeds of which satisfy a private business use and payment test, or (2) more than five percent ($5 million, if less) of the proceeds are used to finance loans to persons other than State or local governmental units.

Under the tax-exempt bond rules, all persons and entities other than states and local governments are treated as private parties, eligible for financing only if specifically authorized. No such authorization exists for the United Nations or any other foreign government entity.

Reasons for Change

The committee believes that the unique status of the United Nations organization justifies the extension of tax-exempt financing to it for certain limited purposes. However the committee believes that these bonds generally should be subject to the same restrictions as other private activity bonds, including the State private activity bond volume limitations.

Explanation of Provision

The bill authorizes the issuance by a State or local government of tax-exempt private activity bonds when at least 95 percent of the net proceeds will be used to finance the construction or acquisition of real property used for offices (and functionally related and subordinate land and space for supporting activities) for use by the United Nations and its agencies and instrumentalities. These bonds will be subject to the State private activity bond volume limit of the State where the bonds are issued and to all other private activity bond rules (except the rehabilitation requirement on acquisition of existing property).

Effective Date

The provision applies to bonds issued after the date of enactment.

8. Repeal of expired provisions (sec. 4528 of the bill and sec. 148 of the Code)

Present Law

Present law includes two special exceptions to the arbitrage rebate and pooled financing temporary period rules for certain qualified student loan bonds. This exception applied only to bonds issued before January 1, 1989.

Explanation of Provision

These special exceptions are deleted as "deadwood."

Effective Date

This provision is effective on the date of enactment.

9. Treasury Department regulatory authority to integrate arbitrage rebate and yield restriction requirements (sec. 4529 of the bill and sec. 148 of the Code)

Present Law

In general

Interest on State and local government bonds generally is tax-exempt. Interest is not tax-exempt if the bonds are arbitrage bonds. Arbitrage bonds are bonds more than a minor portion of the proceeds of which is invested at a yield that is materially higher than the bond yield during periods other than prescribed "temporary periods." (Exceptions are provided for, *inter alia*, proceeds such as those invested in a reasonably required reserve or replacement fund.)

Rebate requirement

In general, arbitrage profits earned on investments unrelated to the governmental purpose for which tax-exempt bonds are issued must be rebated to the Federal Government. This requirement primarily affects earnings during such periods and earnings on such specially treated proceeds as those invested as part of a reasonably required reserve or replacement fund (which are not subject to yield restriction).

For certain governmental and qualified 501(c)(3) bonds for construction projects, a special penalty alternative may be elected in lieu of complying with the rebate requirement. Under this elective regime, penalties are imposed unless set expenditure targets are met at six-month intervals. These expenditure targets are:

(1) at least 10 percent of the available construction proceeds of the bond issue must be spent within six months after the bonds are issued;

(2) at least 45 percent of those proceeds must be spent within 12 months after the bonds are issued;

(3) at least 75 percent of those proceeds must be spent within 18 months after the bonds are issued; and

(4) 100 percent (less certain allowable retainage) of those proceeds must be spent within two years after the bonds are issued.

Temporary periods

Regulatory temporary periods

In general, Treasury Department regulations prescribe the applicable temporary periods for bond proceeds. For most bonds, the initial temporary period is three years from the date on which the bonds are issued. An issuer qualifies for this unrestricted investment period only if the issuer reasonably expects to satisfy three tests:

(1) *Expenditure test.*—At least 85 percent of the spendable proceeds of the issue must be expected to be spent within three years after the bonds are issued.

(2) *Time test.*—A substantial binding commitment to commence with the project to be financed must be entered into within six months after the bonds are issued.

(3) *Due diligence test.*—After the binding commitment is entered into, work to complete the project must proceed with due diligence.

Treasury Department regulations also establish shorter temporary periods for special types of proceeds (e.g., loan repayments) and types of bonds (e.g., tax and revenue anticipation notes).

Statutory temporary periods

The Internal Revenue Code (the Code) provides specific temporary periods in three cases. First, the initial temporary period on pooled financing bonds is limited to six months, and the temporary period on repayments of loans financed with such bonds is limited to three months.[4] Pooled financing bonds are bonds the proceeds of which are to be used to make loans to two or more persons.

Second, the Code provides that the initial temporary period for bonds that are advance refunded terminates no later than the date on which the refunding occurs. Third, the Code limits the initial temporary period on advance refunding bonds to 30 days.

Proposed and temporary Treasury Department regulations

On May 18, 1992, the Treasury Department issued proposed and temporary regulations which would allow most regulatory temporary periods to be extended indefinitely if (1) the bond proceeds were expended, determined after the fact, in a manner that actually qualified the bonds for the temporary period claimed by the issuer, and (2) all arbitrage profits on the bond issue were rebated to the Federal Government. For example, the three-year initial temporary period described above could be extended if the expenditures, time, and due diligence tests were actually complied with and arbitrage profits were rebated.

The proposed regulations do not apply to the three types of bonds for which statutory temporary periods are prescribed. Additionally, the proposed regulations do not apply to construction bond issues for which the penalty alternative to the rebate requirement is elected.

Reasons for Change

The committee believes that Treasury Department regulatory authority waiving the yield restriction requirement in appropriate, non-abusive, circumstances may assist in easing compliance with the tax-exempt bond rules and eliminate duplicative administrative burdens.

[4]This six-month period is increased to two years in the case of construction bonds subject to the special expenditure targets, described above, regardless of whether the issuer elects the penalty alternative to the rebate requirement.

Explanation of Provision

The bill provides the Treasury Department with express legislative authority to waive by regulation most statutory tax-exempt bond yield restriction requirements, provided that all arbitrage profits on the bond issue are rebated to the Federal Government. This authority does not extend to either (1) yield restriction of the proceeds of bonds involved in advance refunding transactions or (2) construction bond issues for which the special three-percent penalty-in-lieu-of-rebate penalty is elected.

The committee intends that the Treasury department will give due consideration to regulatory action designed to preclude earlier or larger than necessary issuance of tax-exempt bonds or other abuse in this area. Specifically, the committee intends that the Treasury may impose "look-back" requirements, based on actual expenditures of bond proceeds, as a condition to waiving otherwise applicable yield restriction requirements. For example, the committee believes specifically that a look-back provision may be needed if the yield restriction requirement were waived for pooled financing bonds. If a look-back requirement were developed for these bonds, Treasury should look for guidance to the spend-down schedule set forth in the Code for certain construction bonds.

In taking this action, the committee intends no inference as to the Treasury Department's authority in actions previously taken in its proposed regulations, described above.

Effective Date

The provision is effective on the date of enactment.

D. INSURANCE PROVISIONS

1. Treatment of certain insurance contracts on retired lives (sec. 4531 of the bill and sec. 817(d) of the Code)

Present Law

Life insurance companies are allowed a deduction for any net increase in reserves and are required to include in income any net decrease in reserves. The reserve of a life insurance company for any contract is the greater of the net surrender value of the contract or the reserve determined under Federally prescribed rules. In no event, however, may the amount of the reserve for tax purposes for any contract at any time exceed the amount of the reserve for annual statement purposes.

Special rules are provided in the case of a variable contract. Under these rules, the reserve for a variable contract is adjusted by (1) subtracting any amount that has been added to the reserve by reason of appreciation in the value of assets underlying such contract, and (2) adding any amount that has been subtracted from the reserve by reason of depreciation in the value of assets underlying such contract. In addition, the basis of each asset underlying a variable contract is adjusted for appreciation or depreciation to the extent the reserve is adjusted.

A variable contract generally is defined as any annuity or life insurance contract (1) that provides for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset accounts of the company, and (2) under which, in the case of an annuity contract, the amounts paid in, or the amounts paid out, reflect the investment return and the market value of the segregated asset account, or, in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account. A pension plan contract that is not a life, accident, or health, property, casualty, or liability insurance contract is treated as an annuity contract for purposes of this definition.

Reasons for Change

The committee believes that certain contracts which provide insurance on retired lives should be treated as variable contracts in order to simplify the treatment of such contracts and to provide a more accurate measure of the income of life insurance companies with respect to such contracts.

Explanation of Provision

The bill provides that a variable contract is to include a contract that provides for the funding of group term life or group accident and health insurance on retired lives if: (1) the contract provides for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset account of the company; and (2) the amounts paid in, or the amounts paid out, under the contract reflect the investment return and the market value of the segregated asset account underlying the contract.

Thus, the reserve for such a contract is to be adjusted by (1) subtracting any amount that has been added to the reserve by reason of appreciation in the value of assets underlying such contract, and (2) adding any amount that has been subtracted from the reserve by reason of depreciation in the value of assets underlying such contract. In addition, the basis of each asset underlying the contract is to be adjusted for appreciation or depreciation to the extent that the reserve is adjusted.

Effective Date

The provision applies to taxable years beginning after December 31, 1991.

2. Treatment of modified guaranteed contracts (sec. 4532 of the bill and new sec. 817A of the Code)

Present Law

Life insurance companies are allowed a deduction for any net increase in reserves and are required to include in income any net decrease in reserves. The reserve of a life insurance company for any contract is the greater of the net surrender value of the contract or the reserve determined under Federally prescribed rules. The net surrender value of a contract is the cash surrender value reduced by any surrender penalty, except that any market value adjustment required on surrender is not taken into account. In no event, however, may the amount of the reserve for tax purposes for any contract at any time exceed the amount of the reserve for annual statement purposes.

In general, assets held for investment are treated as capital assets. Any gain or loss from the sale or exchange of a capital asset is treated as a capital gain or loss and is taken into account for the taxable year in which the asset is sold or exchanged.

Reasons for Change

Life insurance companies have recently begun issuing annuity contracts, life insurance contracts, and pension plan contracts that provide for a guaranteed interest rate for a specified period of time and a market value adjustment (both positive and negative) in the event that the owner of the contract surrenders the contract prior to the end of the guaranteed interest period. These contracts are commonly referred to as modified guaranteed contracts.

If the premium or other consideration received under a modified guaranteed contract

is allocated to an account that is segregated from the general asset accounts of the life insurance company, then the reserve for the contract and the assets in the segregated account generally are required to be taken into account at market value for annual statement (i.e., state regulatory accounting) purposes. The tax reserve for a modified guaranteed contract, however, does not reflect market fluctuations in the assets underlying the contract, and gain or loss in the assets is not recognized unless the assets are disposed of.

The committee believes that it is appropriate to conform the Federal income tax treatment of modified guaranteed contracts with the annual statement treatment of such contracts in order to simplify the accounting for such contracts and to provide a more accurate measure of the income of life insurance companies with respect to such contracts. Nonetheless, the committee continues to believe that mark-to-market treatment is not appropriate for the general account assets of a life insurance company.

Explanation of Provision

The bill provides three special rules that apply to modified guaranteed contracts issued by life insurance companies. First, in determining the amount of the reserve for a modified guaranteed contract, any market value adjustment that is required on surrender of the contract is to be taken into account in calculating the net surrender value of the contract. Second, gain or loss with respect to an asset that is held as part of a segregated account under a modified guaranteed contract is treated as ordinary gain or loss. Third, any such asset that is held as of the close of any taxable year is treated as sold for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account for such taxable year (the "mark-to-market requirement").[1]

If gain or loss is taken into account by reason of the mark-to-market requirement, then the amount of gain or loss subsequently realized as a result of a sale, exchange, or other disposition of the asset, or as a result of the application of the mark-to-market requirement is to be appropriately adjusted to reflect such gain or loss. In addition, the bill authorizes the Treasury Department to issue regulations that provide for the application of the mark-to-market requirement at times other than the close of a taxable year or the last business day of a taxable year.

A modified guaranteed contract is defined as any life insurance contract, annuity contract, or pension plan contract[2] that is not defined as a variable contract under section 817 of the Code and that satisfies the following requirements. First, all or a part of the amounts received under the contract must be allocated to an account, which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time by reference to market values. Second, reserves for the contract are valued at market for annual statement purposes.[3]

[1]The wash sale rules of section 1091 of the Code are not to apply to any loss that is required to be taken into account by reason of the mark-to-market requirement.

[2]The provision only applies to a pension plan contract that is not a life, accident, or health, property, casualty, or liability contract.

[3]If a contract ceases to be treated as one for which reserves are valued at market for annual statement purposes, but the assets underlying the contract remain part of the segregated account, then the assets will continue to be subject to the mark-to-market requirement.

The Treasury Department is authorized to issue regulations (or other forms of guidance): (1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B); (2) to determine the interest rates applicable under sections 807(c)(3) and 807(d)(2)(B) with respect to a modified guaranteed contract annually, calculating such rates as appropriate for modified guaranteed contracts and using a method that approximates the yield on the assets underlying the contract, and to the extent appropriate for such a contract, to modify or waive section 811(d); and (3) as may be necessary or appropriate to carry out the purposes of this section.

Further, the committee is concerned about preventing the use of the provision to recharacterize gain or loss as ordinary in certain types of transactions. The committee is particularly concerned about characterization of gain or loss as ordinary under the provision in transactions that would otherwise either (1) have to meet the requirements of the hedging exception to the straddle rules to receive this treatment, or (2) be treated as capital transactions under present law. For example, it may be appropriate to treat assets transferred to a segregated account as purchased at fair market value by the account. It is the committee's intent that ordinary treatment under the provision be limited to gain or loss on those assets properly taken into account in calculating the reserve for Federal tax purposes (and necessary to support such reserves) for modified guaranteed contracts, and that future Treasury regulations provide rules for limiting such treatment with respect to other assets (such as assets representing surplus of the company). The Treasury Department is authorized to issue future regulations to carry out this intent, to be effective at all times following the effective date of the provision.

Effective Date

The provision applies to taxable years beginning after December 31, 1991. A taxpayer that is required to (1) change its calculation of tax reserves to take into account market value adjustments and (2) mark to market its segregated assets in order to comply with the requirements of the provision is treated as having initiated changes in method of accounting and as having received the consent of the Treasury Department to make such changes.

The section 481(a) adjustments required by reason of the changes in method of accounting are to be combined and taken into account as a single net adjustment for the taxpayer's first taxable year beginning after December 31, 1991.

E. COOPERATIVE PROVISIONS

1. Discharge of indebtedness income from prepayment of REA loans (sec. 4541 of the bill and sec. 501(c)(12) of the Code)

Present Law

Internal Revenue Code

Under section 501(c)(12) of the Code, a rural electric cooperative generally is exempt from Federal income tax if at least 85 percent of the cooperative's income is derived from members. Cancellation of indebtness income generally must be taken into account in determining the percentage of a cooperative's income derived from members. Section 501(c)(12)(B)(iv) provided, however, that the 85-percent test is applied without regard to any cancellation of indebtness income arising from the prepayment of a loan pursuant to sections 306A, 306B, or 311 of the Rural Electrification Act ("REA Act"), as in effect on January 1, 1987.

1990 Farm Act

Section 2387 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 Farm Act") amended section 306B of the REA Act. Under such amendment, rural electric cooperatives that merge with another rural electric cooperative that previously prepaid REA loans under the 1988 or 1989 Budget Reconciliation Acts may prepay REA loans at a discount, provided the prepayment occurs within one year of such merger. Because this amendment occurred after January 1, 1987, the cancellation of indebtedness income arising from such prepayments would not be excluded in applying the 85-percent test under present law.

Reasons for Change

Because the amendment to section 306B of the REA Act by the 1990 Farm Act occurred after January 1, 1987, the prepayment of REA loans at a discount under such amendment may cause a rural electric cooperative to violate the 85-percent test and thereby lose its exemption. Thus, present law could effectively prevent the loan prepayments that the 1990 Farm Act intended to encourage. The committee believes that the 85-percent test should not be a barrier to the prepayment of REA loans at a discount under the amendment to Section 306B of the REA Act by the 1990 Farm Act.

Explanation of Provision

The bill provides that the 85-percent test of section 501(c)(12) is applied without regard to cancellation of indebtedness income arising from the prepayment of REA loans under section 306B(b) of the REA Act, as in effect on January 1, 1991. For purposes of determining whether section 306B(b) of the REA Act remains in effect as on January 1, 1991, the renumbering of such subsection, the addition of a caption to such subsection, or any amendments to subsection 306B(a) shall be disregarded.

Effective Date

The provision is effective with respect to prepayments of REA loans made after December 31, 1992.

2. Treatment of certain amounts received by telephone cooperatives (sec. 4542 of the bill and secs. 501(c)(12) and 512 of the Code)

Present Law

Mutual or cooperative telephone companies ("telephone cooperatives") are exempt from Federal income tax if 85 percent or more of their income consists of amounts collected from members for the sole purpose of meeting losses and expenses (sec. 501(c)(12)(A)). In applying this 85-percent test, certain income received by a telephone cooperative is disregarded, including income received from a nonmember telephone company for the performance of communication services which involve members of the telephone cooperative, certain pole rental income, and income from the sale of display listings in a telephone directory furnished to members of the telephone cooperative (sec. 501(c)(12)(B)).

Tax-exempt organizations generally are subject to the unrelated business income tax (UBIT) on income from a trade or business that is not substantially related to the organization's tax-exempt purposes. Under special rules, certain investment income (e.g., interest, dividends, royalties, and certain rents) generally is exempt from UBIT, although some tax-exempt organizations, such as social clubs described in section 501(c)(7) and certain mutual benefit organizations, are subject to UBIT on their investment income.

Reasons for Change

In view of regulatory changes in the telecommunications industry affecting the division of revenues between long-distance carriers and local phone companies, the committee believes that it is appropriate to modify the tax treatment for purposes of sections 501(c)(12) and 512 of certain revenues received by telephone cooperatives.

In general, the committee believes that income received indirectly from members through a nonmember telephone company for communication services indirectly provided to members should qualify as member-source income for purposes of the 85-percent test of section 501(c)(12). Consistent with the present-law exclusion of directory income, the committee believes that certain income from services related to telecommunications (e.g., billing and collection services provided to long-distance telephone companies) should be excluded from the computation of the 85-percent test. Finally, the committee believes that a telephone cooperative should not lose its tax-exempt status where it derives investment income to be used for repair or replacement in an amount greater than that allowed under the 85-percent test, so long the excess is subject to tax and such income does not become a predominant source of income of the cooperative.

Explanation of Provision

The bill amends section 501(c)(12) to provide that 50 percent of the income received by a telephone cooperative from a nonmember telephone company for performing communication services—e.g., fees received for originating (or terminating) a long-distance call placed by (or to) a member—are treated as collected from the members of the telephone cooperative for the sole purpose of meeting the losses and expenses of the telephone cooperative.[1] The remaining 50 percent of income received by a telephone cooperative from a nonmember telephone company is, as under present law, excluded from the 85-percent test under section 501(c)(12)(B)(i).

The bill also excludes from the 85-percent test under section 501(c)(12) amounts received by a telephone cooperative from billing and collection services performed for another telephone company.[2]

In addition, the bill provides that telephone cooperatives will not lose their tax-exempt status under section 501(c)(12) if they earn certain investment "reserve income" in excess of 15 percent of their total income, but only if such reserve income (when added to other income not collected from members) does not exceed 35 percent of the cooperative's total income. For purposes of this provision, "reserve income" is defined as income that otherwise would be excluded from UBIT under section 512(b) (e.g., interest and dividends) and that is set aside for the repair or replacement of telephone facilities of the cooperative. Under the provision, tax-exempt telephone cooperatives are subject to the UBIT on such reserve income between the 15-percent and 35-percent range.[3]

Effective Date

The provision is effective for amounts received or accrued after December 31, 1992.

3. Treatment of certain housing cooperatives (sec. 4543 of the bill and secs. 277 and 1388 of the Code)

Present Law

Deductions by Membership Organizations

Under section 277, costs incurred by a "membership organization" attributable to furnishing services, insurance, goods or other items of value to its members are deductible in any taxable year only to the extent of any income the organization has derived from its members. The Internal Revenue Service has held that section 277 applies to housing cooperatives,[1] while certain courts have held that section 277 does not apply to cooperatives that are subject to tax under subchapter T of the Code.[2] It is not clear whether housing cooperatives are subject to subchapter T.

Tax Treatment of Cooperatives

A cooperative is an organization, usually a corporation, which benefits its members and patrons by selling goods to them, purchasing products from them, and returning any income in excess of costs to them. A cooperative that is subject to subchapter T may exclude any patronage dividends paid to its members and patrons from its taxable income (sec. 1382). For a cooperative other than an "exempt cooperative",[3] a patronage dividend must be determined solely by reference to the net earnings of the organization from business done with or for its patrons. The Eighth Circuit has held that a nonexempt cooperative may not use patronage losses to offset nonpatronage income. See *Farm Services Cooperative v. Commissioner*, 611 F.2d 1270 (8th Cir. 1980).

Reasons for Change

The committee is concerned about the uncertainty regarding whether section 277 applies to housing cooperatives. The committee also believes that the tax rules specifically designed for cooperatives in subchapter T should apply to housing cooperatives. While the committee believes that the taxation of housing cooperatives should be governed by general tax rules for cooperatives, the committee believes that those tax rules should be clarified to prohibit nonpatronage income from being reduced by patronage losses. Accordingly, the committee decided to clarify the rules applicable to housing cooperatives governing the deduction of nonpatronage losses under subchapter T by codifying the Eighth Circuit approach in *Farm Services Cooperative*. The committee also decided to specify that certain common transactions of housing cooperatives will be treated as generating patronage income. In this regard, the committee believes that special treatment should be accorded to limited equity cooperatives since these cooperatives typically are owned by low or moderate income individuals.

Explanation of Provision

The provision clarifies that section 277 does not apply to a "cooperative housing corporation".[4] The provision, however, adopts a rule in subchapter T similar to section 277 that patronage losses of the corporation cannot offset earnings that are not patronage earnings.

For this purpose, the provision specifically treats the following items as "patronage earnings": (1) interest on reasonable reserves established in connection with the corporation, including reserves required by a government agency or lender, (2) rents from laundry and parking to the extent attributable to use of the facilities by tenant-stockholders (as defined in section 216(b)(2)) and their guests, and (3) in the case of certain "limited equity cooperative housing corporation",[5] rental income attributable to housing projects operated by such corporations.

No inference shall be drawn from the provision regarding the deductibility of patronage losses under present law.

Effective Date

The provision applies to taxable years beginning after the date of enactment.

4. Treatment of safe harbor leases of membership organizations (sec. 4544 of the bill and sec. 277 of the Code)

Present Law

Deductions of membership organizations

Under section 277, a membership organization operated primarily to furnish services or goods to its members may deduct costs attributable to such operations only to the extend of income derived from members. In essence, section 277 prohibits using losses incurred from transactions with members to offset income derived from transactions with nonmembers.

Safe harbor leases

The Economic Recovery Tax Act of 1981 ("ERTA") provided rules intended to permit full utilization of tax benefits. Under those rules (known as the "safe harbor lease rules"), the putative "lessor" in the transaction was treated as the property owner for Federal income tax purposes (regardless of

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[1] Amounts received by a telephone cooperative from a nonmember telephone company (e.g., long-distance carrier) for performing communication services often are referred to as "access charges." Thus, under the bill, 50 percent of such access charges received by a telephone cooperative from another telecommunications company are treated as member-source income for purposes of the 85-percent test of section 501(c)(12).

[2] Telephone cooperatives (and other local telephone companies) often serve as billing and collection agents for other telecommunications companies. (That is, a telephone cooperative bills, and collects from, its members not only charges for local phone service provided by the cooperative but also charges for amounts owed to a long-distance carrier for the member's long-distance calls.) Telephone cooperatives are compensated for performing billing and collection services, generally by retaining a portion of the long-distance charges collected from members. Similar to the present-law treatment of certain pole rental income and directory listing (e.g., "yellow pages") revenue, the bill treats such billing and collection revenues as excluded form the 85-percent test under section 501(c)(12).

The bill provides that, for purposes of the UBIT, no inference is intended regarding the treatment of income from billing and collection services.

[3] Income that is not taken into account under section 501(c)(12)(B) likewise is disregarded for purposes of the 15-percent and 35-percent thresholds.

[1] See Rev. Rul. 90-36, 1990-1 C.B. 59.

[2] See *Landmark v. United States*, 92-1 Tax Cas. (CCH) para. 50,058 (Ct. Cl. 1992); *Farm Services Cooperative v. Commissioner*, 70 T.C. 145, 155-58, (1978), *rev'd on other grounds*, 611 F.2d 1270 (8th Cir. 1980).

[3] An "exempt cooperative" is a farmers' cooperative association described in section 521(b)(1). An exempt cooperative may allocate to its patrons and deduct, not only earnings from patronage activities, but also dividends on capital stock and earnings from nonpatronage sources (sec. 1382(c)).

[4] Under section 216(b)(1), a cooperative housing corporation generally is a corporation (i) that has one class of stock, (ii) each of the stockholders of which is entitled, solely by reason of ownership of stock, to occupy a dwelling owned or leased by the cooperative, (iii) no stockholder of which is entitled to receive any distribution not out of earnings and profits of the cooperative, and (iv) 80 percent or more of the gross income for the taxable year of which is derived from tenant-stockholders.

[5] Generally, a cooperative housing corporation is a "limited equity cooperative housing corporation" if the amount paid by a tenant stockholder for stock in the corporation cannot exceed the sum of (i) the consideration paid by the first tenant-stockholder, adjusted for cost of living, (ii) payments of improvements to the dwelling unit, and (iii) payments to amortize corporate indebtedness arising from the acquisition or development of real property (sec. 143(k)(9)(D)(i)).

the transaction's economic substance) and thereby was entitled to cost recovery deductions and investment credits. Thus, a person (i.e., lessee) who complied with these rules could, by entering into a nominal sale and safe-harbor leaseback, effectively sell some of the tax benefits associated with the property, *while retaining the benefits and burdens* of ownership. The safe harbor lease rules were repealed by the Tax Equity and Fiscal Responsibility Act of 1982.

Reasons for Change

The committee understands that a number of electric generating cooperatives subject to section 277 entered into safe harbor leases in reliance upon ERTA. Under these leases, the cooperative typically (a) sold personal property to a corporation in exchange for cash equal to a portion of the value of transferring the tax benefits from the property to the cooperation and an interest bearing, installment note, and (b) then leased the property back from that corporation for a rental that equaled the payments on the note. Thus, the transaction created both interest income (from the installment note) and rental expense (from the leaseback).

The committee understands that the Internal Revenue Service has asserted that the interest income on the installment note is not derived from members, but the rental expense must be allocated between income derived from members and nonmembers (based on the amount of electricity furnished to members and nonmembers respectively). As a result, a cooperative that does most of its business with members is treated as receiving amounts of interest income which can be offset only by the relatively small amount of rental expense allocable to nonmember business, resulting in significant additional tax liability to the cooperative.

The committee believes that the safe harbor lease rules were intended to be available to cooperatives notwithstanding Section 277. The committee believes, however, that the safe harbor lease should not result in a cooperative avoiding taxation on its nonmember income. Accordingly, the committee believes that the net difference between interest income and the rental expense arising from safe-harbor leases should both be allocated between member and nonmember income.

Explanation of Provision

The bill provides that the interest income and rental expense from the sale and leaseback of the property under a safe harbor lease are to be first netted and the difference allocated between members and nonmembers in proportion to the business done with each group.

Effective Date

The provision is effective for all taxable years beginning before, on, or after the date of enactment.

F. INTANGIBLES

1. Amortization of goodwill and certain other intangibles (sec. 4551 of the bill and secs. 167, 1060, 1253, and new sec. 197 of the Code)

Present Law

In determining taxable income for Federal income tax purposes, a taxpayer is allowed depreciation or amortization deductions for the cost or other basis of intangible property that is used in a trade or business or held for the production of income if the property has a limited useful life that may be determined with reasonable accuracy. No depreciation or amortization deductions are allowed with respect to *goodwill or going concern* value.

Reasons for Change

The Federal income tax treatment of the costs of acquiring intangible assets is a source of considerable controversy between taxpayers and the Internal Revenue Service. Disputes arise concerning: (1) whether an amortizable intangible asset exists; (2) in the case of an acquisition of a trade or business, the portion of the purchase price that is allocable to an amortizable intangible asset; and (3) the proper method and period for recovering the cost of an amortizable intangible asset.

It is believed that much of the controversy that arises under present law with respect to acquired intangible assets could be eliminated by specifying a single method and period for recovering the cost of most acquired intangible assets and by treating acquired goodwill and going concern value as amortizable intangible assets. It is also believed that there is no need at this time to change the Federal income tax treatment of self-created intangible assets, such as goodwill that is created through advertising and other similar expenditures.

Accordingly, the bill requires the cost of *most acquired intangible assets, including* goodwill and going concern value, to be amortized ratably over a 16-year period. It is recognized that the useful lives of certain acquired intangible assets to which the bill applies may be shorter than 16 years, while the useful lives of other acquired intangible assets to which the bill applies may be longer than 16 years. The 16-year amortization period was selected so that, prospectively applied, the bill would be approximately revenue neutral over the next five fiscal years.

In addition, it is desirable to facilitate the *settlement of controversies that have arisen* or may arise with respect to intangibles assets that were acquired in past open years by providing an election to clarify the treatment of such property.

Explanation of Provision

In general

The bill allows an amortization deduction *with respect to the capitalized costs of certain* intangible property (defined as a "section 197 intangible") that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction is determined by amortizing the adjusted basis (for purposes of determining gain) of the intangible ratably over a 16-year period that begins with the month that the intangible is acquired.[1] No other depreciation or amortization deduction is allowed *with respect to a section 197 intangible that* is acquired by a taxpayer.

In general, the bill applies to a section 197 intangible acquired by a taxpayer regardless of whether it is acquired as part of a trade or business. In addition, the bill generally applies to a section 197 intangible that is treated as acquired under section 338 of the Code. The bill generally does not apply to a section 197 intangible that is created by the taxpayer if the intangible is not created in connection with a transaction (or series of related transactions) that involves the acquisition of a trade or business or a substantial portion thereof.

Except in the case of amounts paid or incurred under certain covenants not to compete (or under certain other arrangements that have substantially the same effect as covenants not to compete) and certain amounts paid or incurred on account of the transfer of a franchise, trademark, or trade name, the bill generally does not apply to any amount that is otherwise currently deductible (i.e., not capitalized) under present law.

No inference is intended as to whether a depreciation or amortization deduction is allowed under present law with respect to any intangible property that is either included in, or excluded from, the definition of a section 197 intangible. In addition, no inference is intended as to whether an asset is to be *considered tangible or intangible property* for any other purpose of the Internal Revenue Code.

Definition of section 197 intangible

In general

The term "section 197 intangible" is defined as any property that is included in any one or more of the following categories: (1) *goodwill and going concern value*; (2) *certain* specified types of intangible property that generally relate to workforce, information base, know-how, customers, suppliers, or other similar items; (3) any license, permit, or other right granted by a governmental unit or any agency of instrumentality thereof; (4) any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (5) any franchise, trademark, or trade name.

Certain type of property, however, are specifically excluded from the definition of the term "section 197 intangible." The term "section 197 intangible" does not include: (1) any interest in a corporation, partnership, trust, or estate; (2) any interest under an existing futures contract, foreign currency contract, national principal contract, interest rate swap, or other similar financial contract; (3) any interest in land; (4) certain computer software; (5) certain interests in films, sound recordings, video tapes, books, or other similar property; (6) certain rights to receive tangible property or services; (7) certain interests in patents or copyrights; (8) any interest under an existing lease of tangible property; (9) any interest under an existing indebtedness (except for the deposit base and similar items of a financial institution); (10) a franchise to engage in any professional sport, and any item acquired in connection with such a franchise; (11) certain purchased mortgage servicing rights; and (12) if the taxpayer elects, intangibles acquired from a "qualified research entity".

In addition, the Treasury Department is authorized to issue regulations that exclude certain rights of fixed duration or amount *from the definition of a section 197 intangible.*

Goodwill and going concern value

For purposes of the bill, goodwill is the value of a trade or business that is attributable to the expectancy of continued customer patronage, whether due to the name of a trade or business, the reputation of a trade or business, or any other factor.

In addition, for purposes of the bill, going concern value is the additional element of value of a trade or business that attaches to property by reason of its existence as an integral part of a going concern. Going concern value includes the value that is attributable to the ability of a trade or business to continue to function and generate income without interruption notwithstanding a change in ownership. Going concern value also includes the value that is attributable to the use or availability of an acquired trade or

[1] In the case of a short taxable year, the amortization deduction is to be based on the number of months in such taxable year.

business (for example, the net earnings that otherwise would not be received during any period were the acquired trade or business not available or operational).

Workforce, information base, know-how, customer-based intangibles, supplier-based intangibles and other similar items.

Workforce.—The term "section 197 intangible" includes workforce in place (which is sometimes referred to as agency force or assembled workforce), the composition of a workforce (for example, the experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a highly-skilled workforce is to be amortized over the 16-year period specified in the bill. As a further example, the cost of acquiring an existing employment contract (of contracts) or a relationship with employees or consultants (including but not limited to any "key employee" contract or relationship) as part of the acquisition of a trade or business is to be amortized over the 16-year period specified in the bill.

Information base.—The term "section 197 intangible" includes business books and records, operating systems, and any other information base including lists or other information with respect to current or prospective customers (regardless of the method of recording such information). Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems is to be amortized over the 16-year period specified in the bill. As a further example, the cost of acquiring customer lists, subscription lists, insurance expirations,[2] patient or client files, or lists of newspaper, magazine, radio or television advertisers is to be amortized over the 16-year period specified in the bill.

Know-how.—The term "section 197 intangible" includes any patent, copyright, formula, process, design, pattern, know-how, format, or other similar item. For this purpose, the term "section 197 intangible" is to include package designs, computer software, and any interest in a film, sound recording, video tape, book, or other similar property, except as specifically provided otherwise in the bill.[3]

Customer-based intangibles.—The term "section 197 intangible" includes any customer-based intangible, which is defined as the composition of market, market share, and any other value resulting from the future provision of goods or services pursuant to relationships with customers (contractual or otherwise) in the ordinary course of business. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of customer base, circulation base, undeveloped market or market growth, insurance in force, mortgage servicing contracts,[4] investment management contracts, or other relationships with customers that involve the future provision of goods or services, is to be amortized over the 16-year period specified in the bill. On the other hand, the portion (if any) of the purchase price of an acquired trade or business that is attributable to accounts receivable or other similar rights to income for those goods or services that have been provided to customers prior to the acquisition of trade or business is not to be taken into account under the bill.[5]

In addition, the bill specifically provides that the term "customer-based intangible" includes the deposit base and any similar asset of a financial institution. Thus, for example, the portion (if any) of the purchase price of an acquired financial institution that is attributable to the checking accounts, savings accounts, escrow accounts and other similar items of the financial institution is to be amortized over the 16-year period specified in the bill.

Supplier-based intangibles.—The term "section 197 intangible" includes any supplier-based intangible, which is defined as the value resulting from the future acquisition of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a favorable relationship with persons that provide distribution services (for example, favorable shelf or display space at a retail outlet), the existence of a favorable credit rating, or the existence of favorable supply contracts, is to be amortized over the 16-year period specified in the bill.[6]

Other similar items.—The term "section 197 intangible" also includes any other intangible property that is similar to workforce, information base, know-how, customer-based intangibles, or supplier-based intangibles.

Licenses, permits, and other rights granted by governmental units

The term "section 197 intangible" also includes any license, permit, or other right granted by a governmental unit or any agency or instrumentality thereof (even if the right is granted for an indefinite period or the right is reasonably expected to be renewed for an indefinite period).[7] Thus, for example, the capitalized cost of acquiring from any person a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (which is sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license is to be amortized over the 16-year period specified in the bill. For purposes of the bill, the issuance or renewal of a license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof is to be considered an acquisition of such license, permit, or other right.

Covenants not to compete and other similar arrangements

The term "section 197 intangible" also includes any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete; hereafter "other similar arrangement") entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof). For this purpose, an interest in a trade or business includes not only the assets of a trade or business, but also stock in a corporation that is engaged in a trade or business or an interest in a partnership that is engaged in a trade or business.

Any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof) is chargeable to capital account and is to be amortized ratably over the 16-year period specified in the bill. In addition, any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) after the taxable year in which the covenant (or other similar arrangement) was entered into is to be amortized ratably over the remaining months in the 16-year amortization period that applies to the covenant (or other similar arrangement) as of the beginning of the month that the amount is paid or incurred.

For purposes of this provision, an arrangement that requires the former owner of an interest in a trade or business to continue to perform services (or to provide property or the use of property) that benefit the trade or business is considered to have substantially the same effect as a covenant not to compete to the extent that the amount paid to the former owner under the arrangement exceeds the amount that represents reasonable compensation for the services actually rendered (or for the property or use of property actually provided) by the former owner. As under present law, to the extent that the amount paid or incurred under a covenant not to compete (or other similar arrangement) represents additional consideration for the acquisition of stock in a corporation, such amount is not to be taken into account under this provision but, instead, is to be included as part of the acquirer's basis in the stock.

Franchises, trademarks, and trade names

The term "section 197 intangible" also includes any franchise, trademark, or trade name. For this purpose, the term "franchise" is defined, as under present law, to include any agreement that provides one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.[8] In addition, as provided under present law, the renewal of a franchise, trademarks, or trade name is to be treated as an acquisition of such franchises, trademark, or trade name.[9]

The bill continues the present-law treatment of certain contingent amounts that are paid or incurred on account of the transfer of

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[2] Insurance expirations are records that are maintained by insurance agents with respect to insurance customers. These records generally include information relating to the type of insurance, the amount of insurance, and the expiration date of the insurance.

[3] See below for a description of the exceptions for certain patents, certain computer software, and certain interests in films, sound recordings, video tapes, books, or other similar property.

[4] Certain purchased mortgage servicing rights are excluded from the definition of a section 197 intangible under special rules described below.

[5] As under present law, the portion of the purchase price of an acquired trade or business that is attributable to accounts receivable is to be allocated among such receivables and is to be taken into account as payment is received under each receivable or at the time that a receivable becomes worthless.

[6] See below, however, for a description of the exception for certain rights to receive tangible property or services from another person.

[7] A right granted by a governmental unit or an agency or instrumentality thereof that constitutes an interest in land or an interest under a lease of tangible property is excluded from the definition of a section 197 intangible. See below for a description of the exceptions for interests in land and for interests under leases of tangible property.

[8] Section 1253(b)(1) of the Code.

[9] Only the costs incurred in connection with the renewal, however, are to be amortized over the 16-year period that begins with the month that the franchise, trademark, or trade name is renewed. Any costs incurred in connection with the issuance (or an earlier renewal) of a franchises, trademark, or trade name are to continue to be taken into account over the remaining portion of the amortization period that began at the time of such issuance (or earlier renewal).

a franchise, trademark, or trade name. Under these rules, a deduction is allowed for amounts that are contingent on the productivity, use, or disposition of a franchise, trademark, or trade name only if (1) the contingent amounts are paid as part of a series of payments that are payable at least annually throughout the term of the transfer agreement, and (2) the payments are substantially equal in amount or payable under a fixed formula.[10] Any other amount, whether fixed or contingent, that is paid or incurred on account of the transfer of a franchise, trademark, or trade name is chargeable to capital account and is to be amortized ratably over the 16-year period specified in the bill.

Exceptions to the definition of a section 197 intangible

In general.—The bill contains several exceptions to the definition of the term "section 197 intangible." Several of the exceptions contained in the bill apply only if the intangible property is not acquired in a transaction (or series of related transactions) that involves the acquisition of assets which constitute a trade or business. It is anticipated that the Treasury Department will exercise its regulatory authority to require any intangible property that would otherwise be excluded from the definition of the term "section 197 intangible" to be taken into account under the bill under circumstances where the acquisition of the intangible property is, in and of itself, the acquisition of an asset which constitutes a trade or business or a substantial portion of a trade or business.

The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. It is not intended, however, that the value of the assets acquired relative to the value of the assets retained by the transferor is determinative of whether the acquired assets constitute a substantial portion of a trade or business.

For purposes of the bill, a group of assets is to constitute a trade or business if the use of such assets would constitute a trade or business for purposes of section 1060 of the Code (i.e., if the assets are of such a character that goodwill or going concern value could under any circumstances attach to the assets). In addition, the acquisition of a franchise, trademark or trade name is to constitute the acquisition of a trade or business or a substantial portion of a trade or business.

In determining whether a taxpayer has acquired an intangible asset in a transaction (or series of related transactions) that involves the acquisition of assets that constitute a trade or business or a substantial portion of a trade or business, only those assets acquired in a transaction (or a series of related transactions) by a taxpayer (and persons related to the taxpayer) from the same person (and any related person) are to be taken into account. In addition, any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of assets are to be taken into account in determining whether the transferred assets constitute a trade or business or a substantial portion of a trade or business.

Interests in a corporation, partnership, trust of estate.—The term "section 197 intangible" does not include any interest in a corporation, partnership, trust, or estate. Thus, for example, the bill does not apply to the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not such interests are regularly traded on an established market.[11]

Interests under certain financial contracts.—The term "section 197 intangible" does not include any interest under an existing futures contract, foreign currency contract, notional principal contract, interests rate swap, or other similar financial contract, whether or not such interest is regularly traded on an established market. Any interest under a mortgage servicing contract,[12] credit care servicing contract or other contract to service indebtedness issued by another person, and any interest under an assumption reinsurance contract[13] is not excluded from the definition of the term "section 197 intangible" by reason of the exception for interest under certain financial contracts.

Interests in land.—The term "section 197 intangible" does not include any interest in land. Thus, the cost of acquiring an interest in land is to be taken into account under present law rather than under the bill. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral rights, timber rights, grazing rights, riparian rights, air rights, zoning, variances, and any other similar rights with respect to land. An interest in land is not to include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television services.

The costs of acquiring licenses, permits and other rights relating to improvements to land, such as building construction or use permits, are amortized over the life of the improvement in accordance with present law.

Certain computer software.—The term "section 197 intangible" does not include computer software (whether acquired as part of a trade or business or otherwise) that (1) is readily available for purchase by the general public; (2) is subject to a non-exclusive license; and (3) has not been substantially modified. In addition, the term "section 197 intangible" does not include computer software which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

For purposes of the bill, the term "computer software" is defined as any program (i.e., any sequence of machine-readable code) that is designed to cause a computer to perform a desired function. The term "computer software" includes any incidental and ancillary rights with respect to computer software that (1) are necessary to effect the legal acquisition of the title to, and the ownership of, the computer software, and (2) are used only in connection with the computer software. The term "computer software" does not include any data base or similar item (other than a data base or item that is in the public domain and that is incidental to the software[14] regardless of the form in which it is maintained or stored.

If a depreciation deduction is allowed with respect to any computer software that is not a section 197 intangible solely by reason of the exceptions described in the preceding paragraph,[15] the amount of the deduction is to be determined by amortizing the adjusted basis of the computer software ratably over a 36-month period that begins with the month that the computer software is placed in service. For this purpose, the cost of any computer software that is taken into account as part of the cost of computer hardware or other tangible property under present law is to continue to be taken into account in such manner under the bill. In addition, the cost of any computer software that is currently deductible (*i.e.*, not capitalized) under present law is to continue to be taken into account in such manner under the bill.

Certain interests in films, sound recordings, video tapes, books, or other similar property.—The term "section 197 intangible" does not include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (including the right to broadcast or transmit a live event) if the interest is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

Certain rights to receive tangible property or services.—The term "section 197 intangible" does not include any right to receive tangible property or services under a contract (or any right to receive tangible property or services granted by a governmental unit or an agency or instrumentality thereof) if the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to a right to receive tangible property or services that is not a section 197 intangible, the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is anticipated that the regulations may provide that in the case of an amortizable right to receive tangible property or services in substantially equal amounts over a fixed period that is not renewable, the cost of acquiring the right will be taken into account ratably over such fixed period. It is also anticipated that the regulations may provide that in the case of a right to receive a fixed amount of tangible property or services over an unspecified period, the cost of acquiring such right will be taken into account under a method that allows a deduction based on the amount of tangible property or services received during a taxable year compared to the total amount of tangible property or services to be received.

For example, assume that a taxpayer acquires from another person a favorable contract right of such person to receive a specified amount of raw materials each month for the next three years (which is the remaining life of the contract) and that the right to re-

[10] Section 1253(d)(1) of the Code.

[11] A temporal interest in property, outright or in trust, may not be used to convert a section 197 intangible into property that is amortizable more rapidly than ratably over the 16-year period specified in the bill.

[12] Certain purchased mortgage servicing rights are excluded from the definition of a section 197 intangible under special rules described below.

[13] See below for description of the treatment of assumption reinsurance contracts.

[14] For example, a data base would not include a dictionary feature used to spell-check a word processing program.

[15] Computer software acquired from a qualified research entity, as described below may also be excluded from the definition of a section 197 intangible. The cost of any intangible assets acquired in such an acquisition, including any computer software, is to be taken into account under present law.

ceive such raw materials is not acquired as part of the acquisition of assets that constitute a trade or business or a substantial portion thereof (i.e., such contract right is not a section 197 intangible). It is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract. Alternatively, if the favorable contract right is to receive a specified amount of raw materials during an unspecified period, it is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right by multiplying such cost by a fraction, the numerator of which is the amount of raw materials received under the contract during any taxable year and the denominator of which is the total amount of raw materials to be received under the contract.

It is also anticipated that the regulations may require a taxpayer under appropriate circumstances to amortize the cost of acquiring a renewable right to receive tangible property or services over a period that includes all renewal options exercisable by the taxpayer at less than fair market value.

Certain interests in patents or copyrights.—the term "section 197 tangible" does not include any interest in a patent or copyright which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to an interest in a patent or copyright and the interest is not a section 197 intangible, then the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. it is expected that the regulations may provide that if the purchase price of a patent is payable on an annual basis as a fixed percentage of the revenue derived from the use of the patent, then the amount of the depreciation deduction allowed for any taxable year with respect to the patent equals the amount of the royalty paid or incurred during such year.[16]

Interests under leases of tangible property.—The term "section 197 intangible" does not include any interest as a lessor or lessee under an existing lease of tangible property (whether real or personal).[17] The cost of acquiring an interest as a lessor under a lease of tangible property where the interest as lessor is acquired in connection with the acquisition of the tangible property is to be taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants operating retail stores, the portion (if any) of the purchase price of the shopping center that is attributable to the favorable attributes of the leases is to be taken into account as a part of the basis of the shopping center and is to be taken into account in determining the depreciation deduction allowed with respect to the shopping center.

The cost of acquiring an interest as a lessee under an existing lease of tangible property is to be taken into account under present law (see section 178 of the Code and Treas. Reg. sec. 1.162–11(a)) rather than under the provisions of the bill.[18] In the case of any interest as a lessee under a lease of tangible property that is acquired with any other intangible property (either in the same transaction or series of related transactions), however, the portion of the total purchase price that is allocable to the interest as a lessee is not to exceed the excess of (1) the present value of the fair market value rent for the use of the tangible property for the term of the lease,[19] over (2) the present value of the rent reasonably expected to be paid for the use of the tangible property for the term of the lease.

Interests under indebtedness.—The term "section 197 intangible" does not include any interest (whether as a creditor or debtor) under any indebtedness that was in existence on the date that the interest was acquired.[20] Thus, for example, the value of assuming an existing indebtedness with a below-market interest rate is to be taken into account under present law rather than under the bill. In addition, the premium paid for acquiring the right to receive an above-market rate of interest under a debt instrument may be taken into account under section 171 of the Code, which generally allows the amount of the premium to be amortized on a yield-to-maturity basis over the remaining term of the debt instrument. This exception for interests under existing indebtedness does not apply to the deposit base and other similar items of a financial institution.

Professional sports franchises.—The term "section 197 intangible" does not include a franchise to engage in professional baseball, basketball, football, or other professional sport, and any item acquired in connection with such a franchise. Consequently, the cost of acquiring a professional sports franchise and related assets (including any good will, going concern value, or other section 197 intangibles) is to be allocated among the assets acquired as provided under present law (see, for example, section 1056 of the Code) and is to be taken into account under the provisions of present law.

Purchased mortgage servicing rights.—The term "section 197 intangible" does not include any right to service indebtedness that is secured by residential real property (a "purchased mortgage servicing right"), unless such right is acquired in a transaction (or series of related transactions) involving the acquisition of assets (other than such right or other such purchased mortgage servicing rights) constituting a trade or business or a substantial portion of a trade or business.

Certain property acquired from a qualified research entity.—At the election of the taxpayer, the term "section 197 intangible" does not include any intangible property that is acquired in a qualifying acquisition from a qualified research entity.

A qualified research entity must satisfy certain requirements intended to limit qualification to certain research-intensive start-up entities. First, the excess of the fair market value of the gross assets of the entity over the adjusted issue price of short term debt (debt that has a maturity of one year or less at the time of issuance) must not exceed $50 million.

Second, the entity must not have had any gross receipts (other than earnings on short-term investments of reasonable working capital) during any period more than five years prior to the acquisition. Furthermore, during the entity's entire period of existence on or before the acquisition date, the aggregate amount of expenditures for research and experimentation (within the meaning of section 174 of the Code) which are technological in nature[21] is at least $500,000 and is also at least 3C percent of its aggregate gross receipts (other than earnings on short term investments of reasonable working capital).

Third, at all times during the existence of the entity on or before the acquisition date, at least 50 percent of the fair market value of its equity must be held directly by five or fewer non-corporate persons and at least 50 percent of the fair market value of its equity must be owned by individuals on a look-through basis (other than ownership attributed through a corporation).

The bill provides special attribution rules, aggregation rules, and rules relating to predecessors, as well as rules for applying each of the requirements in the case of a sole proprietorship.

An acquisition from a qualified research entity qualifies for the elective treatment only if substantially all of the section 197 intangibles acquired in the transaction (or a series of related transactions) were created by the qualified research entity or were acquired by that entity in a transaction (or a series of series of related transactions) that themselves would have qualified for the election (apart from the effective date). Thus, for example, a qualified research entity may not act directly or indirectly as a conduit to transfer property from an entity that is not a qualified research entity.

Regulatory authority regarding rights of fixed term or duration.—The bill authorizes the Treasury Department to issue regulations that exclude a right received under a contract, or granted by a governmental unit or an agency or instrumentality thereof, from the definition of a section 197 intangible if (1) the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof) and (2) the right either (A) has a fixed duration of less than 16 years or (B) is fixed as to amount[22] and property amortizable (without regard to this provision) under a method similar to the unit of production method. Generally, it is anticipated that the mere fact that a taxpayer will have the opportunity to renew a contract or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will not be taken into account in determining the duration of

[16] See *Associated Patentees, Inc.*, 4 T.C. 979 (1945); and Rev. Rul. 67–136, 1967–1 C.B. 56.

[17] The bill provides that a sublease is to be treated in the same manner as a lease of the underlying property. Thus, the term "section 197 intangible" does not include any interest as a sublessor or sublessee of tangible property.

[18] The lease of a gate at an airport for the purpose of loading and unloading passengers and cargo is a lease of tangible property for this purpose. It is anticipated that such treatment will serve as guidance to the Internal Revenue Service and taxpayers in resolving existing disputes.

[19] In no event is the present value of the fair market value rent for the use of the tangible property for the term of the lease to exceed the fair market value of the tangible property as of the date of acquisition. The present value of such rent is presumed to be less than the value of the tangible property if the duration of the lease is less than the economic useful life of the property.

[20] For purposes of this exception, the term "interest under any existing indebtedness" is to include mortgage servicing rights to the extent that the rights are stripped coupons under section 1286 of the Code. See Rev. Rul. 91–46, 1991–34 I.R.B. 5 (August 26, 1991).

[21] For this purpose it is intended that software development costs qualify as expenditures for research and experimentation under the same standards as applied to the cost of developing other products and processes. I.R.S. Notice 87–12, 1987–1 C.B. 452. See Prop. Regs. 1.174–2(a)(6).

[22] For example, an emission allowance granted a public utility under Title IV of the Clean Air Act Amendments of 1990 is a right that is limited in amount within the meaning of this provision.

such right or whether it is for a fixed amount. However, the mere facts that competitive bidding occurs at the time of renewal and that there are or may be modifications in price (or in terms or requirements relating to the right that increase the cost to the bidder) shall not be within the scope of the preceding sentence unless the bidding also actually produces a fair market value price comparable to the price that would obtain if the rights were purchased in an arm's length transaction. Furthermore, it is expected that, as under present law, the Treasury Department will take into account all the facts and circumstances, including any facts indicating an actual practice of renewals or expectancy of renewals.

For example, Company A enters into a license with Company B to use certain know-how developed by B. The license is for five years and provides that it cannot be renewed by A except on terms that are fully available to A's competitors and will reflect an arm's length price determined at the time of renewal. The license does not constitute a substantial portion of a trade or business and is not entered into as part of a transaction (or series of related transactions) that constitute the acquisitions of a trade or business or substantial portion thereof. It is anticipated that in these circumstances the regulations will provide that the license is not a section 197 intangible because it is of fixed duration of less than 16 years.

The regulations may also prescribe rules governing the extent to which renewal options and similar items will be taken into account for the purpose of determining whether rights are fixed in duration or amount.

It is also anticipated that such regulations may prescribe the appropriate method of amortizing the capitalized costs of rights which are excluded by such regulations from the definition of a section 197 intangible.

Exception for certain self-created intangibles

The bill generally does not apply to any section 197 intangible that is created by the taxpayer if the section 197 intangible is not created in connection with a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion thereof.

For purposes of this exception, a section 197 intangible that is owned by a taxpayer is to be considered created by the taxpayer if the intangible is produced for the taxpayer by another person under a contract with the taxpayer that is entered into prior to the production of the intangible. For example, a technological process or other know-how that is developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process or know-how is to be considered created by the taxpayer.

The exception for "self-created" intangibles does not apply to the entering into (or renewal of) a contract for the use of a section 197 intangible. Thus, for example, the exception does not apply to the capitalized costs incurred by a licensee in connection with the entering into (or renewal of) a contract for the use of know-how or other section 197 intangible. These capitalized costs are to be amortized over the 16-year period specified in the bill.

In addition, the exception for "self-created" intangibles does not apply to: (1) any license, permit, or other right that is granted by a governmental unit or an agency or instrumentality thereof; (2) any covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (3) any franchise, trademark, or trade name. Thus, for example, the capitalized costs incurred in connection with the development or registration of a trademark or trade name are to be amortized over the 16-year period specified in the bill.

Special rules

Determination of adjusted basis

The adjusted basis of a section 197 intangible that is acquired from another person generally is to be determined under the principles of present law that apply to tangible property that is acquired from another person. Thus, for example, if a portion of the cost of acquiring an amortizable section 197 intangible is contingent, the adjusted basis of the section 197 intangible is to be increased as of the beginning of the month that the contingent amount is paid or incurred. This additional amount is to be amortized ratably over the remaining months in the 16-year amortization period that applies to the intangible as of the beginning of the month that the contingent amount is paid or incurred.

Treatment of certain dispositions of amortizable section 197 intangibles

Special rules apply if a taxpayer disposes of a section 197 intangible that was acquired in a transaction or series of related transactions and, after the disposition,[23] the taxpayer retains other section 197 intangibles that were acquired in such transaction or series or related transactions.[24] First, no loss is to be recognized by reason of such a disposition. Second, the adjusted bases of the retained section 197 intangibles that were acquired in connection with such transaction or series of related transactions are to be increased by the amount of any loss that is not recognized. The adjusted basis of any such retained section 197 intangible is increased by the product of (1) the amount of the loss that is not recognized solely by reason of this provision, and (2) a fraction, the numerator of which is the adjusted basis of the intangible as of the date of the disposition and the denominator of which is the total adjusted bases of all such retained section 197 intangibles as of the date of the disposition.

For purposes of these rules, all persons treated as a single taxpayer under section 41(f)(1) of the Code are treated as a single taxpayer. Thus, for example, a loss is not to be recognized by a corporation upon the disposition of a section 197 intangible if after the disposition a member of the same controlled group as the corporation retains other section 197 intangibles that were acquired in the same transaction (or a series of related transactions) as the section 197 intangible that was disposed of. It is anticipated that the Treasury Department will provide rules for taking into account the amount of any loss that is not recognized due to this rule (for example, by allowing the corporation that disposed of the section 197 intangible to amortize the loss over the remaining portion of the 16-year amortization period).

Treatment of certain nonrecognition transactions

If any section 197 intangible is acquired in a transaction to which section 332, 351, 361, 721, 731, 1031, or 1033 of the Code applies (or any transaction between members of the same affiliated group during any taxable year for which a consolidated return is filed),[25] the transferee is to be treated as the transferor for purposes of applying this provision with respect to the amount of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor.

For example, assume that an individual owns an amortizable section 197 intangible that has been amortized under section 197 for 4 full years and has a remaining unamortized basis of $300,000. In addition, assume that the individual exchanges the asset and $100,000 for a like-kind amortizable section 197 intangible in a transaction to which section 1031 applies. Under the bill, $300,000 of the basis of the acquired amortizable section 197 intangible is to be amortized over the 12 years remaining in the original 16-year amortization period for the transferred asset and the other $100,000 of basis is to be amortized over the 16-year period specified in the bill.[26]

Treatment of certain partnership transactions

Generally, consistent with the rules described above for certain nonrecognition transactions, a transaction in which a taxpayer acquires an interest in an intangible held through a partnership (either before or after the transaction) will be treated as an acquisition to which the bill applies only if, and to the extent that, the acquiring taxpayer obtains, as a result of the transaction, an increased basis for such intangible.[27]

For example, assume that A, B and C each contribute $700 for equal shares in partnership P, which on January 1, 1993, acquires as its sole asset an amortizable section 197 intangible for $2,100. Assume that on January 1, 1997, (1) the sole asset of P is the intangible acquired in 1993, (2) the intangible has an unamortized basis of $1,500 and A, B, and C each have a basis of $500 in their partnership interests, and (3) D (who is not related to A, B, or C) acquires A's interest in P for $800. Under the bill, if there is no section 754 election in effect for 1997, there will be no change in the basis or amortization of the intangible and D will merely step into the shoes of A with respect to the intangible. D's share of the basis in the intangible will be $500, which will be amortized over the 12 years remaining in the amortization period for the intangible.

On the other hand, if a section 754 election is in effect for 1997, then D will be treated as having an $800 basis for its share of P's in-

[23] For this purpose, the abandonment of a section 197 intangible or any other event that renders a section 197 intangible worthless is to be considered a disposition of a section 197 intangible.

[24] These special rules do not apply to a section 197 intangible that is separately acquired (i.e., a section 197 intangible that is acquired other than in a transaction or a series of related transactions that involve the acquisition of other section 197 intangibles). Consequently, a loss may be recognized upon the disposition of a separately acquired section 197 intangible. In no event, however, is the termination or worthlessness of a portion of a section 197 intangible to be considered the disposition of a separately acquired section 197 intangible. For example, the termination of one or more customers from an acquired customer list or the worthlessness of some information from an acquired data base is not to be considered the disposition of a separately acquired section 197 intangible.

[25] The termination of a partnership under section 708(b)(1)(ii) of the Code is a transaction to which this rule applies. In such a case, the bill applies only to the extent that the adjusted basis of the section 197 intangibles before the termination exceeds the adjusted basis of the section 197 intangibles after the termination. (See the example below in the discussion of "Treatment of Certain Partnership Transactions.")

[26] No inference is intended whether any asset treated as a section 197 intangible under the bill is eligible for like kind exchange treatment.

[27] This discussion is subject to the application of the anti-churning rules which are discussed below.

tangible. Under section 197, D's share of income and loss will be determined as if P owns two intangible assets. D will be treated as having a basis of $500 in one asset, which will continue to be amortized over the 12 remaining years of the original 16-year life. With respect to the other asset, D will be treated as having a basis of $300 (the amount of step-up obtained by D under section 743 as a result of the section 754 election) which will be amortized over a 16-year period starting with January of 1997. B and C will each continue to share equally in a $1,000 basis in the intangible and amortize that amount over the remaining 12-year life.

As an additional example, assume the same facts as described above, except that D acquires both A's and B's interests in P for $1,600. Under section 708, the transaction is treated as if P is liquidated immediately after the transfer, with C and D each receiving their pro rata share of P's assets which they then immediately contribute to a new partnership. The distributions in liquidation are governed by section 731. Under the bill, C's interest in the intangible will be treated as having a $500 basis, with a remaining amortization period of 12 years. D will be treated as having an interest in two assets: one with a basis of $1,000 and a remaining amortization period of 12 years, and the other with a basis of $600 and a new amortization period of 16 years.

As discussed more fully below, the bill also changes the treatment of payments made in liquidation of the interest of a deceased or retired partner in exchange for goodwill. Except in the case of payments made on the retirement or death of a general partner of a partnership for which capital is not a material income-producing factor, such payments will not be treated as a distribution of partnership income. Under the bill, however, if the partnership makes an election under section 754, section 734 will generally provide the partnership the benefit of a stepped-up basis for the retiring or deceased partner's share of partnership goodwill and an amortization deduction for the increase in basis under section 197.

For example, using the facts from the preceding examples, assume that on January 1, 1997, A retires from the partnership in exchange for a payment from the partnership of $800, all of which is in exchange for A's interest in the intangible asset owned by P. Under the bill, if there is a section 754 election in effect for 1997, P will be treated as having two amortizable section 197 intangibles: one with a basis of $1,500 and a remaining life of 12 years, and the other with a basis of $300 and a new life of 16 years.

Treatment of certain reinsurance transactions

The bill applies to any insurance contract that is acquired from another person through an assumption reinsurance transaction (but not through an indemnity reinsurance transaction).[28] The amount taken into account as the adjusted basis of such a section 197 intangible, however, is to equal the excess of (1) the amount paid or incurred by the acquirer/reinsurer under the assumption reinsurance transaction,[29] over (2) the amount of the specified policy acquisition expenses (as determined under section 848 of the Code) that is attributable to premiums received under the assumption reinsurance transaction. The amount of the specified policy acquisition expenses of an insurance company that is attributable to premiums received under an assumption reinsurance transaction is to be amortized over the period specified in section 848 of the Code.

Treatment of amortizable section 197 intangible as depreciable property

For purposes of chapter 1 of the Internal Revenue Code, an amortizable section 197 intangible is to be treated as property of a character which is subject to the allowance for depreciation provided in section 167. Thus, for example, an amortizable section 197 intangible is not a capital asset for purposes of section 1221 of the Code, but an amortizable section 197 intangible held for more than one year generally qualifies as property used in a trade or business for purposes of section 1231 of the Code. As further examples, an amortizable section 197 intangible is to constitute section 1245 property, and section 1239 of the Code is to apply to any gain recognized upon the sale or exchange of an amortizable section 197 intangible, directly or indirectly, between related persons.

Treatment of certain amounts that are properly taken into account in determining the cost of property that is not a section 197 intangible

The bill does not apply to any amount that is properly taken into account under present law in determining the cost of property that is not a section 197 intangible. Thus, for example, no portion of the cost of acquiring real property that is held for the production of rental income (for example, an office building, apartment building or shopping center) is to be taken into account under the bill (i.e., no goodwill, going concern value or any other section 197 intangible is to arise in connection with the acquisition of such real property). Instead, the entire cost of acquiring such real property is to be included in the basis of the real property and is to be recovered under the principles of present law applicable to such property.

Modification of purchase price allocation and reporting rules for certain asset acquisitions

Sections 338(b)(5) and 1060 of the Code authorize the Treasury Department to promulgate regulations that provide for the allocation of purchase price among assets in the case of certain asset acquisitions. Under regulations that have been promulgated pursuant to this authority, the purchase price of an acquired trade or business must be allocated among the assets of the trade or business using the "residual method."

Under the residual method specified in the Treasury regulations, all assets of an acquired trade or business are divided into the following four classes: (1) Class I assets, which generally include cash and cash equivalents; (2) Class II assets, which generally include certificates of deposit, U.S. government securities, readily marketable stock or securities, and foreign currency; (3) Class III assets, which generally include all assets other than those included in Class I, II, or IV (generally all furniture, fixtures, land, buildings, equipment, other tangible property, accounts receivable, covenants not to compete, and other amortizable intangible assets); and (4) Class IV assets, which include intangible assets in the nature of goodwill or going concern value. The purchase price of an acquired trade or business (as first reduced by the amount of the assets included in Class I) is allocated to the assets included in Class II and Class III based on the value of the assets included in each class. To the extent that the purchase price (as reduced by the amount of the assets in Class I) exceeds the value of the assets included in Class II and Class III, the excess is allocable to assets included Class IV.

It is expected that the present Treasury regulations which provide for the allocation of purchase price in the case of certain asset acquisitions will be amended to reflect the fact that the bill allows an amortization deduction with respect to intangible assets in the nature of goodwill and going concern value. It is anticipated that the residual method specified in the regulations will be modified to treat all amortizable section 197 intangibles as Class IV assets and that this modification will apply to any acquisition of property to which the bill applies.

Section 1060 also authorizes the Treasury Department to require the transferor and transferee in certain asset acquisitions to furnish information to the Treasury Department concerning the amount of any purchase price that is allocable to goodwill or going concern value. The bill provides that the information furnished to the Treasury Department with respect to certain asset acquisitions is to specify the amount of purchase price that is allocable to amortizable section 197 intangibles rather than the amount of purchase price that is allocable to goodwill or going concern value. In addition, it is anticipated that the Treasury Department will exercise its existing regulatory authority to require taxpayers to furnish such additional information as may be necessary or appropriate to carry out the provisions of the bill, including the amount of purchase price that is allocable to intangible assets that are not amortizable section 197 intangibles.[30]

General regulatory authority

The Treasury Department is authorized to prescribe such regulations as may be appropriate to carry out the purposes of the bill including such regulations as may be appropriate to prevent avoidance of the purposes of the bill through related persons or otherwise. It is anticipated that the Treasury Department will exercise its regulatory authority where appropriate to clarify the types of intangible property that constitute section 197 intangibles.

Effective Date

In general

The provision generally applies to property acquired after the date of enactment of the bill. As more fully described below, however, a taxpayer may elect (1) to apply the bill to all property acquired after July 25, 1991, or (2) if the taxpayer acquired section 197 intangibles on or before July 25, 1991, to clarify the treatment of all section 197 intangibles acquired on or before the date of enactment for purposes of all "open taxable years". A taxpayer may not, however, make both of the foregoing elections. In addition, a taxpayer that does not make either of the above elections may elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill pursuant to a binding

[28] An assumption reinsurance transaction is an arrangement whereby one insurance company (the reinsurer) becomes solely liable to policyholders on contracts transferred by another insurance company (the ceding company). In addition, for purposes of the bill, an assumption reinsurance transaction is to include any acquisition of an insurance contract that is treated as occurring by reason of an election under section 338 of the Code.

[29] The amount paid or incurred by the acquirer-reinsurer under an assumption reinsurance transaction is to be determined under the principles of present law. (See Treas. Reg. sec. 1.817-4(d)(2).)

[30] There is no intention to codify any aspect of the existing regulations under section 1060 or other provisions. In addition, it is expected that the Treasury Department will review the operation of the regulations under sections 1060 and 338 in light of new section 197.

written contract in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. Finally, special "anti-churning" rules may apply to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Election to apply bill to property acquired after July 25, 1991

A taxpayer may elect to apply the bill to all property acquired by the taxpayer after July 25, 1991. If a taxpayer makes this election, the bill also applies to all property acquired after July 25, 1991, by any taxpayer that is under common control with the electing taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of the Code) at any time during the period that began on November 22, 1991, and that ends on the date that the election is made.[31]

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[32] and the election may be revoked only with the consent of the Treasury Department.

Special election to settle the treatment of section 197 intangibles for purposes of all "open taxable years"

In general

A taxpayer that acquired an "amortizable section 197 intangible"[33] on or before July 25, 1991 is allowed to make an election pursuant to which such taxpayer would be required, with respect to all "amortizable section 197 intangibles" acquired on or before the date of enactment and during any year for which a Federal income tax return has been filed before June 16, 1992 (a "return year"), to amortize 75 percent of the basis of such intangibles that were actually claimed as amortizable intangible asset basis on such taxpayer's Federal income tax return for the year of acquisition. If amortization was not claimed with respect to any one or more amortizable section 197 intangibles acquired in a year until the return for the next following year (or if a different basis, period, or method of amortization for any such asset was claimed on such next following year's return), then such return for the next following year shall be the governing return for all the prior year's acquisitions, provided it was filed before June 16, 1992.[34]

The method and period of such amortization under the election will be the same as reported by the taxpayer on its relevant return. The remaining 25 percent of the basis of such intangibles, as well as the entire basis of any amortizable section 197 intangibles acquired in such year that were not treated as amortizable on such return, would be treated as non-amortizable goodwill and would only be recovered at the time that the trade or business to which the goodwill relates is disposed of (or becomes worthless). The allocation of basis between amortizable intangibles and non-amortizable intangibles as reflected on the relevant return will be binding on the electing taxpayer and the IRS. For purposes of the rules described in this paragraph regarding the basis of intangibles claimed as amortizable and the allocation of basis on the return, an amended return for a return year shall be treated as a return, but only if filed on or before July 25, 1991. In addition, any settlement or closing agreement with respect to the year of acquisition (or the immediately following year, if applicable) shall be treated as the relevant return for purposes of the 25 percent basis reduction and other rules if it is entered into before the date the election is made. In applying the 25 percent basis reduction and the rules for determining period and method of amortization, there are certain exceptions for years involving an irrevocable resolution of issues, described below.[35]

Except as described herein, no other submission or document will be treated as a return for purposes of this provision or will govern the treatment of section 197 assets for purposes of the election.

Treatment of assets for which there is an irrevocable resolution of proper Federal income tax treatment

Notwithstanding the general rule requiring a 25 percent reduction in the basis of amortized section 197 intangibles, if a taxpayer makes the election no 25 percent reduction in the basis of previously amortized amortizable section 197 intangibles will occur for any period for which there is an irrevocable resolution with respect to the Federal income tax treatment of such assets by reason of a closing agreement, settlement agreement, or final judicial decision, as described below. For this purpose, only certain situations will be considered to be an irrevocable resolution. In each case, an irrevocable resolution will not have occurred unless the proper treatment of an amortizable section 197 intangible had been raised and such closing agreement, settlement agreement, or final judicial decision expressly addressed and resolved the issue of such treatment.

First, if a taxpayer, on or before the date the election is made, has entered a final closing agreement under section 7121 that governs the amortization of particular section 197 intangibles, such closing agreement shall be considered an irrevocable resolution of the proper Federal income tax treatment for the period or periods it covers. The treatment of such intangibles for such periods shall be undisturbed by any election under this section.

Second, if a final agreement on Form 870-AD has been entered by the taxpayer and the IRS on or before the date the election is made, that addresses the treatment of one or more intangible assets, then the basis and method of amortization reflected in such Form 870-AD shall not be disturbed by the election for the period or periods it covers. However, it shall be a condition of making the election that such basis and method shall govern for all such years of the taxpayer with respect to the assets covered by such agreement.

Third, if a taxpayer's case has reached a final judicial determination on or before the date of making the election, then, with respect to the particular acquisitions covered by that final determination, the basis and method of amortization reflected in that final determination also shall not be disturbed. It shall be a condition of making the election that such basis and method shall govern for all years covered by the decision and for all subsequent years of the taxpayers with respect to the assets and the acquisition covered by such determination.

If a closing or settlement agreement does not determine the treatment of the asset for all years, then the agreement governs only the years to which it applies. However, if such an agreement covers the year of acquisition (or the next year, if relevant) and thus is treated as the "return" for that year, the 25 percent basis reduction, method and period of amortization for any years not covered by the agreement is determined by reference to that agreement. If a judicial decision does not cover all years, it shall be observed for the year or years to which it applies and for all following years.

Treatment of acquisitions for which no return has been filed before June 16, 1992

If a taxpayer makes the election for all "open taxable years", such taxpayer will also be required to apply the rules of section 197, as contained in the bill, to all "amortizable section 197 intangibles" acquired on or before the date of enactment for which a return has not been filed prior to June 16, 1992. However, 25 percent of the adjusted basis of each such intangible shall for all purposes be treated as goodwill with respect to which no deduction for amortization or depreciation is allowable. Thus, for example, 25 percent of the excess of purchase price over the amount

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[31] However, with certain exceptions, an amortization deduction is not to be allowed under the bill for goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill if: (1) the section 197 intangible is acquired after July 25, 1991; and (2) either (a) the taxpayer or a related person held or used the intangible on July 25, 1991; (b) the taxpayer acquired the intangible from a person that held such intangible on July 25, 1991, and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible on July 25, 1991. See below for a more detailed description of these "anti-churning" rules.

[32] It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

[33] For purposes of the election, property is considered an "amortizable section 197 intangible" if it meets the requirements of new section 197 for amortization over 16 years but for the effective date of new section 197. Taxpayers making the election will not be permitted to treat property acquired from a qualified research entity prior to the date of enactment as having been excluded from the definition of such section 197 property.

[34] For example, assume an acquisition occurred in 1986 and the taxpayer's return for the year of the acquisition claimed amortization for no amortizable section 197 intangibles. (This could occur, for example, because the acquisition occurred at year end and no amortization would be taken for that year, or because additional time was necessary to obtain information (such as an appraisal) necessary to file a return). In its return for the year 1987, the taxpayer identified and claimed amortization for some amortizable section 197 intangibles. In such a case, the return for 1987 is the relevant return for purposes of determining the basis and method of amortization of all amortizable section 197 intangibles acquired in 1986.

The same result would occur if the taxpayer on its return for 1986 had claimed amortization for some amortizable section 197 intangibles acquired that year but claimed amortization for any other, newly identified, amortizable section 197 intangible on the return for 1987, or otherwise changed the allocation of amortized basis or the method of amortization for any such intangible.

[35] If a taxpayer makes the election, the election applies only to items for which the taxpayer claimed amortization on its relevant return (or amended return) as an asset that would be an amortizable section 197 intangible. The 25 percent basis reduction does not apply (and the election does not itself settle any dispute) with respect to any item that was reported by the taxpayer in some other manner (e.g., as basis of tangible property, or as a currently deductible expense of any kind) even though the IRS may assert that such item should be reclassified as a section 197 intangible.

However, if there has been a settlement or closing agreement prior to the date the election is made that is the referent for the 25 percent basis reduction and for the period and method of amortization under the rules of the election, then the identification and treatment of the asset in such agreement shall govern whether such asset is an amortizable section 197 intangible.

properly allocable to assets that are not "amortizable section 197 intangibles" will be treated as nonamortizable goodwill; and 75 percent of such excess will be amortized on a straight line basis over 16 years.

Election applies for purposes of all "open taxable years"

If a taxpayer makes the election, the 25 percent basis reduction will apply for all purposes of computing tax for all "open taxable year" is a taxable year for which either (1) the statute of limitations for assessment has not expired before June 16, 1992, and there has been no closing agreement, settlement agreement or final judicial determination entered before the date of the election with respect to such year which irrevocably resolves the treatment for such year of all deductions with respect to section 197 intangibles[36] or (2) as of June 16, 1992, a claim for refund is pending with the IRS,[37] or a refund suit is pending in a Federal court, that involves or may involve the proper Federal income tax treatment of section 197 intangibles. For this purpose, a claim for refund will be treated as pending on June 16, 1992, if prior to that date such a claim was properly filed by the taxpayer and denied by the IRS and the time for filing a suit for refund under section 6532 has not expired as of June 16, 1992.

In determining whether an agreement or final judicial determination irrevocably resolves the treatment for a year of all deductions with respect to section 197 intangibles, the rules described above regarding irrevocable resolutions shall apply.[38]

In determining whether a claim for refund or refund or refund suit involves or may involve the proper Federal income tax treatment of section 197 intangibles, the following rules shall apply. A refund claim or suit involves the proper tax treatment of section 197 intangibles if the taxpayer has raised such treatment in such claim or suit or if the IRS, in response to any refund claim, has raised such treatment as an issue (in each case before June 16, 1992). In addition, any refund claim or suit pending before June 16, 1992 is one that may involve the proper tax treatment of section 197 intangibles (even if such treatment has not been raised by either party before June 16, 1992) if the taxpayer has claimed amortization of any such intangible during any taxable period that would affect the determination of any offsets to such claim for refund, and the case is in a procedural posture where such offsets could still be raised. In such a situation, a taxpayer making the election will be required to apply the election to any such intangibles for purposes of determining offsets to the claim for refund.

No deficiency or interest will arise for any year for which the time for asserting a deficiency has expired. However, in the case of a year that is an open taxable year due to the existence or a refund claim or suit, as described above, the 25 percent basis reduction shall apply for purposes of determining the amount of any refund after all offsets (including such 25 percent reduction) are considered.

Furthermore, if amortization deductions claimed in a year that is not an open taxable year would affect the determination of tax for a year that is an open taxable year (for example, because of their effect on the amount of a net operating loss carryforward or carryback to such an open taxable year) then the 25 percent basis reduction and the rules for determining period and method of amortization shall be taken into account for purposes of determining the tax liability for such open taxable years.

Tax and interest must be paid with election and before January 1, 1993

Underpayments of tax that are attributable to the election will be subject to interest. The election must be made before January 1, 1993, in such manner as the Treasury Department may prescribe and will not be valid unless any additional tax due with respect to all return years together with all applicable interest is paid before January 1, 1993. The election can be revoked only with the consent of the Secretary.

Persons under common control

In the case of two or more persons that, at any time between February 14, 1992 and the date of enactment are under common control within the meaning of subparagraphs (A) and (B) of section 41(f)(1), the election is valid only if made by the common parent corporation (or an equivalent person) and then applies to all such persons. In the case of a group of corporations that filed a consolidated return for any open taxable year, the parent corporation would be required to make the election for such taxable year. A corporation that is no longer part of a consolidated group would be eligible to make the election for all open taxable years that the corporation was not a member of a group that filed a consolidated return. The Treasury Department shall prescribe rules for applying the election to persons who were under common control for some but not all years to which the election might apply.

Statute of limitations and other rules

The statute of limitations on the assessment of tax with respect to any taxable year affected by the election shall expire no sooner than two years after the election is made.

If a taxpayer makes the election, the anti-churning rules, described in more detail below, will apply to an acquisition of a section 197 intangible that is non-amortizable under current law, if such acquisition occurs after July 25, 1991, in an open taxable year which is not a return year.

Elective binding contract exception

A taxpayer may also elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill if the property is acquired pursuant to a binding written contract that was in effect on the date of enactment and at all times thereafter until the property is acquired. This election may not be made by any taxpayer that is subject to either of the elections described above that apply the provisions of the bill to property acquired before the date of enactment of the bill.

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[39] and the election may be revoked only with the consent of the Treasury Department.

Anti-churning rules

Special rules are provided by the bill to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Under these "anti-churning" rules, goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill may not be amortized as an amortizable section 197 intangible if: (1) the section 197 intangible is acquired by a taxpayer after the date of enactment of the bill; and (2) either (a) the taxpayer or a related person held or used the intangible at any time during the period that begins July 25, 1991, and that ends on the date of enactment of the bill; (b) the taxpayer acquired the intangible from a person that held such intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill. The anti-churning rules, however, do not apply to the acquisition of any intangible by a taxpayer if the basis of the intangible in the hands of the taxpayer is determined under section 1014(a) (relating to property acquired from a decedent).

For purposes of the anti-churning rules, a person is related to another person if: (1) the person bears a relationship to that person which would be specified in section 267(b)(1) or 707(b)(1) of the Code if those sections were amended by substituting 20 percent for 50 percent; or (2) the persons are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of the Code). A person is treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

In addition, in determining whether the anti-churning rules apply with respect to any increase in the basis of partnership property under section 732, 734, or 743 of the Code, the determinations are to be made at the partner level and each partner is to be treated as having owned or used the partner's proportionate share of the partnership property. Thus, for example, the anti-churning rules do not apply to any increase in the basis of partnership property that occurs upon the acquisition of an interest in a partnership that has made a section 754 election if the person acquiring the partnership interest is not related to the person selling the partnership interest.[40]

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[36] In addition, the statute of limitations for a taxable year is to be treated as expired for purposes of this election if, as of June 16, 1992, the taxpayer has agreed to extend the statute of limitations for such taxable year solely with respect to issues that do not involve the proper treatment for Federal income tax purposes of acquired intangibles that are defined as section 197 intangibles under the bill.

[37] For example, such a claim includes one for which the statute of limitations with respect to such claim is extended under section 6511(d)(2) (which may similarly be a situation in which the statute of limitations for assessment is extended pursuant to section 6501).

[38] *See, Treatment of assets for which there is an irrevocable resolution of proper Federal income tax treatment, supra.*

[39] It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

[40] In addition to these rules, it is anticipated that rules similar to the anti-churning rules under section 168 of the Code will apply in determining whether persons are related. (*See Prop. Treas. Reg.* 1.168 4 (February 16, 1991).) For example, it is anticipated that a corporation, partnership, or trust that owned or used property at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and that is longer in existence will be considered to be in existence for

These "anti-churning" rules are not to apply to any section 197 intangible that is acquired from a person with less than a 50-percent relationship to the acquirer to the extent that: (1) the seller recognizes gain on the transaction with respect to such intangible; and (2) the seller agrees, notwithstanding any other provision of the Code, to pay a tax on such gain which, when added to any other Federal income tax imposed on such gain, equals the product of such gain and the highest rate of tax imposed by section 1 or 11 of the Code, whichever is applicable. The seller is treated as satisfying the second requirement if the excess of (1) the total tax liability for the year of the transaction over (2) what its tax liability for such year would have been had the sale of the intangible (but not the remainder of the transaction) been excluded from the computation equals or exceeds the product of the gain on that asset times the relevant maximum rate.

The bill also contains a general anti-abuse rule that applies to any section 197 intangible that is acquired by a taxpayer from another person. Under this rule, a section 197 intangible may not be amortized under the provisions of the bill if the taxpayer acquired the intangible in a transaction one of the principal purposes of which is to (1) avoid the requirement that the intangible be acquired after the date of enactment of the bill or (2) avoid any of the anti-churning rules described above that are applicable to goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill.

Finally, the special rules described above that apply in the case of a transactions described in section 332, 351, 361, 731, 1031, or 1033 of the Code also apply for purposes of the effective date. Consequently, if the transferor of any section 197 property is not allowed an amortization deduction with respect to such property under this provision, then the transferee is not allowed an amortization deduction under this provision to the extent of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor. In addition, this provision is to apply to any subsequent transfers of any such property in a transaction described insection 332, 351, 361, 731, 1031, or 1033.

2. Modify special treatment of certain liquidation payments (sec. 4552 of the bill and secs. 736(b) and 751(c) of the Code)

Present Law

Payments for purchase of goodwill and accounts receivable

A current deduction generally is not allowed for a capital expenditure (i.e., an expenditure that yields benefits beyond the current taxable year). The cost of goodwill acquired in connection with the assets of a going concern normally is a capital expenditure, as is the cost of acquiring accounts receivable. The cost of acquiring goodwill is recovered only when the goodwill is disposed of, while the cost of acquiring accounts receivable is taken into account only when the receivable is disposed of or becomes worthless.

Payments made in liquidation of partnership interest

The tax treatment of a payment made in liquidation of the interest of a retiring or deceased partner depends upon whether the payment is made in exchange for the partner's interest in partnership property. A liquidating payment made in exchange for such property is treated as distribution by the partnership (sec. 736(b)). Such distribution generally results in gain to the retiring partner only to the extent that the cash distributed exceeds the partner's adjusted basis in his partnership interest.

A liquidating payment not made in exchange for the partner's interest in partnership property receives either of two possible treatments. If the amount of the payment is determined without reference to partnership income, it is treated as a guaranteed payment and is generally deductible (sec. 736(a)(2)). If the amount of payment is determined by reference to partnership income, the payment is treated as a distributive share of partnership income, thereby reducing the distributive shares of other partners (which is equivalent to a deduction) (sec. 736(a)(2)).

A special rule treats amounts paid for goodwill of the partnership (except to the extent provided in the partnership agreement) and unrealized receivables as not made in exchange for an interest in partnership property (sec. 736(b)(2)(B)). Thus, such amounts may be deductible. Unrealized receivables include unbilled amounts, accounts receivable, depreciation recapture, market discount, and certain other items (sec. 751(c)).

Sale or exchange of a partnership interest

The sale or exchange of a partnership interest results in capital gain or loss to the transferor partner, except to the extent that ordinary income or loss is recognized with respect to the partner's share of the partnership's unrealized receivables and substantially appreciated inventory items (sec. 741). It is often unclear whether a payment by a partnership to a retiring partner is made in sale or exchange of, or in liquidation of, a partnership interest.

Reasons for Change

In general

By treating a payment for unstated goodwill and unrealized receivables as a guaranteed payment or distributive share, present law in effect permits a deduction for an amount that would otherwise constitute a capital expenditure. This treatment does not measure partnership income properly. It also threatens to erode the rule requiring capitalization of such payments generally. Under present law, a prospective buyer of a business may structure the transaction so as to currently deduct such an amount by first entering into a partnership with the seller and then liquidating the seller's partnership interest.

Section 736 was intended to simplify the taxation of payments in liquidation. Instead, it has created confusion as to whether a particular payment is a payment in liquidation or is made pursuant to a sale of the partnership interest to the continuing partners. The proposal reduces this confusion by eliminating a primary difference between sales and liquidations.

The special treatment of goodwill was apparently predicated on the assumption that the adverse positions of the taxpayers will result in a stated price equal to the true value of the goodwill. That assumption is false. If the value of the preferential rate (if any) and the income deflection are not equal, the stated goodwill and total retirement payments will likely be set so as to maximize the combined tax savings for both retiring and continuing partners.

It is recognized, however, that general partners in service partnerships do not ordinarily value goodwill in liquidating partners. Accordingly, such partners may continue to receive the special rule of present law.

Unrealized receivables

When originally enacted, the term "unrealized receivables" was limited to unbilled amounts and accounts receivable. The tax deferral resulting from immediate deduction of amounts paid for these items is relatively short because payment is usually received in the near future. Such deferral is considerably longer, however, with respect to the deduction of other items now included in the expanded definition of unrealized receivables, such as depreciation recapture of business assets, which are slow to give rise to ordinary income.

Explanation of Provision

In general

The bill generally repeals the special treatment of liquidation payments made for goodwill and unrealized receivables. Thus, such payments would be treated as made in exchange for the partner's interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent. The bill does not change present law with respect to payments made to a general partner in a partnership in which capital is not a material income-producing factor.

The determination of whether capital is a material income-producing factor would generally be made under principles of present and prior law.[1] For purposes of this provision, capital is not a material income-producing factor where substantially all the gross income of the business consists of fees, commissions, or other compensation for personal services performed by an individual. The practice of his or her profession by a doctor, dentist, lawyer, architect, or accountant will not, as such, be treated as a trade or business in which capital is material income-producing factor even though the practitioner may have a substantial capital investment in professional equipment or in the physical plant constituting the office from which such individual conducts his or her practice so long as such capital investment is merely incidental to such professional practice.

In addition, the bill does not affect the deductibility of compensation paid to a retiring partner for past services.

Unrealized receivables

The bill also repeals the special treatment of payments made for unrealized receivables (other than unbilled amounts and accounts receivable) for all partners. Such amounts would be treated as made in exchange for the partner's interest in partnership property. Thus, for example, a payment for depreciation recapture would be treated as made in exchange for an interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent.

Effective Date

The provision generally applies to partners retiring or dying after February 14, 1992. The provision does not apply to any partner who retires after February 14, 1992, if a written

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purposes of determining whether the taxpayer that acquired the property is related to such corporation, partnership, or trust.

As a further example, it is anticipated that in the case of a transaction to which section 338 of the Code applies, the corporation that is treated as selling its assets will not be considered related to the corporation that is treated as purchasing the assets if at least 80 percent of the stock of the corporation that is treated as selling its assets is acquired by purchase after July 25, 1991.

[1] E.g., sections 401(c)(2) and 911(d) of the Code and old section 1348(b)(1)(A) of the Code.

contract to purchase the partner's interest in the partnership was binding on February 14, 1992, and at all times thereafter until such purchase. For this purpose, a written contract is to be considered binding only if the contract specifies the amount to be paid for the partnership interest and the timing of any such payments.

C. OTHER SIMPLIFICATION PROVISIONS

1. Close partnership taxable year with respect to decreased partner, etc. (sec. 4561 of the bill and sec. 706(c) of the Code)

Present Law

The partnership taxable year closes with respect to a partner whose entire interest is sold, exchanged, or liquidated. Such year, however, generally does not close upon the death of a partner. Thus, a decedent's entire share of items of income, gain, loss, deduction and credit for the partnership year in which death occurs is taxed to the estate or successor in interest rather than to the decedent on his or her final income tax return. See, *Estate of Hesse* v. *Commissioner*, 74 T.C. 1307, 1311 (1980).

Reasons for Change

The rule leaving open the partnership taxable year with respect to a deceased partner was adopted in 1954 to prevent the bunching of income that could occur with respect to a partnership reporting on a fiscal year other than the calendar year. Without this rule, as many as 23 months of income might have been reported on the partner's final return. Legislative changes occurring since 1954 have required most partnerships to adopt a calendar year, reducing the possibility of bunching. Consequently, income and deductions are better matched if the partnership taxable year closes upon a partner's death and partnership items are reported on the decedent's last return.

Present law closes the partnership taxable year with respect to a deceased partner only if the partner's entire interest is sold or exchanged pursuant to an agreement existing at the time of death. By closing the taxable year automatically upon death, the provision reduces the need for such agreements.

Explanation of Provision

The bill provides that the taxable year of a partnership closes with respect to a partner whose entire interest in the partnership terminates, whether by death, liquidation or otherwise.

The committee does not intend to change present law with respect to the effect upon the partnership taxable year of a transfer of a partnership interest by a debtor to the debtor's estate (under Chapters 7 or 11 of Title 11, relating to bankruptcy).

Effective Date

The provision applies to partnership taxable years beginning after December 31, 1992.

2. Treatment of built-in losses for purposes of the corporate alternative minimum tax (sec. 4562 of the bill and sec. 56(g) of the code)

Present Law

For purposes of the regular corporate tax, if at the time of an ownership change, a corporation has a net operating loss or a net unrealized built-in loss, the use of such losses in post-change periods is limited. A corporation has a net unrealized built-in loss if the aggregate adjusted bases of the assets of the corporation exceed the fair market value of the assets immediately before the change of ownership (sec. 382).

For purposes of the adjusted current earnings (ACE) component of the corporate alternative minimum tax (AMT), if a corporation with a net unrealized built-in loss undergoes an ownership change in a taxable year beginning after 1989, the adjusted basis of each asset of such corporation generally is adjusted to each asset's fair market value (sec. 56(g)(4)(G). This rule essentially eliminates, rather than limits, the use of built-in losses for ACE purposes. The net operating loss of a corporation, on the other hand, is not eliminated for AMT purposes after a change of ownership.

Reasons for Change

Present law complicates the treatment of built-in losses of a corporation after a change of ownership by providing different rules for regular and alternative minimum tax and by providing rules different than those applicable to net operating losses. The present-law alternative minimum tax rules applicable to build-in losses requires a significant amount of additional recordkeeping.

Explanation of Provision

The bill repeals the ACE rule relating to the treatment of build-in losses after a change of ownership. Thus, for ACE purposes, the treatment of built-in losses would be similar to the treatment of net operating loss carryovers (in the same way that the treatment of built-in losses is similar to the treatment of net operating losses for regular tax purposes).

Effective Date

The provision is effective for changes of ownership occurring after December 31, 1991.

3. Increase transfer to the Reforestation Trust Fund (sec. 4563 of the bill)

Present Law

The Secretary of the Treasury is required to transfer receipts from certain import duties on plywood and lumber to the Reforestation Trust Fund in maximum amounts of $30 million for each fiscal year. In addition, the Trust Fund earns interest on investments of any cash balance. Monies in Congressional appropriations for reforestation and timber stock improvement in publicly owned national forests.

Reasons for Change

The committee believes the reforestation of Federally owned land is important both to the environment and to insure a domestic timber supply for future generations. The committee wants to insure that sufficient funds are available for reforestation expenses.

Explanation of Provision

The bill increases from $30 million to $45 million the maximum amount that may be transferred to the Reforestation Trust Fund for any fiscal year. Of the additional $15 million, $14 million is allocated for qualifying expenditures in Oregon.

Effective Date

The provision is effective for the 1993 Federal fiscal year and thereafter.

4. Private foundation common investment fund (sec. 4564 of the bill and new sec. 501(n) of the Code)

Present Law

Code section 501(c)(3) requires that an organization be organized and operated exclusively for an exempt purpose in order to qualify for tax-exempt status under that section.

Section 501(f) provides that an organization is treated as organized and operated exclusively for charitable purposes if it is comprised solely of members that are educational institutions and is organized and operated solely to hold, commingle, and collectively invest (including arranging for investment services by independent contractors) in stocks and securities, the moneys contributed thereto by the members, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members.

Reasons for Change

The committee believes it is appropriate to extend to private foundations and community foundations to present-law rules that permit educational institutions to form tax-exempt cooperative service organizations to provide for collective investment of their assets.

Explanation of Provision

The bill provides that a cooperative service organization comprised solely of members that are tax-exempt private foundations and community foundations[1] shall be treated as organized and operated exclusively for charitable purposes if: (1) it has at least 20 members; (2) no one member holds (after the organization's second taxable year) more than 10 percent (by value) of interests in the organization; (3) it is organized[2] and controlled by its members, but no one member by itself controls the organization or any other member; (4) the members are permitted to dismiss any of the organization's investment advisors, if (following reasonable notice) members holding a majority of interest in the account managed by such advisor vote to remove such advisor; and (5) the organization is organized and operated solely to hold, commingle, and collectively invest (including arranging for investment services by independent contractors) in stocks and securities, the monies contributed by the members, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members.[3]

A cooperative service organization meeting the criteria of the proposed modification would be subject to the present-law excise tax provisions applicable to private foundation (e.g., sec. 4941 rules governing self-dealing arrangements), other than sections 4940 and 4942.[4] In addition, each member's alloca-

[1] For purposes of the provision, "community foundations" are a form of charitable trust or fund (which generally are established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area) as to which section 170(b)(1)(A)(vi) applies. See Treas. Reg. sec. 1.170A-9(e)(10).

The committee expects that members will present the organization with verification of their status as tax-exempt private or community foundations at the time they become members (i.e., when they make an initial investment). The committee intends that a reasonable time period (such as 60 days) should be allowed for withdrawal by a member that subsequently ceases to qualify as a tax-exempt private or community foundation.

[2] The committee intends that an organization in existence at the time of enactment will meet the requirement that it be "organized" by members if its initial board of directors or trustees are officers of private or community foundations that become members of the organization within a reasonable period after enactment of the bill.

[3] The committee intends that an organization will be deemed to be organized and operated solely to collectively invest in stocks and securities if its income is derived solely from investing in stocks and securities, and ordinary and routine investments in connection with a stock and securities portfolio.

A cooperative service organization described in the provision qualifies for tax-exempt status under section 501(c)(3) only if the other applicable requirements of that section (e.g., prohibition of private inurement, political activities, and substantial lobbying) are satisfied.

[4] In addition, the bill provides that the present-law expenditure responsibility requirements of section

ble share (whether or not distributed) of the capital gain net income and gross investment income of the organization for any taxable year of the organization is treated, for purposes of the excise tax imposed under present-law section 4940, as capital gain net income and gross investment income of the member for the taxable year of such member in which the taxable year of the organization ends.[5]

Effective Date

The provision applies to taxable years ending on or after December 31, 1992.

5. Determinations of gas produced from qualifying sources under the nonconventional fuels production credit (sec. 4565 of the bill and sec. 29 of the Code)

Present Law

Nonconventional fuels are eligible for a production credit ("the section 29 credit") equal to $3 per barrel or Btu oil barrel equivalent[1] (the credit amount generally is adjusted for inflation, except for gas produced from a tight formation). Fuels qualifying for the credit must be produced domestically from a well drilled, or a facility placed in service, before January 1, 1993. The production credit is available for qualifying fuels sold before January 1, 2003.

Qualifying fuels include (1) oil produced from shale and tar sands, (2) gas produced from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass (i.e., any organic material other than oil, natural gas, or coal (or any product thereof), and (3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when such as feedstocks. The amount of the credit is determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before 1980.

As a general rule, the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation is made in accordance with section 503 of the Natural Gas Policy Act of 1978 (the "NGPA").[2] The term "gas from a tight formation" means only gas from a tight formation which either, as of April 20, 1977, was committed or dedicated to interstate commerce (as defined in section 2(18) of the NGPA, as in effect on the date of enactment of the Omnibus Budget Reconciliation Act of 1990, or is produced from a well drilled after November 5, 1990.

Under section 503 of the NGPA,[3] if any State or Federal agency[4] make any final determination that a well produces certain "high-cost natural gas,"[5] that determination is applicable unless it is reversed by the Federal Energy Regulatory Commission (FERC) under special procedures established by the NGPA.[6]

Under the regulatory authority granted to it by the NGPA, FERC has furnished the following definitions of certain types of high-cost natural gas. Natural gas produced from geopressured brine is natural gas which is dissolved before initial production of the natural gas in subsurface brine aquifers with at least 10,000 parts of dissolved solids per million parts of water and with an initial reservoir geopressure gradient in excess of 0.465 pounds per square inch for each vertical foot of depth.[7]

Occluded natural gas produced from coal seams means naturally occurring natural gas from entrapment from the fractures, pores and bedding planes of coal seams.[8]

Natural gas produced from Devonian shale means natural gas produced from fractures, micropores and bedding planes of shales deposited during the paleozoic Devonian Period. Shales deposited during such period are defined as either (1) the gross Devonian age stratigraphic interval encountered by a well bore, at least 95 percent of which has a gamma ray index of 0.7 or greater; or (2) generally, one continuous interval within the gross Devonian age stratigraphic interval, encountered by a well bore, as long as at least 95 percent of the selected Devonian shale interval has a gamma ray index of 0.7 or greater.[9] When measuring the Devonian age stratigraphic interval, the gamma ray index at any point is calculated by dividing the gamma ray log value at that point by the gamma log value at the shale base line established over the entire Devonian age interval penetrated by the well bore.

In general, guidelines for making a determination that a formation is a tight formation are as follows: (1) The estimated average *in situ* gas permeability, throughout the pay section, is expected to be 0.1 millidarcy or less; (2) the stabilized production rate, against atmospheric pressure, of wells completed for production in the formation, without stimulation, is not expected to exceed the production rate set forth by FERC in regulations;[10] and (3) no well drilled into the recommended tight formation is expected to produce, without stimulation, more than 5 barrels of crude oil per day.[11] The FERC regulations establishing a definition of tight formation also set forth determination and review requirements similar to those provided by the NGPA for high-cost natural gas.

Any Federal or State agency that makes a determination that a formation is a tight formation or that a well produces high-cost natural gas is required to provide timely notice in writing of such determination to FERC.[12] The notice must include such substantiation and be in such a manner as FERC may, by ruling, require.

The NGPA provides that FERC will reverse any final State or Federal agency determination that a formation is a tight formation or that a well produces high-cost natural gas if (1) FERC finds that such determination is not supported by substantial evidence in the record upon which such determination was made; and (2) the preliminary finding and required notice thereof is made within 45 days after the date on which FERC received notice of the determination by the State or Federal agency and the final finding is made within 120 days after the date of the preliminary finding.[13] If (1) FERC finds that a State or Federal agency determination is not consistent with information contained in FERC's public records, and which is not part of the record upon which the State or Federal agency's determination was made, and (2) the preliminary finding by FERC and required notice thereof is made within 45 days after the date on which FERC received notice of the determination and the final finding is made within 120 days after the date of the preliminary finding, FERC may remand the matter to the State or Federal agency for consideration of such information.[14] If the agency, after consideration of the information transmitted to it by FERC, affirms its previous determination, such determination, as so affirmed, is subject to additional review by FERC. Such findings and remands by FERC may be subject to judicial review.[15]

In general, any final determination by a State or Federal agency (or by FERC) that a formation is a tight formation or that a well produces high-cost natural gas which is no longer subject to FERC or judicial review is thereafter binding with respect to such natural gas.[16]

In 1989, the Natural Gas Wellhead Decontrol Act[17] was enacted. That Act repealed Title I of the NGPA, effective on January 1, 1993. It also repealed FERC's determination review responsibility under section 503 of the NGPA. The legislative history to the Natural Gas Wellhead Decontrol Act stated that the Senate Committee on Energy and Natural Resources did not intend, by repealing sections of the NGPA referenced in section 29 of the Internal Revenue Code, to reflect an adverse judgment as to the merits of the tax credits for any categories of natural gas production that might be affected by such action.[18] In view of this indication that Congress did not intend the 1989 legislation to limit the availability of the section 29 credit, FERC initially announced that it would continue to process well determinations until January 1, 1993, in order to allow producers to obtain tax credits that are dependent upon such determinations even if the gas has been otherwise decontrolled.[19] FERC has subsequently announced that it will continue to process well determinations received by June 30, 1993 if they are filed with jurisdictional agencies by December 31, 1992.[20]

Reasons for Change

The committee understands that the Internal Revenue Code requires certain formations and wells to be determined as qualifying for the section 29 credit under relevant provisions of the Natural Gas Policy Act of 1978. The committee further understands that based on the repeal of that statute, effective January 1, 1993, and based on pub-

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4945(d)(4)(B) will not apply to grants made by private foundations to the cooperative service organization and that such grants will be deemed to be qualifying distributions for purposes of 4942.

[5] Each member's allocable share of the organization's expenses are passed through to the member for purposes of determining the deductions allowed by section 4940(c)(3) in computing the member's net investment income.

[1] A barrel-of-oil equivalent generally means that amount of the qualifying fuels which has a Btu content of 5.8 million.

[2] P.L. 95-621, Nov. 9, 1978.

[3] 15 U.S.C. sec. 3413 (1988).

[4] Under the NGPA, a State or Federal agency having regulatory jurisdiction with respect to the production of natural gas is authorized to make determinations for qualification under certain categories of natural gas. Such an agency, however, may waive its authority to make such determinations by entering into an agreement with FERC allowing FERC to be the determination-making body. (15 U.S.C. 3413(c) (1988).)

[5] Under the NGPA, high-cost natural gas includes gas produced from geopressured brine, coal seams, or Devonian shale. In addition, the NGPA grants FERC the authority to treat other types of natural gas as high-cost natural gas if the gas is produced under such other conditions that FERC determines to present extraordinary risks or costs. Under this authority, FERC treats gas produced from a tight formation as high-cost natural gas. (15 U.S.C. sec. 3317(c) (1988).)

[6] 15 U.S.C. sec. 3413(a)(1) (1988).

[7] 18 C.F.R. sec. 272.103(c).

[8] 18 C.F.R. sec. 272.103(d).

[9] 18 C.F.R. sec. 272.103(e).

[10] *See* table in 18 C.F.R. sec. 271.703(c)(1)(B).

[11] 18 C.F.R. sec. 271.703(c).

[12] 15 U.S.C. sec. 3413(a)(2) (1988).

[13] 15 U.S.C. sec. 3413(b)(1) (1988).

[14] 15 U.S.C. sec. 3413(b)(2) (1988).

[15] 15 U.S.C. sec. 3413(b)(4) (1988).

[16] 15 U.S.C. sec. 3413(d) (1988).

[17] P.L. 101-60, July 26, 1989.

[18] S. Rep. No. 101-39, 101st Cong., 1st Sess. 9 (1989).

[19] F.E.R.C. Order No. 523, 55 Fed. Reg. 17425, April 25, 1990.

[20] F.E.R.C. Order No. 539, 57 Fed. Reg. 13009, April 15, 1992.

lished statements by the Federal Energy Regulatory Commission, it may be that certain wells, the production from which should qualify for the credit, will not be subject to FERC determination. In order to ensure that qualifying gas production from such wells in fact will receive the credit, the committee believes that it is necessary to continue the well and formation determination process for periods after FERC discontinues its role in this process.

Because the sole purpose for well and formation determinations following the repeal of Title I of the NGPA will be for section 29 tax credit qualification, the committee believes it is appropriate to mandate that the Treasury Department be the determination-making body for periods for which FERC ceases making such determinations. Moreover, the committee believes it appropriate to require Treasury to make determinations using guidelines substantially consistent with those presently employed by FERC.

Explanation of Provisions

With respect to determinations required under the Internal Revenue Code of whether gas is produced from geopressured brine, Devonian shale, coal seams, or from a tight formation, in the event that such a determination is not made by the Federal Energy Regulatory Commission in accordance with section 503 of the Natural Gas Policy Act of 1978 due to the expiration of that statute, the bill requires the Secretary of Treasury to make such determinations. For this purpose, the bill mandates that any such determination by the Treasury Department be based on the guidelines for making determinations set forth in the Natural Gas Policy Act of 1978 (and in regulations thereunder) prior to its repeal.

In addition, the bill clarifies that for purposes of the section 29 credit, the definitions of gas produced from geopressured brine, Devonian shale, coals seams, or from a tight formation are as established by the Federal Energy Regulatory Commission under the Natural Gas Policy Act of 1978 prior to repeal of provisions of that statute relating to such definitions.

Effective Date

With respect to well and formation determinations required to be made by the Treasury Department, the bill is effective for determinations with respect to which no such determination is made by the Federal Energy Regulatory Commission as a result of the repeal of relevant provisions of the Natural Gas Policy Act of 1978.

Subtitle F—Estate and Gift Tax Provisions

1. Waiver of right of recovery for certain marital deduction property (sec. 4601 of the bill and secs. 2207A and 2207B of the Code)

Present Law

For estate and gift tax purposes, a marital deduction is allowed for qualified terminable interest property (QTIP). Such property generally is included in the surviving spouse's gross estate. The surviving spouse's estate is entitled to recover the portion of the estate tax attributable to such inclusion from the person receiving the property, unless the spouse directs otherwise by will (sec. 2207A). For this purpose, a will provision specifying that all taxes be paid by the estate is presently sufficient to waive the right of recovery.

The gross estate includes the value of previously transferred property in which the decedent retains enjoyment or the right to income (sec. 2036). The estate is entitled to recover from the person receiving the property a portion of the estate tax attributable to the inclusion (sec. 2207B). This right may be waived only by a provision in the will (or revocable trust) specifically referring to section 2207B.

Reasons for Change

The committee understands that persons utilizing standard testamentary language often inadvertently waive the right of recovery with respect to QTIP. Similarly, the committee believes that persons waiving a right to contribution are unlikely to refer to the Code section granting the right. Accordingly, the committee believes that allowing the right of recovery (or right to contribution) to be waived only by specific reference to the right of recovery (or right to contribution) would simplify the drafting of wills by better conforming with the testator's likely intent.

Explanation of Provision

The bill provides that the right of recovery with respect to QTIP is waived to the extent that language in the decedent's will or revocable trust specifically so indicates. Thus, a general provision specifying that all taxes be paid by the estate is no longer sufficient to waive the right of recovery. The bill also provides that the right of contribution for property over which the decedent retained enjoyment or the right to income is waived by a specific indication, but specific reference to section 2207B would no longer be required.

Effective Date

The provision applies to decedents dying after the date of enactment.

2. Inclusion in gross estate of certain gifts made within three years of death (sec. 4602 of the bill and secs. 2035 and 2038 of the Code)

Present Law

The first $10,000 of gifts of present interests to each donee during any one calendar year are excluded from Federal gift tax.

The value of the gross estate includes the value of any previously transferred property if the decedent retained the power to revoke the transfer (sec. 2038). The gross estate also includes the value of any property with respect to which such power is relinquished during the three years before death (sec. 2035). This rule has been interpreted to include in the gross estate certain transfers made from a revocable trust within three years of death.[1] Such inclusion subjects gifts that would otherwise qualify under the annual $10,000 exclusion to estate tax.

Reasons for Change

The inclusion of certain property transferred during the three years before death is directed at transfers that would otherwise reduce the amount subject to estate tax by more than the amount subject to gift tax, disregarding appreciation occurring between the times of gift and death. Because all amounts transferred from a revocable trust are subject to the gift tax, the committee believes that inclusion of such amounts is unnecessary where the transferor has retained no power over the property transferred out of the trust. The committee understands that repeal of such inclusion eliminates a principal tax disadvantage of funded revocable trusts, which are generally used for nontax purposes.

[1] See, e.g., *Jalkut Estate v. Commissioner*, 96 T.C. 675 (1991) (transfers from revocable trust to permissible beneficiaries of the trust includable in the grantor's gross estate); LTR 9117003 (same).

Explanation of Provision

The bill provides that a transfer from a trust over which the grantor held the power to revoke would be treated as if made directly by the grantor. Thus, an annual exclusion gift from such trust is not included in the gross estate. It is intended that no inference be drawn from the provision with respect to the treatment of transfers from revocable trusts under present law.

The bill also revises section 2035 to improve its clarity.

Effective Date

The provision applies to dependents dying after the date of enactment.

3. Definition of qualified terminable interest property (sec. 4603 of the bill and secs. 2044, 2056(b)(7), and 2523(f) of the Code)

Present Law

A marital deduction is allowed for qualified terminable interest property (QTIP). Property is QTIP only if the surviving spouse has a qualifying income interest for life (e.g., the spouse is entitled to all of the income from the property, payable at least annually). QTIP generally is includible in the surviving spouse's gross estate.

The United States Tax Court has held that, in order to satisfy the QTIP requirements, the income accumulating between the last distribution date and the date of the surviving spouse's death (the "accumulated income") must be paid to the spouse's estate or be subject to a power of appointment held by the spouse. *See Estate of Howard v. Commissioner*, 91 T.C. 329, 338 (1988), *rev'd*, 910 F.2d 633 (9th Cir. 1990). In contrast, proposed Treasury regulations presently provide that an income interest may constitute a qualifying income interest for life even if the accumulated income is not required to be distributed to the surviving spouse or the surviving spouse's estate. *See* Prop. Treas. Reg. secs. 20.2056(b)-7(c)(1), 25.2523(f)-1(b).

Reasons for Change

The committee believes that an income interest may constitute a qualifying income interest for life even if the accumulated income is not required to be distributed to the surviving spouse or the surviving spouse's estate. Moreover, the committee wishes to alleviate the uncertainty caused by the Tax Court opinion in *Estate of Howard* as to when a trust qualifies for the marital deduction. This uncertainty makes planning difficult and necessitates closing agreements designed to prevent the whipsaw that would occur if a deduction is allowed for property that is not subsequently included in the spouse's estate.

Explanation of Provision

Under the bill, an income interest does not fail to be a qualified income interest for life solely because the accumulated income is not required to be distributed to the surviving spouse. Such income is includible in the surviving spouse's gross estate.

It is intended that no inference be drawn from the provision with respect to the definition of a qualified income interest for life under present law.

Effective Date

The provision applies to decedents dying, and gifts made, after date of enactment. However, the bill does not include in the surviving spouse's gross estate property transferred before the date of enactment for which no marital deduction was claimed.

4. Inclusion of property qualifying for the marital deduction in the gross estate (sec. 4604 of the bill and secs. 2056(b) and 2523 of the Code)

Present Law

A marital deduction against the estate and gift tax generally is permitted for the value of property passing between spouses. No marital deduction is permitted, however, if, upon termination of the spouse's interest, possession or enjoyment of the property passes to another person (the "terminable interest rule"). Certain exceptions to this rule may apply if the spouse receives a general power of appointment over, or an income interest in, a "specific portion" of property (sec. 2056(b) (5), (6), (7)). The spouse is subject to transfer tax on property over which he or she holds a general power of appointment.

A Treasury regulation defines a "specific portion" to be a fractional or percentage share of a property interest (Treas. Reg. sec. 20.2056(b)-5(c)). Finding this regulation invalid, courts have held that the term "specific portion" includes a fixed dollar amount. *See Northeastern Pennsylvania National Bank & Trust Co. v. United States*, 387 U.S. 213 (1967); *Estate of Alexander v. Commissioner*, 82 T.C. 34 (1984), *aff'd*, No. 8401600 (4th Cir. April 3, 1985). Under the court holdings, appreciation in certain marital deduction property may be includible in neither spouse's estate.

Reasons for Change

The marital deduction postpones the imposition of the estate or gift tax until the property is transferred outside the marital unit. The exceptions to the terminable interest rule insure that the value of all property qualifying for the marital deduction is subject to transfer tax in the hands of the recipient spouse. By invalidating the Treasury regulation having this effect, the court holdings create uncertainty. Reversal of the holdings makes the law more certain by unequivocally implementing the policy underlying the marital deduction.

Explanation of Provision

The bill provides that, for purposes of the marital deduction, a "specific portion" only includes a portion determined on a fractional or percentage basis. Thus, a trust does not qualify under the exceptions to the terminable interest rule unless the required income interest and general power of appointment are expressed as a fraction or a percentage of the property.

It is intended that no inference be drawn from the provision with respect to definition of "specific portion" under present law. The bill does not generally affect the marital deduction allowed for a pecuniary formula marital deduction bequest. *See, e.g.*, Rev. Rul. 64-19, 1964-1 C.B. 682.

Effective Date

The provision generally applies to gifts made, and decedents dying, after date of enactment. The provision does not apply to a transfer under a will or revocable trust executed before the date of enactment if either (1) on that date the decedent was under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of death, or (2) the decedent dies within three years after the date of enactment. The provision applies, however, if the will or trust is amended after the date of enactment in any respect that increases the amount of the transfer qualifying for the marital deduction or alters the terms by which the interest passes.

5. Requirements for qualified domestic trust (sec. 4605 of the bill and sec. 2056A of the Code)

Present Law

A deduction generally is allowed for Federal estate tax purposes for the value of property passing to a spouse. The Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") denied the marital deduction for property passing to a noncitizen spouse outside a qualified domestic trust ("QDT"). An estate tax is imposed on corpus distributions from a QDT.

TAMRA defined a QDT as a trust that, among other things, required all trustees be U.S. citizens or domestic corporations. This provision was modified in the Omnibus Budget Reconciliation Acts of 1989 and 1990 to require that at least one trustee be a U.S. citizen or domestic corporation and that no corpus distribution be made unless such trustee has the right to withhold any estate tax imposed on the distribution (the "withholding requirement").

Reasons for Change

Wills drafted under the TAMRA rules must be revised to conform with the withholding requirement, even though both the TAMRA rule and its successor ensure that a U.S. trustee is personally liable for the estate tax on a QDT. Reinstatement of the TAMRA rule for wills drafted in reliance upon it reduces the number of will revisions necessary to comply with statutory changes, thereby simplifying estate planning.

Explanation of Provision

A trust created before the enactment of the Omnibus Budget Reconciliation Act of 1990 is treated as satisfying the withholding requirement if its governing instrument requires that all trustees be U.S. citizens or domestic corporations.

Effective Date

The provision applies as if included in the Omnibus Budget Reconciliation Act of 1990

6. Election of special use valuation of farm property for estate tax purposes (sec. 4606 of the bill and sec. 2032A of the Code)

Present Law

For estate tax purposes, an executor may elect to value certain real property used in farming or other closely held business operations at its current use value rather than its highest and best use (sec. 2032A). A written agreement signed by each person with an interest in the property must be filed with the election.

Treasury regulations require that a notice of election and certain information be filed with the Federal estate tax return (Treas. Reg. sec. 20.2032A-8). The administrative policy of the Treasury Department is to disallow current use valuation elections unless the required information is supplied.

Under procedures prescribed by the Secretary of the Treasury, an executor who makes the election and provides substantially all of the information requested on the estate tax return but fails to provide all required information may supply the missing information within a reasonable period of time (not exceeding 90 days) after notification by the Secretary of the Treasury.

Reasons for Change

The committee understands that executors commonly fail to include with the filed estate tax return a recapture agreement signed by all persons with an interest in the property or all information required by Treasury regulations. The committee believes that allowing such signatures or information to be supplied later is consistent with the legislative intent of section 2032A and eases return filing.

Explanation of Provision

The bill extends the procedures allowing subsequent submission of information to any executor who makes the election and submits the recapture agreement, without regard to compliance with the Treasury regulations. Thus, the bill allows the current use valuation election if the executor supplies the required information within a reasonable period of time (not exceeding 90 days) after notification by the IRS. During that time period, the bill also allows addition of signatures to a previously filed agreement.

Effective Date

The provision applies to decedents dying after the date of enactment.

7. Income taxation of accumulation trusts (sec. 4607 of the bill and secs. 644 and 665-669 of the Code)

Present Law

In general

A nongrantor trust is treated as a separate taxpayer for Federal income tax purposes. Such trust is generally treated as a conduit with respect to amounts distributed currently and taxed as an individual with respect to undistributed income. The conduit treatment is achieved by allowing the trust a deduction for amounts distributed to beneficiaries during the taxable year to the extent of distributable net income and by including the distributions in the beneficiaries' income.

Distributions of accumulated income

A distribution of previously accumulated income is taxed under the "throwback rules", which provide that beneficiaries are taxed on distributions of previously accumulated income from trusts in substantially the same manner as if the income had been distributed when earned or accrued.

Distributions of appreciated property

If property is sold within two years of its contribution to a trust, the gain that would have been recognized had the contributor sold the property is taxed at the contributor's marginal tax rates (sec. 644). In effect, section 644 treats such gains as if the contributor had realized the gain and then transferred the net after-tax proceeds from the sale to the trust as corpus.

Treatment of multiple trusts

Under section 643(f), two or more trusts are treated as one trust if (1) the trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and (2) a principal purpose for the existence of the trusts is the avoidance of Federal income tax. For trusts that were irrevocable as of March 1, 1984, section 643(f) applies only to subsequent contributions to corpus.

Reasons for Change

The throwback rules and section 644 are designed to eliminate the potential tax reduction arising from taxation at the trust, rather than the beneficiary, level. When those provisions were enacted, a taxpayer could reduce substantially overall tax liability by transferring property to one or more trusts, where it would be taxed at lower income tax brackets. In 1984, Congress curtailed the tax avoidance use of multiple trusts, and in 1986, substantially decreased the amount of income taxed at the lower trust income tax brackets. Accordingly, the committee determined that the insignificant

potential tax reduction available through the transfer of property to trust no longer warranted the complex computations required by the throwback rules and section 644.

Explanation of Provision

The bill exempts amounts distributed by domestic trusts after December 31, 1992, from the "throwback rules." It also provides that precontribution gain on property sold by a domestic trust is no longer taxed at the contributor's marginal tax rates. The provision does not apply to a trust created before March 1, 1984, unless the taxpayer establishes that the trust would not have been aggregated under the standard contained in section 643(f).

Effective Date

The change in the throwback rules applies to taxable years beginning after December 31, 1992. The modification in section 644 applies to sales or exchanges after December 31, 1992.

8. Estate tax recapture from cash leases of specially valued property (sec. 4608 of the bill and sec. 2032A of the Code)

Present Law

A Federal estate tax is imposed on the value of property passing at death. Generally, the value of property is its fair market value, i.e., the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

Under section 2032A of the Code, the executor may elect to value certain "qualified real property" used in farming or another qualifying trade or business at its current use value rather than its highest and best use. If, after the special use valuation election is made, the heir who acquired the real property ceases to use it in its qualified use within 10 years (15 years for individuals dying before 1982) of the decedent's death, an additional estate tax is imposed in order to "recapture" the benefit of the special use valuation.

Some courts have held that cash rental of specially valued property after the death of the decedent is not a qualified use and, therefore, results in the imposition of the additional estate tax under section 2032A(c). *Martin* v. *Commissioner*, 783 F.2d 81 (7th Cir. 1986) (cash lease to unrelated party); *Williamson* v. *Commissioner*, 93 T.C. 242 (1989) (cash lease to family member).

Reasons for Change

The purpose of special use valuation under section 2032A was to promote the continuation of family farms and other closely-held family businesses. The committee believes that a cash lease by a qualified heir to a "member of the family" (as defined in section 2032A(e)(1)) is consistent with this purpose, provided the "family member" continues to operate the farm or closely held business. Accordingly, the committee wishes to clarify that a cash lease by a qualified heir to a "member of the family" (who continues to operate the farm or closely held business) does not trigger the additional estate tax under section 2032A(c).

Explanation of Provision

The bill provides that the cash lease of specially valued real property by a qualified heir to a "member of the family" (who continues to operate the farm or closely held business) does not cause the qualified use of such property to cease for purposes of imposing the additional estate tax under section 2032A(c).

Effective Date

The provision is effective for cash rentals after December 31, 1976.

9. Interest rate on intra-familial loans made in connection with land sales (sec. 4609 of the bill and secs. 483 and 7872 of the Code)

Present Law

Treatment of Gift Loans

In 1984, the U.S. Supreme Court held that interest-free demand loans made to a child by his parents constituted a transfer of property by gift and was subject to the gift tax. The amount of the gift was the reasonable value of the use of the money lent without charge, rather than the principal amount of the loan. See *Dickman* v. *Commissioner*, 465 U.S. 330 (1984).

Congress codified the *Dickman* holding in the Deficit Reduction Act of 1984 in section 7872, effective generally for term loans made after June 6, 1984, and demand loans outstanding after June 6, 1984. Under section 7872, a below-market interest rate loan (a "below-market loan") is recharacterized as an arm's length transaction in which the lender (i) made a loan to the borrower in exchange for a note requiring the payment of interest at the "applicable Federal rate" (as determined under section 1274(d)), and (ii) made a payment to the borrower equal to the amount of the interest "foregone" by the lender.

A demand loan is treated as a below-market loan if interest is payable at a rate below the applicable Federal rate. A term loan is a below-market loan if the amount of the loan exceeds the present value of all payments due under the loan (determined as of the date of the loan by using a discount rate equal to the applicable Federal rate). For this purpose, a demand loan is any loan which is payable in full at any time upon the demand of the lender and a term loan is any loan which is not a demand loan. With respect to gift loans that are term loans, however, the loan will be treated as a demand loan for income tax purposes and as a term loan for gift tax purposes (sec. 7872(d)(2)).

Land Transfers Between Related Parties

Under section 483 of the Code, a deferred payment contract will generally have unstated interest unless the interest rate provided in the debt instrument is at least equal to the applicable Federal rate. In determining the amount of unstated interest under section 483, a special six percent rate may be substituted for the applicable Federal rate with respect to certain land sales between family members (i.e., "qualified sales") to the extent that the sales price for such sale does not exceed $500,000 (sec. 483(e). This special safe harbor rate does not apply, however, where any party to the sale is a nonresident alien individual.

Two United States Courts of Appeal have recently divided as to whether the special six percent "safe-harbor" rate under section 483(e) could be applied in valuing an installment sales contract for estate and gift tax purposes. See *Ballard* v. *Commissioner*, 854 F.2d 135 (7th Cir. 1988) (holding that six percent rate under section 483(e) could be used for gift tax purposes); *Krabbenhoft* v. *Commissioner*, 939 F.2d 529 (8th Cir. 1991) (holding that section 483(e) did not apply for gift tax purposes).

Reasons for Change

The committee understands that the application of section 483(e) for transfer tax purposes is presently ambiguous. The committee therefore wishes to clarify that the special safe harbor rate under section 483(e) is applicable for transfer tax purposes.

Explanation of Provision

The bill amends section 7872 to provide that the special six percent safe harbor rate under section 483(e) applies for transfer tax purposes to loans made in connection with qualified sales. Accordingly, to the extent that the sales price for a qualified sale to a U.S. resident does not exceed $500,000, the applicable Federal rate for determining the total foregone interest or whether a loan is a below market loan shall not exceed 6 percent, compounded semiannually. It is not intended that any inference be drawn from the bill with respect to the application of section 483(e) under present law.

Effective Date

The provision applies with respect to interest accruing after July 31, 1993.

SUBTITLE G—EXCISE TAX SIMPLIFICATION

A. MOTOR FUEL EXCISE TAX PROVISIONS

1. Consolidate provisions imposing diesel and aviation fuel excise taxes (sec. 4701 of the bill and secs. 4041 and 4091 of the Code)

Present Law

Code section 4091 imposes a tax on the sale of diesel and aviation fuel by a "producer." The term producer generally includes refiners, compounders, blenders, and wholesalers who are registered with the Internal Revenue Service. The term also includes persons to whom diesel or aviation fuel has been sold tax-free.

As a backup, section 4041 imposes a tax on certain sales or uses of diesel and aviation fuel if a taxable sale of such fuel has not occurred under section 4091.

Reasons for Change

Consolidating the diesel and aviation tax rules into one section of the Code will make the rules easier to find and understand.

Explanation of Provision

The bill combines the diesel and aviation fuel tax provisions currently divided between Code sections 4041 and 4091 into a revised section 4091. The use of diesel and aviation fuel in a taxable use by producers will be taxed under section 4091, and the definition of producer is clarified to include purchasers in tax-reduced sales.

The bill also simplifies the Code by eliminating two unnecessary provisions, sections 4041(b)(1)(B) and (j) of the Code. These provisions are redundant.

Effective Date

The provision is effective for sales or uses on or after January 1, 1993.

2. Permit refund of tax to taxpayer for diesel and aviation fuel resold to certain exempt purchasers (sec. 4702(a) of the bill and sec. 6416(b) of the Code)

Present Law

As a general matter, purchasers who use tax-paid fuels for an exempt use are entitled to a refund or credit. Purchasers of tax-paid fuels generally are not permitted a refund or credit if they resell the fuels to another person who subsequently uses them in an exempt use.

However, persons who buy and then resell (a) fuel subject to the special motor fuel or gasoline taxes and (b) certain other articles are permitted a refund or credit (in place of the ultimate users claiming the credit or refund) if they resell the fuel or article for use in the following exempt uses: (1) export, (2) supplies for aircraft or vessels, (3) use by a State or local government, or (4) use by a nonprofit educational organization for its exclusive use.

Reasons for Change

Diesel and aviation fuel sales are not subject to the special refund or credit proce-

dures. The general rules require users of such fuels for exempt purposes to bear the burden of filing for the refund or credit themselves and, therefore, makes such purchases more difficult compared to purchases of gasoline and special motor fuels.

Explanation of Provision

The bill allows a refund or credit to sellers of diesel and aviation fuel who purchase the fuels tax-paid and resell the fuels without payment of tax for any of the exempt uses described above.

Effective Date

The provision is effective for sales on or after January 1, 1993.

3. Consolidate refund provisions for fuel excise taxes (sec. 4702(b) of the bill and secs. 6420, 6421, and 6427 of the Code)

Present Law

As a general matter, purchasers who use fuels for an exempt use are entitled to a refund if the fuels have been purchased tax-paid. The refund provisions for the fuels excise taxes are found in several sections of the Code.

In general, a purchaser entitled to a refund may file a quarterly refund claim for any of the first three quarters of the purchaser's tax year, if the claim exceeds a threshold dollar amount (with the lowest threshold being $750). The threshold amounts differ for different fuels and different exempt uses. A purchaser cannot file a quarterly claim for refund for its fourth quarter, but must file the claim as a credit on that year's income tax return.

There is an expedited procedure for gasohol blenders claiming a refund of part of the excise tax included in the price of the gasoline used for blending into gasohol.

Finally, only an income tax credit, and not a refund, may be claimed for excise taxes on gasoline and special motor fuel used on a farm for farming purposes.

Reasons for Change

Consolidating the credit and refund provisions for fuel excise taxes into one section in the Code will make these provisions easier to find and understand. Standardizing the refund procedures will reduce confusion and allow taxpayers to obtain refunds more quickly.

Explanation of Provision

The bill consolidates the user credit and refund provisions for the fuels excise taxes into one section of the Code. The bill also combines the three refund procedures for fuels taxes into a uniform refund procedure. The new uniform refund procedure permits an exempt user to aggregate its refund claims for all fuels taxes and file for a refund in any calendar quarter in which the amount of the aggregate claim exceeds $750. The uniform refund procedure also permits such a user to file for a refund for its fourth quarter rather than apply for a credit.

The special expedited procedure for gasohol blenders is unchanged.

Effective Date

The provision is effective for sales on or after January 1, 1993.

4. Repeal waiver requirement for fuel tax refunds for cropdusters and other fertilizer applicators (sec. 4702(c) of the bill and sec. 6420 of the Code)

Present Law

In general, farmers who use gasoline and aviation fuel on a farm are entitled to a refund of the tax that has been paid on that fuel. Cropdusters and other fertilizer applicators that use gasoline and aviation fuel on a farm are entitled to a refund of the tax paid on that fuel in lieu of the farmer, but only if the owner or operator of the farm waives its right to a refund for such fuel.

Reasons for Change

Eliminating the waiver will reduce the paperwork burden of a taxpayer seeking a refund.

Explanation of Provision

The bill eliminates the waiver requirement for fuels tax refunds for cropdusters and other fertilizer applicators.

Effective Date

The provision is effective for fuels purchased on or after January 1, 1993.

5. Authorize exceptions from information reporting for certain sales of diesel and aviation fuel (sec. 4703 of the bill and sec. 4093(c)(4) of the Code)

Present Law

Certain producers and importers and purchasers are required to file information returns for reduced-tax sales of diesel and aviation fuel.

Reasons for Change

Allowing the Internal Revenue Service to exempt certain classes of taxpayers from the mandatory information return requirement will simplify its administration of the registration requirements and eliminate unnecessary paperwork for taxpayers.

Explanation of Provision

The bill permits the IRS by regulation to provide exceptions to the mandatory information return requirement for certain sales of diesel and aviation fuel.

Effective Date

The provision applies to sales on or after January 1, 1993.

B. PROVISIONS RELATING TO DISTILLED SPIRITS, WINES, AND BEER (SECS. 4711–4721 OF THE BILL, SECS. 5008(C) 5041, 5053, 5055, 5115, 5175(C), 5207(C), 5222(B), 5384(B) OF THE CODE, AND NEW SEC. 5418 OF THE CODE)

Present Law

Return of imported bottled distilled spirits

Present law provides that when tax-paid distilled spirits which have been withdrawn from bonded premises of a distilled spirits plant are returned for destruction or redistilling, the excise taxes are refunded (sec. 5008(c)). This provision does not apply to imported bottled distilled spirits, since they are withdrawn from customs custody and not from bonded premises.

Bond for exported distilled spirits

Bond generally must be furnished to the Department of the Treasury when distilled spirits are removed from bonded premises for exportation without payment of tax. These bonds are cancelled or credited when evidence is submitted to the Department of the Treasury that the distilled spirits have been exported (sec. 5175(c)).

Distilled spirits plant records

Distilled spirits plant proprietors are required to maintain records of their production, storage, denaturation, and other processing activities on the premises where the operations covered by the records are carried on (sec. 5207(c)).

Transfers from breweries to distilled spirits plants

Under present law, beer may be transferred without payment of tax from a brewery to a distilled spirits plant to be used in the production of distilled spirits, but only if the brewery is contiguous to the distilled spirits plant (sec. 5222(b)).

Posting of sign by wholesale liquor dealers

Wholesale liquor dealers (i.e., dealers, other than wholesale dealers in beer alone, who sell distilled spirits, wines, or beer to other persons who re-sell such products) are required to post a sign conspicuously on the outside of their place of business indicating that they are wholesale liquor dealers (sec. 5115).

Refund of tax for wine returned to bond

Under present law, when unmerchantable wine is returned to bonded production premises, tax that has been paid is returned or credited to the proprietor of the bonded wine cellar to which the wine is delivered (sec. 5044). In contrast, when beer is returned to a brewery, tax that has been paid is returned or credited, regardless of whether the beer is unmerchantable (sec. 5056(a)).

Use of ameliorating material in certain wines

The Code contains rules governing the extent to which ameliorating material (e.g., sugar) may be added to wines made from high acid fruits and the product still be labelled as a standard, natural wine. In general, ameliorating material may not exceed 35 percent of the volume of juice and ameliorating material combined (sec. 5383(b)(1)). However, wines made exclusively from loganberries, currants, or gooseberries are permitted a volume of ameliorating material of up to 60 percent (sec. 5384(b)(2)(D)).

Domestically produced beer for use by foreign embassies, etc.

Under present law, domestically produced distilled spirits and wine may be removed from bond, without payment of tax, for transfer to any customs bonded warehouse for storage pending removal for the official or family use of representatives of foreign governments or public international organizations (secs. 5066 and 5362(c)). A similar rule also applies to imported distilled spirits, wine, and beer.) No such provision exists under present law for domestically produced beer.

Withdrawal of beer for destruction

Present law does not specifically permit beer to be removed from a brewery for destruction without payment of tax.

Records of exportation of beer

Present law provides that a brewer is allowed a refund of tax paid on exported beer upon submission to Department of the Treasury of certain records indicating that the beer has been exported (sec. 5055).

Transfer to brewery of beer imported in bulk

Imported beer brought into the United States in bulk containers may not be transferred from customs custody to brewery premises without payment of tax. Under certain circumstances, distilled spirits imported into the United States in bulk containers may be transferred from customs custody to bonded premises of a distilled spirits plant without payment of tax (sec. 5232).

Reasons for Change

In addition to imposing taxes, the Internal Revenue Code regulates many aspects of the alcoholic beverage industry. These regulations date in many cases from the Prohibition Era or earlier. In 1980, the method of collecting excise taxes on alcoholic beverages was changed from a system under which Treasury Department inspectors regularly were present at production facilities to a bonded premises system, which more close-

ly tracks the systems used in connection with other Federal excise taxes. Many of the recordkeeping requirements and other regulatory measures imposed in connection with these taxes have not been modified to conform to these collection system changes. In addition, modification of statutory provisions is warranted in view of advances in technology used in the alcoholic beverage industry and environmental protection concerns.

Explanation of Provisions

Return of imported bottled distilled spirits

The procedures for refunds of tax collected on imported bottled distilled spirits returned to bonded premises are conformed to the rules of domestically produced and imported bulk distilled spirits. Thus, refunds are available for all distilled spirits on their return to a bonded distilled spirits plant.

Bond for exported distilled spirits

For purposes of cancelling or crediting bonds furnished when distilled spirits are removed from bonded premises for exportation, the Department of the Treasury is authorized to permit records of exportation to be maintained by the exporter, rather than requiring submission of proof of exportation to Treasury in all cases.

Distilled spirits plant records

Distilled spirits plant proprietors are permitted to maintain records of their activities at locations other than the premises where the operations covered by the records are carried on (e.g., corporate headquarters), provided that the records are available for inspection by the Treasury Department during business hours.

Transfers from breweries to distilled spirits plants

The bill allows beer to be transferred without payment of tax from a brewery to a distilled spirits plant to be used in the production of distilled spirits, regardless of whether the brewery is contiguous to the distilled spirits plant.

Posting of sign by wholesale liquor dealers

The requirement that wholesale liquor dealers post a sign outside their place of business indicating that they are wholesale liquor dealers is repealed.

Refund of tax for wine returned to bond

The bill deletes the requirement that wine returned to bonded premises be "unmerchantable" in order for tax to be refunded to the proprietor of the bonded wine cellar to which the wine is delivered.

Use of ameliorating material in certain wines

The wine labelling restrictions are modified to allow any wine made exclusively from a fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) to contain a volume of ameliorating material not in excess of 60 percent.

Domestically produced beer for use by foreign embassies, etc.

The bill extends to domestically produced beer the present-law rule applicable to domestically produced distilled spirits and wine (and imported distilled spirits, wine, and beer) which permits these products to be withdrawn from the place of production without payment of tax for the official or family use of representatives of foreign governments or public international organizations.

Withdrawal of beer for destruction

The bill allows beer to be removed from a brewery without payment of tax for purposes of destruction, subject to Treasury Department regulations.

Records of exportation of beer

The bill repeals the requirement that proof of exportation be submitted to the Treasury Department in all cases as a condition of receiving a refund of tax. This proof will continue to be required to be maintained at the exporter's place of business.

Transfer to brewery of beer imported in bulk

The bill extends the present-law rule applicable to distilled spirits imported into the United States in bulk containers to beer imported into the United States in bulk containers, so that imported beer may, subject to Treasury regulations, be withdrawn from customs custody for transfer to a brewery without payment of tax.

Effective Date

These provisions of the bill generally are effective beginning 180 days after date of the bill's enactment. The provision deleting the requirement that wholesale liquor dealers post a sign outside their place of business is effective on the date of the bill's enactment.

C. OTHER EXCISE TAX PROVISIONS

1. Authority for IRS to grant exemptions from registration requirements (sec. 4731 of the bill and sec. 4222 of the Code)

Present Law

Under section 4222, certain sales of articles subject to Federal excise taxes may not be made without payment of tax unless the manufacturer, the first purchaser, and the second purchaser (if any) are all registered under regulations prescribed by the Secretary.

Reasons for Change

Allowing the Internal Revenue Service to exempt certain classes of taxpayers from the registration provisions. Also, the provision will reduce the paperwork burden for affected taxpayers.

Explanation of Provision

The bill will allow the IRS to provide exemption from generally applicable excise tax registration requirements for certain classes of taxpayers.

Effective Date

The provision applies to sales after the 180th day after the date of enactment.

2. Firearms excise tax exemption for small manufacturers (sec. 4732 of the bill and sec. 4262 of the Code)

Present Law

Present law imposes an 11-percent excise tax on the manufacturing (or importing) of rifles and shotguns and on ammunition (shells and cartridges), and also imposes a 10-percent excise tax on pistols and revolvers (sec. 4181).

Revenues from these taxes are appropriated, in the fiscal year following receipt, to the Federal Aid to Wildlife Program for support of state wildlife programs.

Reasons for Change

Exempting small manufacturers and importers of firearms from the excise tax on firearms and ammunition will reduce the tax paperwork burden on small businesses that produce or import fewer than 50 such items per year.

Explanation of Provision

The bill exempts small manufacturers and importers from the 11-percent excise tax on firearms (rifles and shotguns) and ammunition and the 10-percent excise tax on pistols and revolvers, if such manufacturer or importer manufactures or imports less than 50 such articles per year.

Effective Date

The provision is effective for articles sold after September 30, 1993. In the case of any taxable year ending before the date of enactment, the period for claiming a credit or refund of any overpayment of tax resulting from the proposed exemption from tax will not expire before one year after the date of enactment.

3. Repeal temporary reduction in a tax on piggyback trailers (sec. 4733(a) of the bill and sec. 4051(d) of the Code)

Present Law

Piggyback trailers and semitrailers sold within the 1-year period beginning on July 18, 1984 were permitted a temporary reduction in the retail excise tax on trailers.

Explanation of Provision

The bill repeals the temporary reduction in tax on piggyback trailers as "deadwood."

Effective Date

The provision is effective on the date of enactment.

4. Expiration of excise tax on deep seabed minerals (sec. 4733(b) of the bill and secs. 4495-4498 of the Code)

Present Law and Background

The Deep Seabed Mineral Resources Act (the "Resources Act," P.L. 96-283), imposed an excise tax on certain hard minerals mined on the deep seabed. The tax revenues were intended to fund obligations of the United States under a contemplated Law of the Sea Convention.

The tax was scheduled to terminate on the earlier of the date on which a U.N. international deep seabed treaty took effect with respect to the United States, or June 28, 1990 (10 years after the date of enactment of the tax). Since the United States did not sign the treaty, the excise tax provisions expired on June 28, 1990.

Explanation of Provision

The bill deletes the deep seabed hard minerals excise tax provisions as "deadwood."

Effective Date

The provision is effective on the date of enactment.

5. Exemption for certain ferries from excise tax on ship passenger departures (sec. 4734 of the bill and sec. 4472 of the Code)

Present Law

An excise tax of $3 per passenger is imposed on ship passenger departures on a "covered voyage." A covered voyage includes transportation on (1) a commercial passenger vessel which extends over one or more nights, or (2) a commercial vessel transporting passengers engaged in gambling aboard the vessel beyond the territorial waters of the United States (i.e., more than 3 miles from shore), during which passengers embark or disembark the vessel in the United States. The latter circumstances includes such vessels that leave a U.S. port and return the same day.

The tax does not apply to either (1) a voyage on any vessel owned or operated by the United States or a State or local government (e.g., State or local government ferry boats), or (2) a voyage of less than 12 hours between two U.S. ports. A passenger vessel is any vessel having a berth or stateroom accommodations for more than 16 passengers. The tax is imposed only once on a passenger's covered voyage—either upon embarking or disembarking.

The tax on ship passengers was enacted in the Omnibus Budget Reconciliation Act of 1989, effective on January 1, 1990. Revenues

from the tax go to the General Fund of the Treasury.

Reasons for Change

The committee believes that the current exemption for voyages of less than 12 hours between two U.S. ports generally should be expanded to also include certain ferry boat voyages of less than 12 hours between a port in the United States and a port outside the United States.

Explanation of Provision

The bill expands the current exemption from the ship passenger tax for voyages of less than 12 hours between two U.S. ports to also include ferry boat voyages of less than 12 hours between a port in the United States and a port outside the United States. For this purpose, the term "ferry boat" means any vessel if normally no more than 50 percent of the passengers on any voyage of such vessel return to the port where such voyage began on the first return of such voyage to such port.

Effective Date

The provision generally applies to voyages beginning after December 31, 1989. However, there will be no refunds of tax paid; and if tax has been collected, it will have to be remitted to the Government.

6. Application of aircraft fuels excise tax or air passenger and air freight taxes to certain corporate aircraft (sec. 4735 of the bill and sec. 4282 of the Code)

Present Law

Fuels taxes are imposed on fuels used by "noncommercial aviation" aircraft. For aviation gasoline, the tax is 15 cents per gallon, and for nongasoline (jet) fuels, the tax is 17.5 cents per gallon. "Noncommercial aviation" means the use of an aircraft other than in a business of transporting persons or property for compensation or hire. The term also includes the use of an aircraft which is "properly allocable" to any transportation exempt from the air passenger or air freight taxes under sections 4281 of 4282.

Section 4281 exempts small aircraft (maximum certificated takeoff weight of 6,000 pounds or less) from the air passenger and air freight taxes, unless operated on an established line. Under section 4282, the air passenger and air freight taxes do not apply to transportation by air for other members of an "affiliated group" (as defined in sec. 1504(a), without any exclusions under sec. 1504(b)). In such cases where the air passenger or air freight taxes do not apply, the aircraft is subject to the fuels tax applicable to noncommercial aviation.

Reasons for Change

The committee believes that the aviation excise taxes on business aircraft used by corporate affiliated groups should be properly allocated on a flight-by-flight basis.

Explanation of Provision

The bill clarifies the application of the aviation excise taxes to business aircraft used by corporate affiliated groups to require the Internal Revenue Service to apply the applicable taxes on a flight-by-flight basis for an affiliated group as for a stand alone corporation.

Effective Date

The provision is effective on the date of enactment.

SUBTITLE H. ADMINISTRATIVE PROVISIONS

A. GENERAL PROVISIONS

1. Simplify employment tax reporting for household employees (sec. 4801 of the bill and secs. 3102, 3121, 3306 and 6654 of the Code)

Present Law

An employer who pays a household employee wages of $50 or more in a calendar quarter for household work must withhold social security taxes (including medicare taxes) from wages paid to the employee during the quarter. The employer must also pay an amount of tax that matches the tax withheld from the employee's wages. The employer must file an Employer's Quarterly Tax Return (Form 942) each quarter and a Wage and Tax Statement (Form W-2) at the end of the year.

In addition, an employer must pay Federal unemployment taxes if he or she paid cash wages to household employees totalling $1,000 or more in a calendar quarter in the current or preceding year. The employer must file an Employer's Annual Federal Unemployment Tax Return (Form 940 or Form 940-EZ) at the end of the year.

Reasons for Change

Employer return requirements are confusing and burdensome for many individuals, who may be employers only because they employ a domestic employee on an intermittent basis. Streamlining the return requirements would reduce the filing burden for individuals employing domestic employees.

Explanation of Provision

The bill changes the threshold for withholding and paying social security taxes with respect to domestic service employment from $50 a quarter to $300 a year. The bill requires an individual who employs only household employees (regardless of the amount of the remuneration) to report any social security or Federal unemployment tax obligation for wages paid to such employees on his or her income tax return for the year. The bill includes a household employer's social security and unemployment taxes in the estimated tax provisions. The bill also authorizes the Secretary to enter into agreements with States to collect State unemployment taxes in the same manner.

The bill provides that the Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this provision. These regulations may treat domestic service employment taxes as taxes imposed by chapter 1 of subtitle A for purposes of coordinating the assessment and collection of domestic service employment taxes with the assessment and collection of domestic employers' income taxes.

Effective Date

The provision is effective for remuneration paid in calendar years beginning after December 31, 1992.

2. Clarify that reproductions from digital images are reproductions for recordkeeping purposes (sec. 4802 of the bill and sec. 6103(p) of the Code)

Present Law

Reproductions of a return, document, and certain other matters have the same legal status as the original for purposes of judicial and administrative proceedings. It is unclear whether reproductions made from digital images are also accorded the same legal status as originals.

Reasons for Change

Reducing the IRS' need to maintain hardcopy originals of documents would simplify the administration of the tax laws. As part of its systems modernization plan, the IRS intends to store returns, documents, and other materials in digital image format. This plan will permit the IRS to respond much more quickly to taxpayers' inquiries about the status of their accounts. It will facilitate implementation of this plan to clarify that reproductions made from such images would be accorded the same legal status as other reproductions.

Explanation of Provision

The bill provides that the term reproduction includes a reproduction from a digital image. The bill also requires the Comptroller General to conduct a study of available digital image technology for the purpose of determining the extent to which reproductions of documents stored using that technology accurately reflect the data on the original document and the appropriate period for retaining the original document.

Effective Date

The provision is effective on the date of enactment.

3. Repeal of authority to disclose whether a prospective juror has been audited (sec. 4803 of the bill and sec. 6103(h)(5) of the Code)

Present Law

In connection with a civil or criminal tax proceeding to which the United States is a party, the Secretary must disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject of an audit or other tax investigation by the Internal Revenue Service (sec. 6103(h)(5)).

Reasons for Change

This disclosure requirement, as it has been interpreted by several recent court decisions, has created significant difficulties in the civil and criminal tax litigation process. First, the litigation process can be substantially slowed. It can take the Secretary a considerable period of time to compile the information necessary for a response (some courts have required searches going back as far as 25 years). Second, providing early release of the list of potential jurors to defendants (which several recent court decisions have required to permit defendants to obtain disclosure of the information from the Secretary) can provide an opportunity for harassment and intimidation of potential jurors in organized crime, drug, and some tax protester cases. Third, significant judicial resources have been expended in interpreting this procedural requirement that might better be spent resolving substantive disputes. Fourth, differing judicial interpretations of the nature of this provision have caused confusion. In some instances, defendants convicted of criminal tax offenses have obtained reversals of those convictions because of failures to comply fully with this provision.

Explanation of Provision

The bill repeals the requirement that the Secretary disclose, upon the written request of either party to the lawsuit, whether an individual who is a prospective juror has or has not been the subject to an audit or other tax investigation by the Internal Revenue Service.

Effective Date

The provision is effective for judicial proceedings pending on, or commenced after, the date of enactment.

4. Repeal TEFRA audit rules for S corporations (sec. 4804 of the bill and secs. 6037, 6241, 6242, 6243, 6244, and 6245 of the Code)

Present Law

An S corporation generally is not subject to income tax on its taxable income. Instead, it files an information return and the shareholders report their pro rata share of the S corporation's income and deductions on their own tax returns.

The Subchapter S Revision Act of 1982 generally made the TEFRA partnership audit and litigation rules applicable to S corporations. These rules require the determination of all "Subchapter S items" at the corporate, rather than the shareholder, level. These rules also require a shareholder to report all Subchapter S items consistently with the corporation's information return or to notify the IRS of any inconsistency. Temporary regulations contain an exception from these rules for "small S corporations," i.e., those with five or fewer shareholders, each of whom is a natural person or an estate.

Reasons for Change

An S corporation generally is limited to 35 investors. In addition, the vast majority of both existing and newly formed S corporations are expected to qualify for the small S corporation exception from the unified audit and litigation provisions. Consequently, a unified audit procedure is an unnecessary requirement for S corporations.

Explanation of Provision

The bill repeals the unified audit procedures for S corporations. The bill retains, however, the requirement that shareholders report items in a manner consistent with the corporation's return.

Effective Date

The provision is effective for taxable years beginning after the date of enactment.

5. Clarify statute of limitations for items from passthrough entities (sec. 4805 of the bill and sec. 6501(a) of the Code)

Present Law

Passthrough entities (such as S corporations, partnerships, and certain trusts) generally are not subject to income tax on their taxable income. Instead, these entities file information returns and the entities' shareholders (or beneficial owners) report their pro rata share of the gross income and are liable for any taxes due.

Some believe that present law may be unclear as to whether the statute of limitations for adjustments that arise from distributions from passthrough entities should be applied at the entity or individual level (i.e., whether the 3-year statute of limitations for assessment runs from the time that the entity files its information return or from the time that a shareholder timely files his or her income tax return). (Compare *Fehlhaber* v. *Comm.*, 94 TC 863 (1990) with *Kelly* v *Comm.*, 877 F.2d 7567 (9th Cir. 1989)).

Reasons for Change

Uncertainty regarding the correct statute of limitations hinders the resolution of factual and legal issues and creates needless litigation over collateral matters.

Explanation of Provision

The bill clarifies that the return that starts the running of the statute of limitations for a taxpayer is the return of the taxpayer and not the return of another person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit. The provision is not intended to create any inference as to the proper interpretation of present law.

Effective Date

The provision is effective for taxable years beginning after the date of enactment.

B. TAX COURT PROVISIONS

1. Clarify jurisdiction of Tax Court with respect to overpayment determinations (sec. 4811 of the bill and sec. 6512(b) of the Code)

Present Law

The Tax Court may order the refund of an overpayment determined by the Court, plus interest, if the IRS fails to refund such overpayment and interest within 120 days after the Court's decision becomes final. Whether such an order is appealable is uncertain.

In addition, it is unclear whether the Tax Court has jurisdiction over the validity or merits of certain credits or offsets (e.g., providing for collection of student loans, child support, etc.) made by the IRS that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

Reasons for Change

Clarification of the jurisdiction of the Tax Court and the appealability of orders of the Tax Court would provide for greater certainty for taxpayers and the Government in conducting cases before the Tax Court. Clarification will also reduce litigation.

Explanation of Provision

The bill clarifies that an order to refund an overpayment is appealable in the same manner as a decision of the Tax Court. The bill also clarifies that the Tax Court does not have jurisdiction over the validity or merits of the credits or offsets that reduce or eliminate the refund to which the taxpayer was otherwise entitled.

Effective Date

The provision is effective on the date of enactment.

2. Clarify procedures for administrative cost awards (sec. 4812 of the bill and sec. 7430 of the Code)

Present Law

Any person who substantially prevails in any action brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding.

No time limit is specified for the taxpayer to apply to the IRS for an award of administrative costs. In addition, no time limit is specified for a taxpayer to appeal to the Tax Court an IRS decision denying an award of administrative costs. Finally, the procedural rules adjudicating a denial of administrative costs are unclear.

Reasons for Change

The proper procedures for applying for a cost award are uncertain in some instances. Clarifying these procedures will decrease litigation over these procedural issues and will provide for expedited settlement of these claims.

Explanation of Provision

The bill provides that a taxpayer who seeks an award of administrative costs must apply to the IRS for such costs within 90 days of the date on which the final decision of the IRS as to the determination of the tax, interest, or penalty is mailed to the party. The bill also provides that a taxpayer who seeks to appeal an IRS denial of an administrative cost award must petition the Tax Court within 90 days after the date that the IRS mails the denial notice.

The bill clarifies that dispositions by the Tax Court of petitions relating only to administrative costs are to be reviewed in the same manner as other decisions of the Tax Court.

Effective Date

The provision is effective on the date of enactment.

3. Clarify Tax Court jurisdiction over interest determinations (sec. 4813 of the bill and sec. 7481(c) of the Code)

Present Law

A taxpayer may seek a redetermination of interest after certain decisions of the Tax Court have become final by filing a petition with the Tax Court.

Reasons for Change

It would be beneficial to taxpayers if a proceeding for a redetermination of interest supplemented the original deficiency action brought by the taxpayer to redetermine the deficiency determination of the IRS. A motion, rather than a petition, is a more appropriate pleading for relief in these cases.

Explanation of Provision

The bill provides that a taxpayer must file a "motion" (rather than "a petition") to seek a redetermination of interest in the Tax Court.

Effective Date

The provision is effective on the date of enactment.

4. Clarify net worth requirements for awards of administrative or litigation costs (sec. 4814 of the bill and sec. 7430 of the Code)

Present Law

Any person who substantially prevails any action brought by or against the United States in connection with in the determination, collection, or refund of any tax, interest, or penalty may be awarded reasonable administrative costs incurred before the IRS and reasonable litigation costs incurred in connection with any court proceeding.

A person who substantially prevails must meet certain net worth requirements to be eligible for any award of administrative or litigation costs. In general, only an individual whose net worth does not exceed $2,000,000 is eligible for an award, and only a corporation or partnership whose net worth does not exceed $7,000,000 is eligible for an award. (The net worth determination with respect to a partnership or S corporation applies to all actions that are in substance partnership actions or S corporation actions, including unified entity-level proceedings under sections 6226 or 6228, that are nominally brought in the name of a partner or a shareholder.)

Reasons for Change

Although the net worth requirements are explicit for individuals, corporations, and partnerships, it is not clear which net worth requirement is to apply to other potential litigants. It is also unclear how the individual net worth rules are to apply to individuals filing a joint tax return. Clarifying these rules will provide certainty for potential claimants and will decrease needless litigation over procedural issues.

Explanation of Provision

The bill provides that the net worth limitations currently applicable to individuals also apply to estates and trusts. The bill also provides that individuals who file a joint tax return shall be treated as one individual for purposes of computing the net worth limitations. Consequently, the net worths of both spouses are aggregated for purposes of this computation. An exception to this rule is provided in the case of a spouse otherwise qualifying for innocent spouse relief.

Effective Date

The provision applies to proceedings commenced after the date of enactment.

C. Permit IRS to Enter Into Cooperative Agreements With State Tax Authorities (sec. 4821 of the bill and new sec. 7524 of the Code)

Present Law

The IRS is generally not authorized to provide services to non-Federal agencies even if the cost is reimbursed (62 Comp. Gen. 323,335 (1983)).

Reasons for Change

Most taxpayers reside in States with an income tax and, therefore, must file both Federal and State income tax returns each year. Each return is separately prepared, with the State return often requiring information taken directly from the Federal return. Permitting the IRS to enter into agreements that are designed to promote efficiency through joint tax administration programs with States would reduce the burden on taxpayers because much of the same information could be used by both Governments.

For example, the burden on taxpayers could be significantly reduced through joint electronic filing of tax returns, whereby a taxpayer electronically transmits both Federal and State returns to one location. Joint Federal and State electronic filing could simplify and shorten return preparation time for taxpayers. Also, State governments could benefit from reduced processing costs, while the IRS could benefit from the potential increase in taxpayers who would elect to file electronically because they would be able to fulfill both their Federal and State obligations simultaneously.

Explanation of Provision

The bill provides that the Secretary is authorized to enter into cooperative agreements with State tax authorities to enhance joint tax administration. These agreements may include (1) joint filing of Federal and State income tax returns, (2) single processing of these returns, and (3) joint collection of taxes (other than Federal income taxes).

The bill provides that these agreements may require reimbursement for services provided by either party to the agreement. Any funds appropriated for tax administration may be used to carry out the responsibilities of the IRS under these agreements, and any reimbursement received under an agreement shall be credited to the amount appropriated.

Any disclosure of any Federal return or return information is governed by the provisions of section 6103, and any cooperative agreement involving any Federal return or return information is subject to and must comply with the provisions of section 6103. No agreement may be entered into that does not provide for the protection of confidentiality of taxpayer information that is required by section 6103. State tax returns or return information processed for a State by the IRS pursuant to a cooperative agreement are not subject to the confidentiality provisions of section 6103, but remain subject to the State confidentiality laws.

Effective Date

This provision is effective on the date of enactment.

D. Employment tax status of fishermen (sec. 4831 of the bill and secs. 3121(b)(20) and 6050A of the Code)

Present Law

Under present law, service as a crew member on a fishing vessel is generally excluded from the definition of employment for purposes of income tax withholding on wages and for purposes of FICA and FUTA taxes if the operating crew of the boat normally consists of fewer than 10 individuals, the individual receives a share of the catch based on the total catch, and the individual does not receive cash remuneration other than proceeds from the sale of the individual's share of the catch. Such crew members are subject to the tax on self-employment income.

Special reporting requirements apply with respect to the operators of boats on which such crew members perform services. In particular, the operator of the boat is required to report the identity of each individual performing such services, the percentage of each such individual's share of the catch and the percentage of the operator's share of the catch, information regarding the value of any catch received in kind, and if the individual receives a share of the proceeds of the catch, the amount so received.

Reasons for Change

The committee believes that providing a statutory definition for determining whether the crew of a fishing boat normally consists of 10 or fewer individuals would make the provision easier to apply and administer. Providing that the exemption continues to apply if an individual receives a small amount of cash in addition to a share of the catch would recognize long-standing industry tradition.

Explanation of Provision

The operating crew of a boat is to be treated as normally made up of fewer than 10 individuals if the average size of the operating crew on trips made during the preceding 4 calendar quarters consisted of fewer than 10 individuals. In addition, the exemption applies if the crew member receives, in addition to the cash remuneration permitted under present law, cash remuneration which does not exceed $100 per trip, is contingent on a minimum catch, and is paid solely for additional duties (e.g., mate, engineer, or cook) for which additional cash remuneration is traditional. The reporting requirements are revised to require reporting with respect to any such additional cash remuneration. As under present law, crew members to which the provision applies are subject to self-employment tax.

Effective Date

The provision applies to remuneration paid on or after January 1, 1992. In addition, the provision applies to remuneration paid after December 31, 1984, and before January 1, 1993, unless the payor treated such remuneration when paid as being subject to wage withholding and employment taxes.

TITLE V. TAXPAYER BILL OF RIGHTS 2

SUBTITLE A. TAXPAYER ADVOCATE

1. Establishment of Position of Taxpayer Advocate Within Internal Revenue Service (sec. 5001 of the bill and sec. 7802 of the Code)

Present Law

The Office of the Taxpayer Ombudsman was created by the IRS in 1979. The Taxpayer Ombudsman's duties are to serve as the primary advocate, within the IRS, for taxpayers. As the taxpayer's advocate, the Taxpayer Ombudsman participates in an ongoing review of IRS policies and procedures to determine their impact on taxpayers, received ideas from the public concerning tax administration, identifies areas of the tax law that confuse or create an inequity for taxpayers, and supervises cases handled under the Problem Resolution Program. Under current procedures, the Taxpayer Ombudsman is selected by the Commissioner of the IRS and serves at his discretion.

Reasons for Change

In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, it is believed that the position should be elevated to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to Congress in order to advise the tax-writing Committees of those areas.

Explanation of Provision

The bill establishes a new position, Taxpayer Advocate, within the IRS. This replaces the position of Taxpayer Ombudsman. The Advocate reports directly to the Commissioner. Compensation of the Advocate is at a level equal to that of the IRS Chief Counsel.

The bill also establishes the Office of Taxpayer Advocate within the IRS. All problem resolution officers are part of that office, and are under the supervision and direction of the Taxpayer Advocate. The functions of the office are (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

The Taxpayer Advocate is required to make two annual reports to the tax-writing Committees. The first report is to contain the objectives of the Taxpayer Advocate for the next calendar year. This report is to contain full and substantive analysis, in addition to statistical information. This report is due not later than October 31 of each year.

The second report is on the activities of the Taxpayer Advocate during the previous fiscal year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a TAO, contain a summary of at least 20 of the most serious problems which taxpayers have in dealing with the IRS, describe in detail the progress made in implementing these recommendations, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, and to include other such information as the Taxpayer Advocate may deem advisable. The Commissioner is required to establish internal procedures that will ensure a formal IRS response to all recommendations submitted to the Commissioner by the Taxpayer Advocate. This report is due not later than June 30 of each year.

Effective Date

The provision is effective on the date of enactment. The first annual reports of the Taxpayer Advocate are due in June and October, 1993.

2. Expansion of Authority to Issue Taxpayer Assistance Orders (sec. 5002 of the bill and sec. 7811 of the Code)

Present Law

Section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance

Order (TAO). TAOs may order the release of taxpayer property levied upon by the IRS and may require the IRS to cease any action, or refrain from taking any action if, in the determination of the Taxpayer Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the Internal revenue laws are being administered.

Reasons for Change

The requirement that the significant hardship be as a result of the manner in which the internal revenue law are being administered has resulted in confusion as to the circumstances which justify the issuance of a TAO. The most frequent situation where a TAO may be needed, but may not be authorized under present law, involves income tax refunds that are needed to relieve severe hardship of taxpayers. Another example involves the re-issuance of refund checks which have been sent by the IRS to an address at which the taxpayer no longer resides. While the mailing of the check to the incorrect address might in no way be due to the fault of the IRS, the normal delays in reissuing such a check may cause great hardship for the taxpayer. Also, the IRS Collection Division may take an enforcement action when the taxpayer has had no actual notice of the deficiency and is not afforded any opportunity to obtain an administrative review of the validity of the tax deficiency. In cases like these, it may be appropriate for the Taxpayer Advocate to issue a TAO to temporarily stay the IRS collection action in order to allow for a review of the appropriateness of the proposed action.

Explanation of Provision

The bill provides the Taxpayer Advocate with broader authority to affirmatively take any action (as permitted by law) with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. For example, the Taxpayer Advocate's scope of power will specifically include (i) the authority to abate assessments, (ii) grant or expedite refund requests, and (iii) stay collection activity. The bill also provides that a TAO may specify a time period within which the TAO must be followed. Finally, the bill provides that only the Taypayer Advocate, the Commissioner of the IRS, or a superior of those two positions, as well as a delegate of the Taxpayer Advocate, may modify or rescind a TAO. The Taxpayer Advocate is not intended to have the power to make determinations concerning the substantive tax treatment of any item.

Effective Date

The provision is effective on the date of enactment.

SUBTITLE B. MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

1. Notification of Reasons for Termination or Denial of Installment Agreements (sec. 5101 of the bill and sec. 6159 of the Code)

Present Law

Section 6159 authorizes the IRS to enter into written installment agreements with taxpayers to facilitate the collection of tax liabilities. In general, the IRS has the right to terminate (or in some instances, alter or modify) such agreements if the taxpayer provided inaccurate or incomplete information before the agreement was entered into, if the taxpayer fails to make a timely payment of an installment or another tax liability, if the taxpayer fails to provide the IRS with a requested update of financial condition, if the IRS determines that the financial condition of the taxpayer has changed significantly, or if the IRS believes collection of the tax liability is in jeopardy. If the IRS determines that the financial condition of a taxpayer that has entered into an installment agreement has changed significantly, the IRS must provide the taxpayer with a written notice that explains the IRS determination at least 30 days before altering, modifying or terminating the installment agreement. No notice is statutorily required if the installment agreement is altered, modified, or terminated for other reasons.

Reasons for Change

The committee believes that the IRS generally should notify taxpayers if an installment agreement is denied, altered, modified, or terminated.

Explanation of Provision

The bill requires the IRS to notify taxpayers 30 days before altering, modifying, or terminating any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy. The IRS must include in the notification an explanation of why the IRS intends to take this action. The bill also requires that the IRS notify taxpayers 30 days before denying any installment agreement for any reason other than that the collection of tax is determined to be in jeopardy. The committee intends that notice of denial of an installment agreement be given to a taxpayer so that the taxpayer can discuss the denial with the IRS before it is formalized. Any insufficiency in the explanation of the denial has no effect on the availability of an installment agreement to the taxpayer.

The provision is effective six months after the date of enactment.

2. Administrative Review of Denial of Requests for, or Termination of, Installment Agreements (sec. 5102 of the bill and sec. 6159 of the Code)

Present Law

A taxpayer whose request for an installment agreement is denied can appeal to successively higher levels of Collection Division management, including the District Director. The IRS is currently testing an appeal process for various collection actions, including installment agreements, that will permit taxpayers to appeal these collection actions to Appeals Division personnel.

Reasons for Change

The committee believes that taxpayers should be able to obtain an independent administrative review of denials of requests for, or termination of, installment agreements.

Explanation of Provision

The bill requires the IRS to establish additional procedures for administrative review of denials of requests for installment agreements and terminations of installment agreements.

Effective Date

The provision is effective on January 1, 1993.

SUBTITLE C. INTEREST

1. Expansion of Authority to Abate Interest (sec. 5201 of the bill and sec. 6404 of the Code)

Present Law

Any assessment of interest on any deficiency attributable in whole or in part to any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act may be abated.

Reasons for Change

The committee believes that it is appropriate to expand the authority to abate interest to situations other than ministerial acts. Therefore, the committee expands the authority to abate interest to any unreasonable error or delay.

Explanation of Provision

The bill generally expands the authority of the IRS to abate interest. The bill permits the IRS to abate interest with respect to any unreasonable error or delay by an officer or employee of the IRS. Only taxpayers who meet the net worth requirements referenced in section 7430(c)(4)(A)(iii) are eligible for interest abatement.

Effective Date

The provision applies to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of enactment.

2. Extension of Interest-Free Period for Payment of Tax After Notice and Demand (sec. 5202 of the bill and sec. 6601 of the Code)

Present Law

In general, a taxpayer must pay interest on late payments of tax. An interest-free period of ten days is provided to taxpayers who pay the tax due within ten days of notice and demand.

Reasons for Change

The ten-day interest-free period was designed to give taxpayers time to receive the notice and pay the amount due. Because it may be very difficult for some taxpayers to remit payment within the ten-day period, particularly if the mail has delayed delivery of the notice, the IRS must recompute interest and send another notice to taxpayers.

Explanation of Provision

The bill extends the interest-free period provided to taxpayers for the payment of the tax liability reflected in the notice from 10 days to 21 days, provided that the total tax liability shown on the notice of deficiency is less than $100,000.

Effective Date

The provision applies in the case of any notice and demand given after the date six months after the date of enactment.

SUBTITLE D. JOINT RETURNS

1. Disclosure of Collection Activities With Respect to Joint Returns (sec. 5301 of the bill and sec. 6103(e) of the Code)

Present Law

The IRS does not disclose collection information to spouses that have filed a joint return.

Reasons for Change

The committee believes that it is appropriate to permit the IRS to discuss with one spouse the efforts it has made to collect the joint return tax liability from the other spouse.

Explanation of Provision

If a tax deficiency with respect to a joint return is assessed, and the individuals filing the return are no longer married or no longer reside in the same household, the bill permits the IRS to disclose in writing (in response to a written request by one of the individuals) to that individual whether the IRS has attempted to collect the deficiency from the other individual, the general nature of the collection activities, and the amount (if any) collected.

Effective Date

The provision is effective on the date of enactment.

2. Joint Return May Be Made After Separate Returns Without Full Payment of Tax (sec. 5302 of the bill and sec. 6013 of the Code)

Present Law

Taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded by statute from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability before the expiration of the three-year period for making the election to file jointly.

Reasons for Change

Not all taxpayers are able to pay the full amount owed on their returns by the filing deadline. In such circumstances, the IRS encourages the taxpayer to pay the tax as soon as possible or enter into an installment agreement. However, taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability. This rule may be unfair to taxpayers experiencing financial difficulties.

Explanation of Provision

The bill repeals the requirement of full payment of tax liability as a precondition to switching from married filing separately status to married filing jointly status.

Effective Date

The provision applies to taxable years beginning after the date of the enactment.–

SUBTITLE E. COLLECTION ACTIVITIES

1. Modifications to Lien and Levy Provisions (sec. 5401 of the bill and secs. 6323 and 6343 of the Code)

i. Withdrawal of public notice of lien

Present Law

The IRS must file a notice of lien in the public record, in order to protect the priority of a tax lien. A notice of tax lien provides public notice that a taxpayer owes the Government money. The IRS has discretion in filing such a notice, but may withdraw a filed notice only if the notice (and the underlying lien) was erroneously filed or if the underlying lien has been paid, bonded, or become unenforceable.

Reasons for Change

The committee believes that it is appropriate to give the IRS discretion to withdraw a notice of lien in other situations as well.

Explanation of Provision

The bill allows the IRS to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer if the Secretary determines that (1) the filing of the notice was premature or otherwise not in accordance with the administration procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability with respect to which the lien was filed, (3) the withdrawal of the lien will facilitate collection of the tax liability, or (4) the withdrawal of the lien would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States. The bill also requires that, at the written request of the taxpayer, the IRS make reasonable efforts to give notice of the withdrawal of a lien to credit reporting agencies specified by the taxpayer, as well as to financial institutions and creditors whose names and addresses have been provided to the IRS by the taxpayer.

Effective Date

The provision is effective on the date of enactment.

ii. Return of levied property

Present Law

The IRS is authorized to return levied property to a taxpayer only when the taxpayer has overpaid its liability to tax, interest, and penalty.

Reasons for Change

There are several situations where the IRS cannot return levied-upon amounts even when it believes doing so would be equitable and in the best interests of the taxpayer and the Government. For example, if the IRS enters into an installment agreement and, in contradiction to the terms of the installment agreement, the IRS levies on the taxpayer's property, the IRS is prohibited from returning the property to the taxpayer.

Explanation of Provision

The bill allows the IRS to return property (including money deposited in the Treasury) that has been levied upon if the Secretary determines that (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability, (3) the return of the property will facilitate collection of the tax liability, or (4) the return of the property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Effective Date

The provision is effective on the date of enactment.

iii. Modifications in certain levy exemption amounts

Present Law

Property exempt from levy includes personal property with a value of up to $1,650, and books and tools necessary for the taxpayer's trade, business, or profession with a value of up to $1,100.

Reasons for Change

The committee believes that these amounts should be indexed for inflation.

Explanation of Provision

The bill increases the exemption amounts to $1,700 for personal property and $1,200 for books and tools. Both these amounts are indexed for inflation commencing with calendar year 1993.

Effective Date

The provision is effective on the date of enactment.

2. Offers-in-Compromise (sec. 5402 of the bill and sec. 7122 of the Code)

Present Law

The IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if: the taxpayer is unable to pay the full amount of the tax liability and it is doubtful that the tax, interest, and penalties can be collected or there is doubt as to the validity of the actual tax liability. Amounts over $500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS Chief Counsel.

Reasons for Change

Because of the requirements for accepting offers-in-compromise, IRS employees may classify accounts as currently-not-collectable, rather than accept part payment through an offer-in-compromise. The committee believes that an expanded offer-in-compromise program would benefit taxpayers by making it possible to liquidate a debt with the Government more rapidly.

Explanation of Provision

The bill allows acceptance of an offer-in-compromise where the compromise would be in the best interest of the Government. The bill also increases from $500 to $50,000 the amount requiring a written opinion from the Office of Chief Counsel. Compromises below the $50,000 threshold must be subject to continuing quality review by the IRS.

Effective Date

The provision is effective on the date of enactment.

3. Notification of Examination (sec. 5403 of the bill and sec. 7605 of the Code)

Present Law

In general, the IRS notifies taxpayers in writing prior to commencing an examination and encloses a copy of Publication 1, "Your Rights as a Taxpayer," with the notice. Sometimes, however, the IRS uses the telephone to schedule an examination.

Reasons for Change

The committee understands that the IRS may be approaching taxpayers, requesting the taxpayer's books and records, but not notifying taxpayers of examination. The committee believes that taxpayers should always receive written notice of an examination.

Explanation of Provision

The bill requires the IRS to notify a taxpayer in writing prior to commencing an examination under all subtitles of the Code and to provide the taxpayer with an explanation of the examination process prior to commencing the examination. Such notice will include an explanation of the process as described in section 7521. The bill exempts from this requirement any examination with respect to which the Secretary determines (1) that it is in connection with a criminal investigation, (2) that the collection of the tax is in jeopardy, (3) that the requirements are inconsistent with national security needs, or (4) that the requirements would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity. This provision does not preclude the IRS from using the telephone to attempt to schedule an examination, so long as the written notice required by this provision has previously been given.

Effective Date

The bill is effective on the date of enactment.

4. Modification of Certain Limits on Recovery of Civil Damages for Unauthorized Collection Activities (sec. 5404 of the bill and sec. 7433 of the Code)

Present Law

A taxpayer may sue the United States for up to $100,000 of damages caused by an officer or employee of the IRS who, with respect to the collection of any Federal tax with respect to the taxpayer, recklessly or intentionally disregards provisions of the Code or the Treasury regulations promulgated thereunder.

Reasons for Change

The committee believes that the cap for damages caused by IRS employees should be raised.

Explanation of Provision

The bill increases the cap to $1 million with respect to reckless or intentional acts. In addition, it permits a taxpayer to sue the United States for damages caused by an IRS employee who, with respect to the collection of any Federal tax with respect to the taxpayer, negligently disregards the provisions of the Code or the Treasury regulations pro-

mulgated thereunder, subject to a cap of $100,000 in damages.

Effective Date

The provision applies to actions by IRS employees that occur after the date of enactment.

5. Designated Summons (sec. 5405 of the bill and sec. 6503(k) of the Code)

Present Law

The period for assessment of additional tax with respect to most tax returns, corporate or otherwise, is three years. The IRS and the taxpayer can together agree to extend the period, either for a specified period of time or indefinitely. The taxpayer may terminate an indefinite agreement to extend the period by providing notice to the IRS.

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS seeks information by issuing an administrative summons. Such a summons will not be judicially enforced unless the Government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court. In addition, a taxpayer may petition the court to quash an administrative summons where this is permitted by statute.[1]

In certain cases the running of the assessment period is suspended during the period when the parties are in court to obtain or avoid judicial enforcement of an administrative summons. Such a suspension is provided in the case of litigation over a third-party summons (sec. 7609(e)) or litigation over a summons regarding the examination of a related party transaction. Such a suspension can also occur with respect to a corporate tax return if a summons is issued at least 60 days before the day on which the assessment period (as extended) is scheduled to expire. In this case, suspension is only permitted if the summons clearly states that it is a "designated summons" for this purpose. Only one summons may be treated as a designated summons for purposes of any one tax return. The limitations period is suspended during the judicial enforcement period of the designated summons and of any other summons relating to the same tax return that is issued within 30 days after the designated summons is issued.

Under current internal procedures of the IRS, no designated summons is issued unless first reviewed by the Office of Chief Counsel to the IRS, including review by an IRS Deputy Regional Counsel for the Region in which the examination of the corporation's return is being conducted.

Reasons for Change

The committee recognizes that issuance of a designated summons is a serious step in the examination of a tax return, given the fact that litigation over the summons would suspend the running of the period for assessing additional tax against the taxpayer under audit. The committee is informed that, in recognition of the seriousness of such a step, the IRS has adopted procedures to ensure high-level IRS review before any such summons is issued. The committee believes that the Code should, however, mandate review in order to assure that careful consideration is given before issuing such a summons.

Under the designated summons rules, summons enforcement litigation can suspend the running of the period for assessing additional tax on a corporation, even though the summons is issued to a person other than that corporation. The committee believes that the corporation should receive prompt written notice of the issuance of such a summons.

Explanation of Provision

The bill requires that issuance of any designated summons with respect to a corporation's tax return must be preceded by review of such issuance by the Regional Counsel, Office of Chief counsel to the IRS, for the Region in which the examination of the corporation's return is being conducted.

In addition, the bill requires that the corporation whose return is in issue be promptly notified in writing in any case where the Secretary issues a designated summons (or another summons, the litigation over which suspends the running of the assessment period under the designated summons procedure) to a third party. It is expected that the IRS generally will meet this requirement by issuing such notice on the same day that it issues such summons, and by transmitting such notice to the corporation in a manner reasonably designed to bring it to the prompt attention of an agent of the corporation responsible for communicating with the IRS in connection with the examination.

The committee does not intend the notice requirement to imply that any summons issued to an unrelated third party, the purpose of which is to obtain information regarding comparable transactions involving unrelated parties, would require disclosure to the taxpayer of any information relating to the unrelated third party that would otherwise remain confidential under any other provision of the law.

Effective Date

The provision applies to summonses issued after date of enactment.

SUBTITLE F. INFORMATION RETURNS

1. Phone Numbers of Person Providing Payee Statement Required to be Shown on Such Statement (sec. 5501 of the bill and secs. 6041, 6041A, 6042, 6044, 6045, 6049, 6050B, 6050H, 6050I, 6050J, 6050K and 6050N of the Code)

Present Law

Information returns must contain the name and address of the payor.

Reasons for Change

Taxpayers often need to contact payors issuing information returns in order to resolve questions about the accuracy of the information provided to the IRS. Currently, payors are only required to provide their names and addresses on information returns. As a result, taxpayers may have difficulty in contacting the payor and resolving questions quickly.

Explanation of Provision

The bill requires that information returns contain the name, address, and phone number of the payor's information contact. A payor has the option of providing the name, address, and phone number of the department with the relevant information. It is intended that the telephone number provide direct access to individuals with immediate resources to resolve a taxpayer's questions in an expeditious manner.

Effective Date

The provision applies to statements required to be furnished after December 31, 1992 (determined without regard to any extension).

2. Civil Damages for Fraudulent Filing of Information Returns (sec. 5502 of the bill and new sec. 7434 of the Code)

Present Law

Federal law provides no private cause of action to a taxpayer who is injured because a false or fraudulent information return has been filed with the IRS asserting that payments have been made to the taxpayer.

Reasons for Change

Some taxpayers may suffer significant personal loss and inconvenience as the result of the IRS receiving fraudulent information returns, which have been filed by persons intent on either defrauding the IRS or harassing taxpayers.

Explanation of Provision

The bill provides that, if any person willfully files a false or fraudulent information return with respect to payments purported to have been made to another person, the other person may bring a civil action for damages against the person filing that return. A copy of the complaint initiating the action must be provided to the IRS. Recoverable damages are limited to the greater of $5,000 or the amount of actual damages (including the costs of the action). The court must specify in its judgment the correct amount (if any) that should have been reported on the information return. An action seeking damages under this provision must be brought within four years after the filing of the false or fraudulent information return, or one year after the false or fraudulent information would have been discovered by the exercise of reasonable care, whichever is later.

Effective Date

The provision applies to false or fraudulent information returns filed after the date of enactment.

3. Requirement to Verify Accuracy of Information Returns (sec. 5503 of the bill and sec. 6201 of the Code)

Present Law

Deficiencies determined by the IRS are generally afforded a presumption of correctness.

Reasons for Change

Taxpayers may encounter difficulties when a payor issues an erroneous information return and refuses to correct the information and report the change to the IRS.

Explanation of Provision

The bill provides that, in any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return (Form 1099) filed by a third party and the taxpayer has fully cooperated with the IRS (including providing timely access to and inspection of all witnesses, information, and documents within the control of the taxpayer which are reasonably requested by the IRS), the Government must present reasonable and probative information concerning the deficiency (in addition to the information return itself). One way in which the taxpayer must cooperate with the IRS is to bring the reasonable dispute over the item of income to the attention of the IRS within a reasonable period of time.

Effective Date

The provision is effective on the date of enactment.

SUBTITLE G. MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

1. Preliminary Notice Requirements (sec. 5601 of the Bill and sec. 6672 of the Code)

[1] Petitions to quash are permitted, for example, in connection with the examination of certain related party transactions under section 6038A(c)(4), and in the case of certain third-party summonses under section 7609(b)(2).

Present Law

A "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis. An individual the IRS has identified as a responsible person is permitted an administrative appeal on the question of responsibility.

Reasons for Change

Some employees may not be fully aware of their personal liability under section 5566 for the failure to pay over trust fund taxes. The committee believes that IRS could take additional efforts to assist the public in understanding its responsibilities.

Explanation of Provision

The bill requires the IRS to issue a notice to an individual the IRS had determined to be a responsible person with respect to unpaid trust fund taxes at least 60 days prior to issuing a notice and demand for the penalty. The statute of limitations shall not expire before the date 90 days after the date on which the notice was mailed. The provision does not apply if the Secretary finds that the collection of the penalty is in jeopardy.

Effective Date

The provision applies to failures occurring after the date of enactment.

2. No Penalty if Prompt Notification of IRS (sec. 5602 of the bill and sec. 6672 of the Code)

Present Law

A responsible person may be subject to a penalty equal to 100 percent of the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

Reasons for Change

Indivuals have been held liable for this penalty even after they have brought their employer's failure to pay to the attention of the IRS.

Explanation of Provision

The bill provides that a reasonable person who notifies the IRS within 21 days of the failure to pay over trust fund taxes to the Government is not liable for this penalty, so long as the notification is made prior to the IRS's contracting the business about the failure to pay over the taxes, and provided that the person is not a significant owner (of a 5-percent or more interest). The provision does not apply if the failure to pay is part of a plan to defraud the Government. Moreover, the provision applies only once to a taxpayer in that taxpayer's lifetime and once to a business in its existence. The provision shall not apply if the effect would be to leave no financially responsible person liable for the penalty.

Effective Date

The provision applies in the case of failures to collect and pay over tax that occur after the date of enactment.

3. Disclosure of Certain Information Where More Than One Person Subject to Penalty (sec. 5603 of the bill and sec. 6103(e) of the Code)

Present Law

The IRS may not disclose to a responsible person the IRS's efforts to collect unpaid trust fund taxes from other responsible persons, who may also be liable for the same tax liability.

Reasons for Change

The committee believes that it is appropriate to permit the IRS to disclose to a responsible person whether the IRS is imposing the penalty on any other responsible person, and whether the IRS has been successful in collecting the penalty against such a person.

Explanation of Provision

The bill requires the IRS, if requested in writing by a person considered by the IRS to be a responsible person, to disclose in writing to that person the name of any other person the IRS has determined to be a responsible person with respect to the tax liability. The IRS is required to disclose in writing whether it has attempted to collect this penalty from other responsible persons, the general nature of those collection activities, and the amount (if any) collected. Failure by the IRS to follow this provision does not absolve any individual for any liability for this penalty.

Effective Date

The provision is effective on the date of enactment.

4. Penalties relating to Failure to Collect and Pay Over Tax (sec. 5604 of the bill and sec. 6672 of the Code)

i. Public information requirements

Present Law

Under section 6672, a "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

Reasons for Change

Some employees may not be fully aware of their personal liability under section 6672 for the failure to pay over trust fund taxes. The committee believes that IRS could take additional efforts to assist the public in understanding its responsibilities.

Explanation of Provision

The bill requires the IRS to print warnings on payroll tax deposit coupon books and appropriate tax returns indicating that certain employees may be liable for this penalty, and to develop a special information packet relating to this penalty.

Effective Date

The provision is effective on the date of enactment.

ii. Board members of tax-exempt organizations

Present Law

Under section 6672, "responsible persons" of tax-exempt organizations are subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

Reasons for Change

Individuals who serve on the boards of tax-exempt organizations, on a voluntary or honorary basis, are often concerned that they will be held liable for unpaid taxes of the organization as a responsible person, even though their service may be strictly voluntary in nature, and they may not be involved in the day-to-day operations and financial decisions of the organization. The committee believes that the IRS has not made adequate efforts to clarify the rules applicable to tax-exempt organizations.

Explanation of Provision

The bill clarifies that the section 6672 responsible person penalty is not to be imposed on volunteer, unpaid members of any board of trustees or directors of a tax-exempt organization to the extent such members are solely serving in an honorary capacity, do not participate in the day-to-day or financial activities of the organization, and do not have actual knowledge of the failure. However, the provision shall not apply if the effect would be to leave no financially responsible person liable for the penalty. The bill requires the IRS to develop materials to better inform board members of tax-exempt organizations (including voluntary or honorary members) that they may be treated as responsible persons. The IRS is required to make such materials routinely available to tax-exempt organizations. The bill also requires the IRS to clarify its instructions to IRS employees on application of the responsible person penalty with regard to honorary or volunteer members of boards of trustees or directors of tax-exempt organizations.

Effective Date

The provision is effective on the date of enactment.

iii. Prompt notification

Present Law

The IRS is not required to notify promptly taxpayers who fall behind in depositing trust fund taxes.

Reasons for Change

The IRS may take from six months to two years before making an initial contact with taxpayers who have fallen behind in their trust fund tax deposits, and additional months or years before the IRS takes direct enforcement action. During this period, the tax liabilities and related interest and penalties can increase significantly and collection becomes more difficult. Individuals often find out many years later, when the amount of tax due is large, that the IRS has determined that they are liable for the entire tax liability as a responsible person. Early notice of such failures could permit more rapid correction of the failure to make correct deposits.

Explanation of Provision

The bill requires the IRS, to the maximum extent practicable, to notify all taxpayers with delinquent taxes described under section 6672 of the Code within 30 days after the return was filed reflecting the delinquency or within 30 days of the first indication that there has been a failure to make timely and complete deposit, whichever is earlier. If the taxpayer is an entity, the Secretary shall notify the entity and the entity shall be required to notify, within 15 days of such notification by the Secretary, all officers, general partners, trustees or other managers of the failure to make a timely and complete deposit. Failure to provide this notice does not absolve any individual from any liability for this penalty.

Effective Date

The provision is effective on the date of enactment.

SUBTITLE H. AWARDING OF COSTS AND CERTAIN FEES

1. Motion for Disclosure of Information (sec. 5701 of the bill and sec. 7430 of the Code)

Present Law

A taxpayer that successfully challenges a determination of deficiency by the IRS may recover attorneys' fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." A taxpayer qualifies as a prevailing party if it (1) establishes that the position of the United States was not substantially justified; (2) substantially prevails with respect to the amount in controversy or with respect to the most significant issue or set of issues presented; and (3) meets certain net worth and (if the taxpayer is a business) size requirements.

Reasons for Change

The committee believes that taxpayers should receive assistance from the IRS in de-

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termining whether the position of the IRS was substantially justified.

Explanation of Provision

The bill provides that once a taxpayer has substantially prevailed, the taxpayer may file a motion for an order requiring the disclosure (within a reasonable period of time) of all information and copies of relevant records in the possession of the IRS with respect to the taxpayer's case and the substantial justification for the position taken by the IRS. Disclosure under this provision is subject to the confidentiality restrictions of section 6103. The provision does not require the disclosure of privileged or otherwise nondisclosable information.

Effective Date

The provision is effective for notices made and proceedings commenced after the date of enactment.

2. Increased Limit on Attorney Fees (sec. 5702 of the bill and sec. 7430 of the Code)

Present Law

Attorneys' fees recoverable by prevailing parties as litigation or administrative costs are limited to a maximum of $75 per hour.

Reasons for Change

The committee believes that these amounts should be raised and indexed for inflation.

Explanation of Provision

The bill raises the statutory rate to $110 per hour, indexed for inflation beginning after 1992.

Effective Date

The provision applies to notices made and proceedings commenced after the date of enactment.

3. Failure to Agree to Extension Not Taken Into Account (sec. 5703 of the bill and sec. 7430 of the Code)

Present Law

To qualify for an award of attorney's fees, the taxpayer must have exhausted the administrative remedies available within the IRS.

Reasons for Change

The IRS has taken the position in regulations that attorney's fees cannot be awarded if the taxpayer has not agreed to extend the statute of limitations. In *Minahan* v. *Commissioner*, 88 T.C. 492 (1987), the Tax Court held that regulation invalid insofar as it provides that a taxpayer's refusal to consent to extend the statute of limitations is to be taken into account in determining whether the taxpayer has exhausted administrative remedies available to the taxpayer.

Explanation of Provision

The bill provides that any failure to agree to an extension of the statute of limitations cannot be taken into account for purposes of determining whether a taxpayer has exhausted the administrative remedies for purposes of determining eligibility for an award of attorney's fees.

Effective Date

The provision applies to proceedings commenced after the date of enactment.

SUBTITLE I. OTHER PROVISIONS

1. Required Content of Certain Notices (sec. 5801 of the bill and sec. 7522 of the Code)

Present Law

The Code requires the IRS to describe the basis for and identify the amounts of tax due, interest, penalties, and any other additional amounts owed in the notice of deficiency sent to taxpayers.

Reasons for Change

If the IRS cannot associate a taxpayer's payment with a balance due, the IRS generally deposits the money and may not inform the taxpayer of the overpayment. For example, a check that is separated from a balance-due income tax return, which is subsequently lost, may not get credited to that taxpayer's account.

Explanation of Provision

The provision requires that the IRS set forth the components of and explanation for each specific adjustment that is the basis for the total tax deficiency. An inadequate description does not invalidate the notice.

Effective Date

The provision applies to notices sent after the date six months after the date of enactment.

2. Treatment of Substitute Returns for Purposes of the Penalty for Failure To Pay Taxes (sec. 5802 of the bill and sec. 6651 of the Code)

Present Law

Section 6651(a)(2) provides that the IRS may assess a penalty for failure to pay tax from the due date of the return until the tax is paid. If no return is filed by the taxpayer and the IRS files a substitute return under section 6020, the tax on which the penalty is measured is considered a deficiency assessable under section 6212 or 6213, and the failure to pay penalty begins to accumulate ten days after the IRS sends the taxpayer a notice and demand for payment of the tax.

Reasons for Change

Under the current penalty system, there is an inequity between voluntarily-filed delinquent returns and substitute returns. Taxpayers who file delinquent returns must pay a failure to file penalty from the due date of the return, whereas the taxpayer who forces the IRS to utilize a substitute return is not assessed the penalty until billed by the IRS.

Explanation of Provision

The bill applies the failure to file penalty to substitute returns in the same manner as the penalty applies to delinquent filers.

Effective Date

The provision applies in the case of any return the due date for which (determined without regard to extensions) is after the date of enactment.

3. Relief From Retroactive Application of Treasury Department Regulations (sec. 5803 of the bill and sec. 7805 of the Code)

Present Law

Treasury may prescribe the extent (if any) to which regulations shall be applied without retroactive effect.

Reasons for Change

The committee believes that it is generally inappropriate for Treasury to issue retroactive regulations.

Explanation of Provision

Proposed, temporary and final regulations are generally required to have an effective date no earlier than the earliest of the following: (i) the date of filing such regulation with the Federal Register, (ii) the date on which any proposed or temporary regulation to which such regulation relates was filed with the Federal Register, and (iii) the date on which any notice substantially describing the expected contents of such regulation was issued to the public. However, with respect to statutes enacted on or after the date of enactment of this provision, a regulation which relates to such statute and which is issued within twelve months of such statute's enactment date may apply as of the date of such statute's enactment. Further, this provision may be superseded by a legislative grant authorizing the Treasury to prescribe the effective date with respect to any regulation. The Treasury may issue retroactive regulations to prevent abuse of the statute. The Treasury may also issue retroactive regulations to correct a procedural defect in the issuance of a regulation. The Treasury may provide that taxpayers may elect to apply a regulation retroactively.

The bill does not apply to regulations prescribed under Code section 986(a)(1)(C) or 986(a)(4) (as amended by the bill). The bill also does not apply to any regulation relating to internal Treasury Department policies, practices, or procedures. Present law with respect to rulings is unchanged.

There may be additional instances in which retroactive application of Treasury regulations has created undue hardship. The bill does not preclude the Congress from both examining these cases and providing any appropriate relief in the future.

Effective Date

The provision applies with respect to any temporary or proposed regulation filed with the Federal Register on or after July 28, 1992, and any temporary or proposed regulation filed with the Federal Register before July 28, 1992, with respect to which a final regulation has not been filed with the Federal Register before that date. The special rule for regulations issued within twelve months shall only apply with respect to statutes enacted on or after the date of enactment.

4. Required Notice to Taxpayers of Certain Payments (sec. 5804 of the bill)

Present Law

If the IRS receives a payment without sufficient information to properly credit it to a taxpayer's account, the IRS may attempt to contact the taxpayer. If contact cannot be made, the IRS places the payment in an unidentified remittance file.

Reasons for Change

If the IRS cannot associate a taxpayer's payment with a balance due, the IRS generally deposits the money and may not inform the taxpayer of the overpayment. For example, a check that is separated from a balance-due income tax return, which is subsequently lost, may not get credited to that taxpayer's account.

Explanation of Provision

The bill requires the IRS to make reasonable efforts to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with any outstanding tax liability.

Effective Date

The provision is effective on the date of enactment.

5. Unauthorized Enticement of Information Disclosure (sec. 5805 of the bill and new sec. 7524 of the Code)

Present Law

There is no statutory disincentive for enticing a tax professional to disclose information about clients in exchange for forgiving the taxes of the professional.

Reasons for Change

The committee believes that enticement of this nature is inappropriate. Therefore, to prevent agents from intervening on behalf of a tax professional to compromise the professional's tax liability in exchange for information regarding the professional's clients,

the committee decided generally to preclude the admissability of such "enticed" information and to provide a right of action to the professional's affected clients against the Government.

Explanation of Provision

The bill provides that, if a Government employee intentionally compromises the determination or collection of any tax due from a tax professional in exchange for certain information concerning a taxpayer who is the professional's client, the information so obtained is not admissible in any judicial proceeding in which the taxpayer is a party, except to rebut a false representation made at trial by the taxpayer. This provision applies only to information conveyed by the taxpayer to the professional for purposes of obtaining advice regarding the taxpayer's tax liability. In addition, the taxpayer may bring a civil action for damages against the United States in a district court of the United States without regard to the amount in controversy. The taxpayer must bring such an action within two years after the date the right of action accrues.[2] Upon a finding of liability, damages shall equal the lesser of $500,000 or the sum of (i) actual economic damages sustained by the taxpayer as a proximate result of the information disclosure, and (ii) the costs of the action. The district court must stay any proceeding with respect to such an action pending completion of any ongoing investigation or prosecution of the taxpayer (which the Commissioner has certified is ongoing to the court).

This provision is intended to apply only where a direct nexus exists between the enticement of the information from the tax professional and the compromise of the professional's tax liability. It is not intended to apply to examination and collection activities of the IRS done in the ordinary course of its determination or collection of tax.

The remedies provided by this provision shall not apply to information conveyed to an attorney, certified public accountant or enrolled agent for the purpose of perpetrating a fraud or crime.

Effective Date

The provision applies to actions taken after the date of enactment.

SUBTITLE J. FORM MODIFICATIONS; STUDIES

A. FORM MODIFICATIONS

1. Explanation of Certain Provisions (sec. 5901 of the bill)

Present Law

Section 6159 authorizes the IRS to enter into written installment agreements with any taxpayer. Section 7122 authorizes the IRS to accept offers in compromise from taxpayers in certain situations. Section 6161 authorizes the IRS to extend the time for payment of tax.

Reasons for Change

Some taxpayers may not have the ability to pay their tax liability when it is due. The Code provides several alternatives to taxpayers in this situation, including installment agreements, offers in compromise, and extensions of time for the payment of taxes. These options are available to the taxpayer at the discretion of the IRS. The committee believes that taxpayers are entitled to be advised of the relief potentially available to them, and to apply for that relief if they think they qualify under IRS guidelines.

Explanation of Provision

The bill requires the IRS to take such actions as may be appropriate (including improved publicity) to ensure that taxpayers are aware of the availability of installment agreements, offers in compromise, and the extension of time to pay tax. The IRS must do so in both the income tax return instructions and collection notices.

Effective Date

The provision is effective on the date of enactment.

2. Improved Procedures for Notifying IRS of Change of Address or Name (sec. 5902 of the bill)

Present Law

Generally, the IRS posts the new address of a taxpayer only upon the filing of the subsequent tax return which contains a new address or if the taxpayer submits a Form 8822, *Change of Address*, to the IRS.

Reasons for Change

Taxpayers frequently encounter problems with the IRS as a result of changing their addresses, and not having IRS examination and collection correspondence forwarded to their new address. Under current procedures, the IRS does not routinely update all of its records with new address information. The IRS has a form which taxpayers can use to notify the IRS of their new address, but this form is seldom utilized by individual taxpayers. Similar problems arise with a taxpayer's change of name (due to events such as marriage or divorce).

Explanation of Provision

The bill requires the IRS to provide improved procedures for taxpayers to notify the IRS of changes in names or addresses. In addition, the bill requires that the IRS institute procedures before June 30, 1993 for the timely updating of all IRS records with change of address information provided to the IRS by taxpayers.

Effective Date

The provision is effective on the date of enactment.

3. Rights and Responsibilities of Divorced Individuals (sec. 5903 of the bill)

Present Law

The IRS provides information on the rights and responsibilities of divorced individuals in Publication 504, *Tax Information for Divorced or Separated Individuals*. This publication is not as widely utilized as Publication 1, *Your Rights As a Taxpayer*.

Reasons for Change

The committee believes that the IRS must do a better job of advising divorced taxpayers of their responsibilities and rights under the Federal tax system.

Explanation of Provision

The bill requires the IRS to include a section on the rights and responsibilities of divorced individuals in Publication 1, *Your Rights As a Taxpayer*.

Effective Date

The provision is effective on the date of enactment.

B. STUDIES

1. Pilot Program for Appeal of Enforcement Actions (sec. 5911 of the bill)

Present Law

A taxpayer who disagrees with an IRS collection action generally can only appeal to successively higher levels of management in the Collection Division. Certain cases involving the 6672 penalty, offers-in-compromise, and employment tax issues may, however, be appealed to the Appeals Division.

Reason for Change

Disputes arise relating to enforcement decisions involving notices of lien, levies, seizures, and decisions not to grant installment agreements. These disputes often arise in cases where the taxpayers did not receive actual notice of the deficiency, often due to divorce and/or change of address.

Explanation of Provision

The bill requires the IRS to establish a one-year pilot program to evaluate the merits of allowing an independent appeal, by the taxpayer, to the Appeals Division of enforcement actions (including lien, levy, and seizure actions) where the deficiency was assessed without the actual knowledge of the taxpayer, where the deficiency was assessed without an opportunity for administrative appeal, and in other appropriate circumstances.

Effective Date

The IRS is required to report to the tax-writing committee by June 30, 1993, on the effectiveness of this pilot program.

2. Study on Taxpayers With Special Needs (sec. 5912 of the bill)

Present Law

The IRS is responsible for providing timely and accurate assistance to taxpayers who want to comply with Federal tax laws.

Reasons for Change

Taxpayers with special needs may experience difficulty in complying with the requirements of the tax system. For example, hearing-impaired taxpayers may have difficulty in obtaining tax assistance from the IRS. Elderly taxpayers may have difficulty in getting tax assistance concerning the tax treatment of Social Security benefits. In addition, some elderly taxpayers could benefit from having tax forms and instructions printed in large-sized print. Non-English speaking taxpayers could benefit from having certain work-sheets and instructions printed in their primary language.

Explanation of Provision

The bill requires the IRS to conduct a study of work to assist the elderly, physically impaired, foreign-language speaking, and other taxpayers with special needs to comply with the tax laws.

Effective Date

The report (and any recommendation) must be submitted to the tax-writing committees by June 30, 1993.

3. Reports on Taxpayer Rights Education Program (sec. 5913 of the bill)

Present Law

The IRS is currently conducting a program to educate revenue officers concerning the rights of taxpayers.

Reasons for Change

The committee believes that it is appropriate for the Congress to be provided the additional information regarding this program.

Explanation of Provision

The bill requires the IRS to report to the tax-writing Committees on its taxpayer rights education program for its officers and employees, including the scope and content of the program, and on the effectiveness of the program.

Effective Date

The report on the scope and content of the taxpayer-rights education program must be

[2]The general accrual rule applied under the Federal Tort Claims Act (28 U.S.C. sec. 2401(b)) is to be applied to actions under this provision; i.e., the right of action does not accrue until a claimant has had a reasonable opportunity to discover all of the essential elements of a possible cause of action. See, e.g., *Rosales* v. *United States*, 824 F.2d 799 (9th Cir. 1987); *Zeidler* v. *United States*, 601 F.2d (10th Cir. 1979).

submitted to the tax-writing committees by April 1, 1993, and the report on the effectiveness of the program must be submitted by June 30, 1993.

4. Biennial Reports on Misconduct By IRS Employees (sec. 5914 of the bill)

Present Law

As mandated by the Inspector General Act, every six months the Inspector General of the Department of the Treasury receives information from the IRS for the Secretary of the Treasury's semiannual report to Congress on employee misconduct. The Inspector General Act, in part, requires that these reports include summary information and descriptions of significant investigative activities and a summary of matters referred to prosecuting authorities and the prosecutions and convictions that have resulted.

Reasons for Change

The IRS Inspection Division investigates allegations and complaints by taxpayers about misconduct by IRS employees that are not covered by the Inspector General Act and reported to Congress. Further, these investigations and the resulting disciplinary actions, if any, are not reported to the public.

Explanation of Provision

The bill requires the IRS to report to the tax-writing committees in June every two years on all cases involving complaints about IRS employee misconduct and on the disposition of those complaints.

Effective Date

The first report must be submitted during June 1993.

5. Study of Notices of Deficiency (sec. 5915 of the bill)

Present Law

Under section 6212, the IRS is required to send a notice of tax deficiency to taxpayers by registered or certified mail.

Reasons for Change

In spite of the requirement of section 6212, many taxpayers still do not receive actual notice from the IRS of their tax deficiency. Generally, if a registered or certified letter is returned to the IRS by the Postal Service as undeliverable, the IRS continues its collection efforts.

Explanation of Provision

The bill requires the GAO to study the effectiveness of current IRS efforts to notify taxpayers with regard to tax deficiencies under section 6212, the number of registered or certified letters and other notices returned to the IRS as undeliverable, any follow-up action taken by the IRS to locate the taxpayers, the effect that failures to receive actual notice have on taxpayers, and recommendations on how the IRS can better notify taxpayers of tax deficiencies.

Effective Date

The report and recommendations must be furnished by June 30, 1993.

6. Notice and Form Accuracy Study (sec. 5916 of the bill)

Present Law

The IRS is responsible for providing accurate and instructive notices, forms, and instructions to taxpayers to assist them in complying with Federal tax laws.

Reasons for Change

Some taxpayers experience difficulty in complying with the requirements of the Federal tax system, due to inaccurate notices, forms, and instructions. The IRS has formed various working groups to improve the accuracy of its communications with the public, but these efforts have not been totally successful.

Explanation of Provision

The bill requires the GAO to study annually the accuracy of 25 of the most commonly used IRS forms, notices, and publications. In conducting its review, the GAO is to seek and consider the comments of organizations representing taxpayers, employers, and tax professionals.

Effective Date

The initial report (and any recommendations) must be submitted to the tax-writing committees by June 30, 1993.

7. IRS Employees' Suggestions Study (sec. 5917 of the bill)

Present Law

The IRS maintains several programs to encourage and reward employees who make suggestions for improving the administration of the tax system.

Reasons for Change

Although the IRS recognizes and pays employees for the value of their suggestions, the IRS does not always implement their recommendations. Worthwhile ideas for lessening the burdens on taxpayers and for improving tax administration may be neglected. Problems that are not solved may lead to frustration on the part of taxpayers and IRS employees.

Explanation of Provision

The bill requires the GAO to conduct a review of the IRS employee suggestion programs. The study is to include a review of all suggestions that were accepted and rewarded by the IRS, an analysis as to how many of these suggestions were implemented, and why the remaining suggestions were not implemented.

Effective Date

The report (and any recommendations) must be submitted to the tax-writing committees by June 30, 1993.

TITLE VI. TECHNICAL CORRECTIONS

SUBTITLE A. REVENUE PROVISIONS

I. Technical Corrections to the Revenue Reconciliation Act of 1990

A. INDIVIDUAL INCOME TAX PROVISIONS

1. Minimum tax rate on certain nonresident aliens (sec. 6101(a)(2) of the bill, sec. 11102 of the 1990 Act, and sec. 897 of the Code)

Present Law

The Revenue Reconciliation Act of 1990 (the "1990 Act") increased the alternative minimum tax rate on individuals from 21 percent to 24 percent

Explanation of Provision

The bill conforms the rate of the minimum tax on the U.S. real property gains of nonresident aliens to the 24 percent minimum tax rate enacted in the 1990 Act.

2. Tax rate of personal holding companies (sec. 6101(a)(4) of the bill, sec. 11101 of the 1990 Act, and sec. 541 of the Code)

Present Law

A corporation that is treated as a personal holding company is subject, in addition to the regular corporate tax, to a 28-percent tax on its undistributed personal holding company income for the taxable year. The present-law rate of 28 percent was set by the Tax Reform Act of 1986.[1] This rate reflected the maximum rate of tax on individuals in that Act.

The 1990 Act increased the maximum rate of tax on individuals from 28 percent to 31 percent effective for taxable years beginning after December 31, 1990.

Explanation of Provision

The bill provides that the increase in the individual maximum tax rate to 31 percent also applies to the personal holding company tax rate, effective for taxable years beginning after December 31, 1990.

3. Definition of AGI for the earned income tax credit and the supplemental earned income tax credit for health insurance premiums (sec. 6101(a)(5) of the bill, sec. 11111 of the 1990 Act, and sec. 32 of the Code)

Present Law

Under present law, a supplemental earned income tax credit (EITC) is available to certain taxpayers for qualified health insurance expenses. Qualified health insurance expenses for which the credit is available are amounts paid during the taxable year for health insurance coverage that includes one or more qualifying children. These expenses include only those expenses relating to the cost of coverage (i.e., premium cost) paid with after-tax dollars. The maximum credit is $428 in 1991. The credit is phased out as adjusted gross income (AGI) (or earned income, if greater) exceeds $11,250 in 1991. Earned income amounts taken into account in computing the maximum credit and the beginning point of the phase-out range are indexed for inflation.

The calculation of this supplemental child health insurance credit is generally the same as the calculation of the basic EITC. Thus, the same eligibility criteria and income phase-in and phase-out requirements apply. There is no family size adjustment with respect to the health insurance credit.

Present law provides that the amount of expenses taken into account in determining the deduction for health insurance costs of self-employed individuals (sec. 162(l)) is reduced by the amount (if any) of the supplemental child health insurance credit allowable to the taxpayer (sec. 162(l)(3)(B)). This so-called "double-dip" provision creates a calculation problem because the amount of the EITC, the supplemental young child credit, and the child health insurance credit cannot be determined until AGI is determined; however, AGI is determined with reference to the deduction for health insurance costs of self-employed individuals. Thus, the operation of the double-dip provision creates a circularity that increases the complexity of the child health credit.

Explanation of Provision

Under the bill, for purposes of the EITC, the supplemental young child credit, and the supplemental child health insurance credit, AGI is calculated assuming that the taxpayer is entitled to the full deduction for health insurance costs under section 162(l). Then, after the maximum child health credit is determined, the double-dip rule (sec. 162(l)(3)(B)) operates as it does under present law.

B. EXCISE TAX PROVISIONS

1. Application of the 2.5-cents-per-gallon tax on fuel used in rail transportation to States and local governments (sec. 6101(b)(3) of the bill, sec. 11211(b)(4) of the 1990 Act, and sec. 4093 of the Code)

Present Law

The 1990 Act increased the highway and motorboat fuels taxes by 5 cents per gallon, effective on December 1, 1990. The 1990 Act continued the exemption from these taxes for fuels used by States and local governments.

The 1990 Act also imposed a 2.5-cents-per-gallon tax on fuel used in rail transpor-

[1] See P.L. 99-514, sec. 101 (b)(8)

tation, also effective on December 1, 1990. Because of a drafting error in the 1990 Act, the 2.5-cents-per-gallon tax on fuel used in rail transportation incorrectly applies to States and local governments.

Explanation of Provision

The bill clarifies that the 2.5-cents-per-gallon tax on fuel used in rail transportation does not apply to such uses by States and local governments.

2. Deposit of certain aviation tax revenues in Airport and Airway Trust Fund (sec. 6101(b)(5) of the bill, sec. 11213 of the 1990 Act, and sec. 9502(e)(1) of the Code)

Present Law

The 1990 Act increased the aviation excise tax rates (except for the international air departure tax rate) by 25 percent, and extended those taxes for five years, effective December 1, 1990, through December 31, 1995. From December 1, 1990 through 1992, the statement of managers on the 1990 Act indicated that the revenues attributable to the increased portion of the aviation taxes were to be retained in the General Fund; these revenues will be deposited in the Airport and Airway Trust Fund for 1993 through 1995. The statute as enacted in the 1990 Act omitted this agreement with respect to the taxes other than those imposed on aviation fuels (i.e., the revenues attributable to the increase in the air passenger ticket tax and the air cargo tax).

Explanation of Provision

The bill clarifies that revenues from all aviation excise taxes attributable to the increased rates imposed by the 1990 Act on taxable events during periods before January 1, 1993, will be retained in the General Fund. The amendment does not affect revenues attributable to the tax rates imposed before enactment of the 1990 Act and extended by that Act. (This provision is also included in H.R. 4691 as passed by the House of Representatives on May 19, 1992.)

3. Small winery production credit and bonding requirements (secs. 6101(b) (7), (8), and (9) of the bill, sec. 11201 of the 1990 Act, and sec. 5041 of the Code)

Present Law

A 90-cents-per-gallon credit is allowed to wine producers who produce no more than 250,000 gallons of wine in a year. The credit may be claimed against the producers' excise or income taxes.

Wine producers must post a bond in amounts determined by reference to expected excise tax liability as a condition of legally operating.

Explanation of Provision

The bill clarifies that wine produced by eligible small wineries may be transferred without payment of tax to bonded warehouses that become liable for payment of the wine excise tax without losing credit eligibility. In such cases, the bonded warehouse will be eligible for the credit to the same extent as the producer otherwise would have been.

The bill further clarifies that the Treasury Department has broad regulatory authority to prevent the benefit of the credit from accruing (directly or indirectly) to wineries producing in excess of 250,000 gallons in a calendar year. The committee specifically understands that this authority extends to all circumstances in which wine production is increased with a purpose of securing indirect credit eligibility for wine produced by such large producers.

The bill also clarifies that the Treasury Department may take the amount of credit expected to be claimed against a producer's wine excise tax liability into account in determining the amount of required bond.

4. Floor stocks refunds for certain cigarette taxes (sec. 6101(b)(10) of the bill and 11202 of the 1990 Act)

Present Law

A floor stocks tax, equal to the amount of the rate increase, is imposed when the rates of Federal excise taxes (other than retail taxes) are increased. The cigarette excise tax rates are scheduled to increase on January 1, 1993. Refunds of this tax, as with the underlying excise tax, are permitted in certain cases.

Explanation of Provision

The bill clarifies that the Treasury Department may make refunds of the cigarette floor stocks tax to be imposed on January 1, 1993, to manufacturers rather than to the persons that actually pay the tax, if the manufacturers demonstrate that the benefit of the refund accrues to the person actually paying the tax.

C. OTHER REVENUE-INCREASE PROVISIONS OF THE 1990 ACT

1. Deposits of Railroad Retirement Tax Act taxes (sec. 6101(c)(3) of the bill, sec. 11334 of the 1990 Act, and sec. 6302(g) of the Code)

Present Law

Employers must deposit income taxes withheld from employees' wages and FICA taxes that are equal to or greater than $100,000 by the close of the next banking day. Under the Railroad Retirement Solvency Act of 1983, the deposit rules for withheld income taxes and FICA taxes automatically apply to Railroad Retirement Tax Act taxes (sec. 226 of P.L. 98-76).

Explanation of Provision

The bill conforms the Internal Revenue Code to the Railroad Retirement Solvency Act of 1983 by stating in the Code that these deposit rules for withheld income taxes and FICA taxes apply to Railroad Retirement Tax Act taxes.

2. Treatment of salvage and subrogation of property and casualty insurance companies (sec. 6101(c)(4) of the bill and sec. 11305 of the 1990 Act)

Present Law

For taxable years beginning after December 31, 1989, property and casualty insurance companies are required to reduce the deduction allowed for losses incurred (both paid and unpaid) by estimated recoveries of salvage and subrogation attributable to such losses. In the case of any property and casualty insurance company that took into account estimated salvage and subrogation recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, 87 percent of the discounted amount of the estimated salvage and subrogation recoverable as of the close of the last taxable year beginning before January 1, 1990, is allowed as a deduction ratably over the first 4 taxable years beginning after December 31, 1989. This special deduction was enacted in order to provide such property and casualty insurance companies with substantially the same Federal income tax treatment as that provided to those property and casualty insurance companies that prior to the Revenue Reconciliation Act of 1990 did not take into account estimated salvage and subrogation recoverable in determining losses incurred.

Explanation of Provision

The bill provides that the earnings and profits of any property and casualty insurance company that took into account estimated salvage and subrogation recoverable in determining losses incurred for its last taxable year beginning before January 1, 1990, is to be determined without regard to the special deduction that is allowed over the first 4 taxable years beginning after December 31, 1989. The special deduction is to be taken into account, however, in determining earnings and profits for purposes of applying sections 56, 902(c)(1) and 960 of the Internal Revenue Code of 1986. This provision is considered necessary in order to provide those property and casualty insurance companies that took into account estimated salvage and subrogation recoverable in determining losses incurred with substantially the same Federal income tax treatment as that provided to those property and casualty insurance companies that prior to the 1990 Act did not take into account estimated salvage and subrogation recoverable in determining losses incurred.

3. Information with respect to certain foreign-owned or foreign corporations: Suspension of the statute of limitations during certain judicial proceedings (sec. 6101(c)(5) of the bill, secs. 11314 and 11315 of the 1990 Act, and secs. 6038A and 6038C of the Code)

Present Law

Any domestic corporation that is 25-percent owned by one foreign person is subject to certain information reporting and recordkeeping requirements with respect to transactions carried out directly or indirectly with certain foreign persons treated as related to the domestic corporation ("reportable transactions") (sec. 6038A(a)). In addition, the Code provides procedures whereby an IRS examination request or summons with respect to reportable transactions can be served on foreign related persons through the domestic corporation (sec. 6038A(e)). Similar provisions apply to any foreign corporation engaged in a trade or business within the United States, with respect to information, records, examination requests, and summonses pertaining to the computation of its liability for tax in the United States (sec. 6038C). Certain noncompliance rules may be applied by the Internal Revenue Service in the case of the failure by a domestic corporation to comply with a summons pertaining to a reportable transaction (a "6038A summons") (sec. 6038A(e)), or the failure by a foreign corporation engaged in a U.S. trade or business to comply with a summons issued for purposes of determining the foreign corporation's liability for tax in the United States (a "6038C summons") (sec. 6038C(d)).

Any corporation that is subject to the provisions of section 6038A or 6038C has the right to petition a Federal district court to quash a 6038A or 6038C summons, or to review a determination by the IRS that the corporation did not substantially comply in a timely manner with the 6038A or 6038C summons (sec. 6038A(e)(4) (A) and (B); sec. 6038C(d)(4)). During the period that either such judicial proceeding is pending (including appeals), and for up to 90 days thereafter, the statute of limitations is suspended with respect to any transaction (or item, in the case of a foreign corporation) to which the summons relates (secs. 6038A(e)(4)(D), 6038C(d)(4)).

The legislative history of the 1989 Act amendments to section 6038A states that the suspension of the statute of limitations applies to "the taxable year(s) at issue."[2] The

[2] H. Rep. No. 247, 101st Cong., 1st Sess. 1301 (1989); "Explanation of Provisions Approved by the Committee on October 3, 1989," Senate Finance Committee Print, 101st Cong., 1st Sess. 118 (October 12, 1989).

legislative history of the 1990 Act, which added section 6038C to the Code, uses the same language.[3]

Explanation of Provision

The bill modifies the provisions in sections 6038A and 6038C that suspend the statute of limitations to clarify that the suspension applies to any taxable year for which the determination of the amount of tax imposed is affected by the transaction or item to which the summons relates.

The Committee intends that, under the bill, a transaction or item would affect the determination of the amount of tax imposed for the taxable year directly at issue, as well as for any taxable year indirectly affected through, for example, net operating loss carrybacks or carryforwards. The Committee does not intend that, under the bill, a transaction or item would affect the determination of the amount of tax imposed for any taxable year other than the taxable year directly at issue solely by reason of any similarity of issues involved. Similarly, the Committee does not intend that, under the bill, a transaction or item would affect the determination of the amount of tax imposed on any taxpayer unrelated to the taxpayer to whom the summons is directed.

4. Rate of interest for large corporate underpayments (secs. 6101(c) (6) and (7) of the bill, sec. 11341 of the 1990 Act, and sec. 6621(c) of the Code)

Present Law

The rate of interest otherwise applicable to underpayments of tax is increased by two percent in the case of large corporate underpayments (generally defined to exceed $100,000), applicable to periods after the 30th day following the earlier of a notice of proposed deficiency, the furnishing of a statutory notice of deficiency, or an assessment notice issued in connection with a nondeficiency procedure.

Explanation of Provision

The bill provides that an IRS notice that is later withdrawn because it was issued in error does not trigger the higher rate of interest. The bill also corrects an incorrect reference to "this subtitle". ±

D. EXPIRING TAX PROVISIONS

1. Exclusion for employer-provided educational assistance (sec. 6101(d)(1) of the bill, sec. 11403 of the 1990 Act, and secs. 127 and 132 of the Code)

Present Law

Employer-provided educational assistance is excludable from gross income to the extent that the value of the assistance does not exceed $5,250 and certain other requirements are satisfied (sec. 127). Prior to the 1990 Act, the exclusion did not apply to graduate level courses. The 1990 Act eliminated this restriction. The Omnibus Budget Reconciliation Act of 1989 provided that educational assistance that is not excludable under section 127 due to the dollar limitation on the exclusion and the restriction on graduate level courses is excludable from gross income if and only if it qualifies as a working condition fringe benefit (sec. 132(h)).

Explanation of Provision

The bill amends the fringe benefit rules to reflect the fact that the graduate level course restriction has been repealed.

2. Research credit provision: Effective date for repeal of special proration rule (sec. 6101(d)(2) of the bill and sec. 11402 of the 1990 Act)

Present Law

The Omnibus Budget Reconciliation Act of 1989 effectively extended the research credit for nine months by prorating certain qualified research expenses incurred before January 1, 1991. The special rule to prorate qualified research expenses applied in the case of any taxable year which began before October 1, 1990, and ended after September 30, 1990. Under this special proration rule, the amount of qualified research expenses incurred by a taxpayer prior to January 1, 1991, was multiplied by the ratio that the number of days in that taxable year before October 1, 1990, bears to the total number of days in such taxable year before January 1, 1991. The amendments made by the 1989 Act to the research credit (including the new method for calculating a taxpayer's base amount) generally were effective for taxable years beginning after December 31, 1989. However, this effective date did not apply to the special proration rule (which applied to any taxable year which began prior to October 1, 1990—including some years which began before December 31, 1989—if such taxable year ended after September 30, 1990).

Section 11402 of the Omnibus Budget Reconciliation Act of 1990 extended the research credit through December 31, 1991, and repealed the special proration rule provided for by the 1989 Act. Section 11402 of the 1990 Act was effective for taxable years beginning after December 31, 1989. Thus, in the case of taxable years beginning before December 31, 1989, and ending after September 30, 1990 (e.g., a taxable year of November 1, 1989 through October 31, 1990), the special proration rule provided by the 1989 Act would continue to apply.

Explanation of Provision

The bill repeals for all taxable years ending after December 31, 1989, the special proration rule provided for by the 1989 Act.

E. Energy Tax Provision: Alternative Minimum Tax Adjustment Based on Energy Preferences (secs. 6101(e)(2) and (6) of the bill, sec. 11531(a) of the 1990 Act, and sec. 56(h) of the Code)

Present Law

In computing alternative minimum taxable income (and the adjusted current earnings (ACE) adjustment of the alternative minimum tax), certain adjustments are made to the taxpayer's regular tax treatment for intangible drilling costs (IDCs) and depletion. A special energy deduction is also allowed. The special energy deduction is initially determined by determining the taxpayer's (1) intangible drilling cost preference and (2) the marginal production depletion preference. The intangible drilling cost preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to the adjustments for IDCs. The marginal production depletion preference is the amount by which the taxpayer's alternative minimum taxable income would be reduced if it were computed without regard to depletion adjustments attributable to marginal production. The intangible drilling cost preference is then apportioned between (1) the portion of the preference related to qualified exploratory costs and (2) the remaining portion of the preference. The portion of the preference related to qualified exploratory costs is multiplied by 75 percent and the remaining portion is multiplied by 15 percent. The marginal production depletion preference is multiplied by 50 percent. The three products described above are added together to arrive at the taxpayer's special energy deduction (subject to certain limitations).

The special energy deduction is not allowed to the extent that it exceeds 40 percent of alternative minimum taxable income determined without regard to either this special energy deduction or the alternative tax net operating loss deduction. Any special energy deduction amount limited by the 40-percent threshold may not be carried to another taxable year. In addition, the combination of the special energy deduction, the alternative minimum tax net operating loss and the alternative minimum tax foreign tax credit cannot generally offset, in the aggregate, more than 90 percent of a taxpayer's alternative minimum tax determined without such attributes.

Explanation of Provisions

Interaction of special energy deduction with net operating loss and investment tax credit

The bill clarifies that the amount of alternative tax net operating loss that is utilized in any taxable year is to be appropriately adjusted to take into account the amount of special energy deduction claimed for that year. This operates to preserve a portion of the alternative tax net operating loss carryover by reducing the amount of net operating loss utilized to the extent of the special energy deduction claimed, which if unused, could not be carried forward.

In addition, the bill contains a similar provision which clarifies that the limitation on the utilization of the investment tax credit for purposes of the alternative minimum tax is to be determined without regard to the special energy deduction.

Interaction of special energy deduction with adjustment based on adjusted current earnings.

The bill provides that the ACE adjustment is to be computed without regard to the special energy deduction. Thus, the bill specifies that the ACE adjustment is equal to 75 percent of the excess of a corporation's adjusted current earnings over its alternative minimum taxable income computed without regard to either the ACE adjustment, the alternative tax net operating loss deduction, or the special energy deduction.

F. Estate Tax Freezes (sec. 6101(f) of the bill, sec. 11602 of the 1990 Act, and secs. 2701–04 of the Code)

Present Law

Generally

The value of property transferred by gift or includible in the decedent's gross estate is its fair market value. Fair market value is generally the price at which the property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts (Treas. Reg. sec. 20.2031). Chapter 14 contains rules that supersede the willing buyer, willing seller standard (Code secs. 2701–04).

Preferred interests in corporation and partnerships

Valuation of retained interests

Scope.—Section 2701 provides special rules for valuing certain rights retained in conjunction with the transfer to a family member of an interest in a corporation or partnership. These rules apply to any applicable retained interest held by the transferor or an applicable family manner immediately after

[3] "Legislative History of Ways and Means Democratic Alternative," House Ways and Means Committee Print (WMCP: 101–37), 101st Cong., 2nd Sess. 58 (October 15, 1990); Report language submitted by the Senate Finance Committee to the Senate Budget Committee on S. 3299, 136 *Cong. Rec.* S 15629, S. 15700 (1990).

the transfer of an interest in such entity. An "applicable family member" is, with respect to any transferor, the transferor's spouse, ancestors of the transferor and the spouse, and spouses of such ancestors.

An applicable retained interest is an interest with respect to which there is one of two types of rights ("affected rights"). The first type of affected right is a liquidation, put, call, or conversion right, generally defined as any liquidation, put, call, or conversion right, or similar right, the exercise or nonexercise of which affects the value of the transferred interest. The second type of affected right is a distribution right[4] in an entity in which the transferor and applicable family members hold control immediately before the transfer. In determining control, an individual is treated as holding any interest held by the individual's brothers, sisters and lineal descendents. A distribution right does not include any right with respect to a junior equity interest.

Valuation.—Section 2701 contain two rules for valuing applicable retained interests. Under the first rule, an affected right other than a right to qualified payments is valued at zero. Under the second rule any retained interest that confers (1) a liquidation, put, call or conversion right and (2) a distribution right that consists of the right to receive a qualified payment is valued on the assumption that each right is exercised in a manner resulting in the lowest value for all rights (the "lowest value rule"). There is no statutory rule governing the treatment of an applicable retained interest that confers a right to receive a qualified payment, but with respect to which there is no liquidation, put, call or conversion right.

A qualified payment is a dividend payable on a periodic basis and at a fixed rate under cumulative preferred stock (or a comparable payment under a partnership agreement). A transferor or applicable family member may elect not to treat such a dividend (or comparable payment) as a qualified payment. A transferor or applicable family member also may elect to treat any other distribution right as a qualified payment to be paid in the amount and at the times specified in the election.

Inclusion in transfer tax base.—Failure to make a qualified payment valued under the lowest value rule within four years of its due date generally results in an inclusion in the transfer tax base equal to the difference between the compounded value of the scheduled payments over the compounded value of the payments actually made. The Treasury Department has regulatory authority to make subsequent transfer tax adjustments in the transfer of an applicable retained interest to reflect the increase in a prior taxable gift by reason of section 2701.

Generally, this inclusion occurs if the holder transfers by sale or gift the applicable retained interest during life or at death. In addition, the taxpayer may, by election, treat the payment of the qualified payment as giving rise to an inclusion with respect to prior periods.

The inclusion continues to apply if the applicable retained interest is transferred to an applicable family member. There is no inclusion on a transfer of an applicable retained interest to a spouse for consideration or in a transaction qualifying for the martial deduction but subsequent transfers by the spouse are subject to the inclusion. Other transfers to applicable family members result in an immediate inclusion as well as subjecting the transferee to subsequent inclusions.

Minimum value of residual interest

Section 2701 also establishes a minimum value for a junior equity interest in a corporation or partnership. For partnerships, a junior equity interest is an interest under which the rights to income and capital are junior to the rights to income and capital are junior to the rights of all other classes of equity interests.

Trusts and term interests in property

The value of a transfer in trust is the value of the entire property less the value of rights in the property retained by the grantor. Section 2702 provides that in determining the extent to which a transfer of an interest in trust to a member of the transferor's family is a gift, the value of an interest retained by the transferor or an applicable family member is zero unless such interest takes certain prescribed forms.

For a transfer with respect to a specified portion of property, section 2702 applies only to such portion. The section does not apply to the extent that the transfer is incomplete.

Explanation of Provisions

Preferred interests in corporations and partnerships

Valuation

The bill provides that an applicable retained interest conferring a distribution right to qualified payments with respect to which there is no liquidation, put, call, or conversion right is valued without regard to section 2701. The bill also provides that the retention of such right gives rise to potential inclusion in the transfer tax base. In making these changes, it is understood that Treasury regulations could provide, in appropriate circumstances, that a right to receive amounts on liquidation of the cooperation or partnership constitutes a liquidation right within the meaning of section 2701 if the transferor, alone or with others, holds the right to cause liquidation.

The bill modifies the definition of junior equity interest by granting regulatory authority to threat a partnership interest with rights that are junior with respect to either income or capital as a junior equity interest. The bill also modifies the definition of distribution right by replacing the junior equity interest exception with an exception for a right under an interest that is junior to the rights of the transferred interest. As a result, section 2701 does not affect the valuation of a transferred interest that is senior to the retained interest, even if the retained interest is not a junior equity interest.

The bill modifies the rules for electing into or out of qualified payment treatment. A dividend payable on a periodic basis and at a fixed rate under a cumulative preferred stock held by the transferor is treated as a qualified payment unless the transferor elects otherwise. If held by an applicable family member, such stock is not treated as a qualified payment unless the holder so elects.[5] In addition, a transferor or applicable family member holding any other distribution right may treat such right as a qualified payment to be paid in the amounts and at the times specified in the election.

Inclusion in transfer tax base

The bill grants the Treasury Department regulatory authority to make subsequent transfer tax adjustments to reflect the inclusion of unpaid amounts with respect to a qualified payment. This authority, for example, would permit the Treasury Department to eliminate the double taxation that might occur if, with respect to a transfer, both the inclusion and the value of qualified payment arrearages were included in the transfer tax base. It would also permit elimination of the double taxation that might result from a transfer to a spouse, who, under the statute, is both an applicable family member and a member of the transferor's family.

The bill treats a transfer to a spouse falling under the annual exclusion the same as a transfer qualifying for the marital deduction. Thus, no inclusion would occur upon the transfer of an applicable retained interest to a spouse, but subsequent transfers by the spouse would be subject to inclusion. The bill also clarifies that the inclusion continues to apply if an applicable family member transfers a right to qualified payments to the transferor.

The provision clarifies the consequences of electing to treat a distribution as giving rise to an inclusion. Under the bill, the election gives rise to an inclusion only with respect to the payment for which the election is made. The inclusion with respect to other payments is unaffected.

Trust and term interests in property

The bill conforms section 2702 to existing regulatory terminology by substituting the term "incomplete gift" for "incomplete transfer." In addition, the bill limits the exception for incomplete gifts to instances in which the entire gift is incomplete. The Treasury Department is granted regulatory authority, however, to create additional exceptions not inconsistent with the purposes of the section. This authority, for example, could be used to except a charitable trust that meets the requirements of section 664 and that does not otherwise create an opportunity for transferring property to a family member free of transfer tax.

G. MISCELLANEOUS PROVISIONS

1. Conforming amendments to the repeal of the *General Utilities* doctrine (secs. 6101(g)(1) and (2) of the bill, sec. 11702(e)(2) of the 1990 Act, and secs. 897(f) and 1248 of the Code)

Present Law

As a result of changes made by recent tax legislation, gain is generally recognized on the distribution of appreciated property by a corporation to its shareholders. The Technical Corrections subtitle of the 1990 Act and technical correction provisions in prior acts made various conforming amendments arising out of these changes. For example, the 1990 Act made a conforming change to section 355(c) to state the treatment of distributions in section 355 transactions in the affirmative rather than by reference to the provisions of section 311. In addition, the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act") made a conforming change to section 1248(f) to update the references to the nonrecognition provisions contained in that subsection. One of the changes was to change the reference to "section 311(a)" from "section 311".

Explanation of Provisions

The bill makes three conforming changes to the Code.

First, section 897(f), relating to the basis in a United States real property interest distributed to a foreign person, is repealed as deadwood. the basis of the distributed property is its fair market value in accordance with section 301(d).

[4] *A distribution right generally is a right to a distribution from a corporation with respect to its stock, or from a partnership with respect to a partner's interest in the partnership.*

[5] *With respect to gifts made in 1990, the bill provides that this election may be made by the due date (including extensions) of the transferor's 1991 gift tax return.*

Second, section 1248(f) is amended to add a reference to section 355(c)(1), which provides generally for the nonrecognition of gain or loss on the distribution of stock or securities in certain subsidiary corporations. This retains the substance of the law as it existed before the conforming change to section 355(c) made by the 1990 Act.

Third, section 1248 is amended to clarify that, notwithstanding the conforming changes made by the 1988 Act, with respect to any transaction in which a U.S. person is treated as realizing gain from the sale or exchange of stock of a controlled foreign corporation, the U.S. person shall be treated as having sold or exchanged the stock for purposes of applying section 1248. Thus if a U.S. person distributes appreciated stock of a controlled foreign corporation to its shareholders in a transaction in which gain is recognized under section 311(b), section 1248 shall be applied as if the stock had been sold or exchanged at its fair market value. Under section 1248(a), part of all of the gain may be treated as a dividend. Under the bill, the rule treating the distribution for purposes of section 1248 as a sale or exchange also applies where the U.S. person is deemed to distribute the stock under the provisions of section 1248(j). Under section 1248(i), gain will be recognized only to the extent of the amount treated as a dividend under section 1248.

These amendments are not intended to affect the authority of the Secretary to issue regulations under section 1248(f) providing exceptions to the rule recognizing gain in certain distributions (cf. Notice 87–64, 1987–2 C.B. 375).

2. Effective date and LIFO adjustment for purposes of computing adjusted current earnings (sec. 6101(g)(4) of the bill, sec. 11701 of the 1990 Act, sec. 7611(b) of the 1989 Act, and sec. 56(g) of the Code)

Present Law

For purposes of computing the adjusted current earnings (ACE) component of the corporate alternative minimum tax, taxpayers are required to make the LIFO inventory adjustments provided in section 312(n)(4) of the Code. Section 312(n)(4) generally is applicable for purposes of computing earnings and profits in taxable years beginning after September 30, 1984. The ACE adjustment generally is applicable to taxable years beginning after December 31, 1989.

Explanation of Provision

The bill clarifies that the LIFO inventory adjustment required for ACE purposes shall be computed by applying the rules of section 312(n)(4) only with respect to taxable years beginning after December 31, 1989. The effective date applicable to the determination of earnings and profits (September 30, 1984) is inapplicable for purposes of the ACE LIFO inventory adjustment. Thus, the ACE LIFO adjustment shall be computed with reference to increases (and decreases, to the extent provided in regulations) in the ACE LIFO reserve in taxable years beginning after December 31, 1989.

3. Low-income housing credit (sec. 6101(g)(5) of the bill, sec. 11701(a)(11) of the 1990 Act, and sec. 42 of the Code)

Present Law

The amendments to the low-income housing tax credit contained in the Omnibus Budget Reconciliation Act of 1989 generally were effective for the building placed in service after December 31, 1989, to the extent the building was financed by tax-exempt bonds ("a bond-financed building"). This rule applied regardless of when the bonds were issued.

A technical correction enacted in the Omnibus Budget Reconciliation Act of 1990 limited this effective date to buildings financed with bonds issued after December 31, 1989. Thus, the technical correction applied pre-1989 Act law to a bond-financed building placed in service after December 31, 1989, if the bonds were issued before January 1, 1990.

Explanation of Provision

The bill repeals the 1990 technical correction. The bill provides, however, that pre-1989 Act law will apply to a bond-financed building if the owner of the building establishes to the satisfaction of the Secretary of the Treasury reasonable reliance upon the 1990 technical correction.

The committee intends that, in the case of buildings placed in service before the date of the bill's enactment, reasonable reliance may be established by a showing of compliance with the law as in effect for those buildings before enactment of the amendments made by the bill.

H. EXPIRED OR OBSOLETE PROVISIONS ("DEADWOOD PROVISIONS")

(Sec. 6001(h) of the bill and secs. 11801–11816 of the 1990 Act)

Present Law

The 1990 Act repealed and amended numerous sections of the Code by deleting obsolete provisions ("deadwood"). These amendments were not intended to make substantive changes to the tax law.

Explanation of Provision

The bill makes several amendments to restore the substance of prior law which was inadvertently changed by the deadwood provisions of the 1990 Act. These amendments include (1) a provision restoring the prior-law depreciation treatment of certain energy property (sec. 168(e)(3)(B)(vi)); (2) a provision restoring the prior-law definition of property eligible for expensing (sec. 179(d)); (3) a provision restoring the prior-law rule providing that if any member of an affiliated group of corporations elects the credit under section 901 for foreign taxes paid or accrued, then all members of the group paying or accruing such taxes must elect the credit in order for any dividend paid by a member of the group to qualify for the 100-percent dividends received deduction (sec. 243(b)); and (4) the provisions relating to the collection of State individual income taxes (secs. 6361–6365).

The bill also makes several nonsubstantive clerical amendments to conform the Code to the amendments made by the deadwood provisions. None of these amendments is intended to change the substance of pre-1990 law.

II. Other Tax Technical Corrections

A. Hedge Bonds (sec. 6102(b) of the bill, sec. 11701 of the 1990 Act, and sec. 149(g) of the Code)

Present Law

The 1989 Act provided generally that interest on hedge bonds is not tax-exempt unless prescribed minimum percentages of the proceeds are reasonably expected to be spent at set intervals during the five-year period after issuance of the bonds (sec. 149(g)). A hedge bond is defined generally as a bond (1) at least 85 percent of the proceeds of which are not reasonably expected to be spent within three years following issuance and (2) more than 50 percent of the proceeds of which are invested at substantially guaranteed yields for four years or more.

This restriction does not apply to hedge bonds, however, if at least 95 percent of the proceeds are invested in other tax-exempt bonds (not subject to the alternative minimum tax). The 95-percent investment requirement is not violated if investment earnings exceeding five percent of the proceeds are temporarily invested for up to 30 days *pending reinvestment* in taxable (including alternative minimum taxable) investments.

Explanation of Provision

The bill clarifies that the 30-day exception for temporary investments of investment earnings applies to amounts (*i.e.*, principal and earnings thereon) temporarily invested during the 30-day period immediately preceding redemption of the bonds as well as such periods preceding reinvestment of the proceeds.

B. Withholding on Distributions from U.S. Real Property Holding Companies (sec. 6102(c) of the bill, sec. 129 of the Deficit Reduction Act of 1984, and sec. 1445 of the Code)

Present Law

Under the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), a foreign investor that disposes of a U.S. real property interest generally is required to pay tax on any gain on the disposition. For this purpose a U.S. real property interest generally includes stock in a domestic corporation that is a U.S. real property holding corporation ("USRPHC"), or was a USRPHC at any time during the previous five years.

A sale or exchange of stock in a USRPHC is an example of a disposition of a U.S. real property interest. In addition, provisions of subchapter C of the Code treat amounts received in certain corporate distributions as amounts received in sales or exchanges, giving rise to tax liability under the FIRPTA rules when a foreign person receives such a distribution from a present or former USRPHC. Thus, amounts received by a foreign shareholder in a USRPHC in a distribution in complete liquidation of the USRPHC are treated as in full payment in exchange for the USRPHC stock, and are therefore subject to tax under FIRPTA (sec. 331; Treas. Reg. sec. 1.897–5T(a)(2)(iii)). Similarly, amounts received by a foreign shareholder in a USRPHC upon redemption of the USRPHC stock are treated as a distribution in part or full payment in exchange for the stock, and are therefore subject to tax under FIRPTA (sec. 302(a); Treas. Reg. sec. 1.897–5T(a)(2)(ii)). Third, amounts received by a foreign shareholder in a USRPHC in a section 301 distribution from the USRPHC that exceeds the available earnings and profits of the USRPHC, are treated as gain from the sale or exchange of the shareholder's USRPHC stock to the extent that they exceed the shareholder's adjusted basis in the stock; such amounts are therefore also subject to tax under FIRPTA (sec. 301(c)(3); Treas. Reg. sec. 1.897–5T(a)(2)(i)).–

FIRPTA withholding

The Tax Reform Act of 1984 established a withholding system to enforce the FIRPTA tax. Unless an exception applies, a transferee of a U.S. real property interest from a foreign person generally is required to withhold the lesser of ten percent of the amount realized (purchase price), or the maximum tax liability on disposition (as determined by the IRS) (sec. 1445).

Although the FIRPTA withholding requirement by its terms generally applies to all dispositions of U.S. real property interests, and subchapter C treats amounts received in certain distributions as amounts received in sales or exchanges, the FIRPTA withholding provisions also provide express rules for withholding on certain distribu-

tions treated as sales or exchanges. Generally, distributions in a transaction to which section 302 (redemptions) or part II of subchapter C (liquidations) applies are subject to 10 percent withholding.[6] Although a section 301 distribution in excess of earnings and profits is also treated as a disposition for purposes of computing the FIRPTA liability of a foreign recipient of the distribution, there is no corresponding withholding provision expressly addressed to the payor of such a distribution.

Explanation of Provision

The bill clarifies that FIRPTA withholding requirements apply to any section 301 distribution to a foreign person by a domestic corporation that is or was a USRPHC, which distribution is not made out of the corporation's earnings and profits and is therefore treated as an amount received in a sale or exchange of a U.S. real property interest. (The bill does not alter the withholding treatment of section 301 distributions by such a corporation that *are* out of earnings and profits.) Under the bill, the FIRPTA withholding requirments that apply to a section 301 distribution not out of earnings and profits are similar to the requirements applicable to redemption or liquidation distributions to a foreign person by such a corporation. The provision is effective for distributions made after the date of enactment of the bill. No inference is intended as to the FIRPTA withholding requirements applicable to such a distribution under present law.

C. Treatment of Credits Attributable to Working Interests in Oil and Gas Properties (sec. 6102(d) of the bill, sec. 501 of the Tax Reform Act of 1986, and sec. 469 of the Code)

Present Law

Under present law, a working interests in an oil and gas property which does not limit the liability of the taxpayer is not a "passive activity" for purposes of the passive loss rules (sec. 469). However, if any loss from an activity is treated as not being a passive loss by reason of being from a working interest, any net income from the activity in subsequent years is not treated as income from a passive activity, notwithstanding that the activity may otherwise have become passive with respect to the taxpayer.

Explanation of Provision

The bill provides that any credit attributable to a working interest in an oil and gas property, in a taxable year in which the activity is no longer treated as not being a passive activity, will not be treated as attributable to a passive activity to the extent of any tax allocable to the net income from the activity for the taxable year. Any credits from the activity in excess of this amount of tax will continue to be treated as arising from a passive activity and will be treated under the rules generally applicable to the passive activity credit.

D. Clarification of Passive Loss Disposition Rule (sec. 6102(e) of the bill, sec. 501 of the Tax Reform Act of 1986, sec. 1005(a)(2)(A) of the Technical and Miscellaneous Revenue Act of 1988, and sec. 469(g)(1)(A) of the Code)

Present Law

The Tax Reform Act of 1986 provided that if a passive activity is disposed of in a transaction in which all gain or loss is recognized, any overall loss from the activity in the year of disposition is recognized and allowed against income (whether active or passive income).[7] The language of the 1986 Act provided that any loss was allowable, first, against income or gain from the passive activity, second, against income or gain from all passive activities, and finally, against any other income or gain. This rule was rewritten by the technical corrections portion of the Technical and Miscellaneous Revenue Act of 1988. The statutory language (as amended by the 1988 Act) providing for the computation of the overall loss for the taxable year of disposition is not entirely clear where the activity is disposed of at a gain.

Explanation of Provision

The bill clarifies the rule relating to the computation of the overall loss allowed upon the disposition of a passive activity. The bill provides that, in a transaction in which all gain or loss is recognized on the disposition of a passive activity, any loss from the activity for the taxable year (taking into account all income, gain, and loss, including gain or loss recognized on the disposition) in excess of any net income or gain from other passive activities for the taxable year is treated as a loss which is not from a passive activity. The provision applies to taxable years beginning after December 31, 1986.

E. Taxation of Excess Inclusions of a Residual Interest in a REMIC for Taxpayers Subject to Alternative Minimum Tax with Net Operating Losses (sec. 6102(j) of the bill, sec. 671 of the Tax Reform Act of 1986, and sec. 860E of the Code)

Present Law

Residual Interests in a REMIC

A real estate mortgage investment conduit ("REMIC") is an entity that holds real estate mortgages. All interests in a REMIC must be "regular interests" or "residual interests." A regular interest is an interest the terms of which are fixed on the start-up day, which unconditionally entitles the holder to receive a specified principal amount, and which provides that interest amounts are payable based on a fixed rate (or a variable rate to the extent provided in the Treasury regulations). A residual interest is any interest that is so designated and that is not a regular interest in a REMIC.

Generally, the holder of a residual interest in a REMIC takes into account his daily portion of the taxable income or net loss of such REMIC for each day during which he held such interest. The taxable income of any holder of a residual interest in a REMIC for any taxable year cannot be less than the excess inclusion for the year (sec. 860E). Thus, in general, income from excess inclusions cannot be offset by a net operating loss (or net operating loss carryover) in computing the taxpayer's regular tax.

Alternative minimum tax

Taxpayers are subject to an alternative minimum tax which is payable, in addition to all other tax liabilities, to the extent it exceeds the taxpayer's regular tax. The tax is imposed at a rate of 24 percent (20 percent in the case of a corporation) on alternative minimum taxable income in excess of an exemption amount. Alternative minimum taxable income generally is the taxpayer's taxable income, as increased or decreased by certain adjustments and preferences.

Because the determination of a taxpayer's alternative minimum taxable income begins with taxable income, a taxpayer holding a residual interest in a REMIC may have positive alternative minimum taxable income even where the taxpayer has a net operating loss for the year.

Explanation of Provision

The bill provides that the present law rule, that the taxable income of a REMIC residual interest shall not be less than its excess inclusions, shall not apply for purposes of the alternative minimum tax. Accordingly, the bill permits a net operating loss (and net operating loss carryovers) to offset income from excess inclusions in computing alternative minimum taxable income. Under the bill, all taxpayers subject to the alternative minimum tax will pay a tax on excess exclusions at the alternative minimum tax rate, regardless of whether the taxpayer has a net operating loss. The provision is effective for taxable years beginning after December 31, 1986.

F. Conforming Amendments Relating to Pension Reemployment Rights of Members of the Uniformed Services (sec. 6102(j) of the bill and sec. 414 of the Code)

Legislative Background and Present Law

Veterans' bill

H.R. 1578 ("Uniformed Services Employment and Reemployment Rights Act of 1991") was passed by the House of Representatives on May 14, 1991. The bill was referred to the Senate Committee on Veterans' Affairs on May 16, 1991. On November 7, 1991, S. 1095 ("Uniformed Services Employment and Reemployment Rights Act of 1991") was reported by the Senate Committee on Veterans' Affairs (S. Rept. 102-203), and is pending before the Senate.

H.R. 1578, as passed by the House, and S. 1095, as reported by the Senate Committee on Veterans' Affairs, each amend chapter 43 of title 38, United States Code, to provide for reemployment rights and benefits for individuals who serve in the uniformed services (i.e., the United States Armed Forces or the commissioned corps of the Public Health Service). Each of the bills provides, among other things, that service in the uniformed services is considered service with the employer for retirement plan benefit accrual purposes; the employer that reemploys the individual is liable for funding any resulting obligation; and the reemployed individual is entitled to any accrued benefits derived from employee contributions to the extent that the individual makes payments to the plan with respect to the contributions.

Internal Revenue Code

Under the Internal Revenue Code, overall limits are provided on contributions and benefits under certain retirement plans. Annual additions with respect to each participant under a qualified defined contribution plan generally are limited to the lesser of $30,000 or 25 percent of compensation. Annual deferrals with respect to each participant under an eligible deferred compensation plan (sec. 457) generally are limited to the lesser of $7,500 or 33⅓ of includible compensation. There is no provision under present law that permits contributions or deferrals to exceed these annual limits in the case of required contributions with respect to a reemployed member of the uniformed services.

Other requirements for which there is no special provision for required contributions with respect to a reemployed member of the uniformed services include the qualified plan nondiscrimination and coverage rules.

Explanation of Provision

The provision amends the Internal Revenue Code to provide special rules in the case

[6] Under other rules, dividend distributions (i.e., distributions are to which sec. 301(c)(1) applies) to foreign persons by U.S. corporations, including USRPHCs, are subject to 30-percent withholding under the Code. Under treaties the withholding on a dividend may be reduced to as little as 5 or 15 percent.

[7] See S. Rept. 99-313, p. 725.

of certain required contributions ("make-up contributions") with respect to a reemployed member of the uniformed services. The provision applies only with respect to contributions to a qualified defined contribution plan or eligible deferred compensation plan (sec. 457) that are required under chapter 43 of title 38, United States Code ("title 38"), as in effect on January 1, 1993.

Under the provision, if any contribution is made by an employer under a qualified defined contribution plan or eligible deferred compensation plan ("individual account plan") with respect to an individual, and such contribution is required by reason of the individual's rights under title 38, then such contribution is not subject to the generally applicable plan contribution limits in the year in which made.[8] In addition, a plan under which such make-up contribution is made will not be treated as failing to meet any requirement applicable to individual account plans (e.g., nondiscrimination rules, including the special ADP and ACP tests applicable to qualified cash or deferred arrangements) by reason of the making of such contribution, nor will the make-up contribution be taken into account in applying the plan contribution limits to any other contribution made during the year. Required contributions are deductible by the employer in the year made, notwithstanding the generally applicable deduction limit on plan contributions (sec. 404(a)), and such contributions are not taken into account in determining the deductibility of other plan contributions made during the year.

A special rule applies in the case of make-up contributions of salary reduction and employer matching amounts. Under the provision, a plan that provides for elective deferrals will be treated as meeting the requirements of title 38 if the employer permits reemployed servicepersons to make additional elective deferrals under the plan during the period which begins on the date of reemployment and has the same length as the period of the individual's absence due to uniformed service (but in no case more than 5 years). The amount of the additional deferrals may not exceed the amount of deferrals that the individual would have been permitted to make under the plan had the individual continued to be employed by the employer during the period of uniformed service and received compensation at the same rate as received from the employer immediately before such service.

The employer is required to match any additional elective deferrals at the same rate that would have been required had the deferrals actually been made during the period of uniformed service. Additional deferrals and employer matching contributions are treated as required employer contributions from the plan qualification rules described above.

The provision clarifies that nothing in title 38 is to be construed as requiring any earnings to be credited to an employee with respect to any contribution before such contribution is actually made. In addition, nothing in title 38 requires any make-up allocation of any forfeiture, or of any employer contribution which was either (1) voluntary (such as a discretionary profit-sharing contribution) or (2) the total amount of which was determined without reference to the number of, or compensation of, plan participants before being allocated to the accounts of participants. For example, make-up contributions would not be required under a plan that provides for a contribution of a set dollar amount, as set percentage of profits, each year. However, make-up contributions would be required under a plan that provides for contributions based on a percentage of participants' compensation. Any election by an employer to provide credit for such amounts (to the extent permitted under title 38) is subject to applicable nondiscrimination and other plan qualification standards.

The provision also provides that a plan may suspend repayment of a plan loan for the period of uniformed service without adverse consequences to the individual.

Because make-up contributions under the bill are not made retroactively, but only after a serviceperson's reemployment, amended tax and information returns generally will not be required.

Effective Date

The provision is effective only if the amendments to chapter 43, title 38, United States Code, described above (or substantially similar amendments to such chapter) are enacted in the 102nd Congress. In such case, the provision applies in cases in which the employee is reemployed on or after August 1, 1990.

G. Exclusion From Income For Combat Zone Compensation (sec. 6102(1)(4) of the bill and sec. 112 of the Code)

Present Law

The Code provides that gross income does not include compensation received by a taxpayer for active service in the Armed Forces of the United States for any month during any part of which the taxpayer served in a combat zone (or was hospitalized as a result of such service) (limited to $500 per month for officers). The heading refers to "combat pay," although that term is no longer used to refer to special pay provisions for members of the Armed Forces, nor is the exclusion limited to those special pay provisions (hazardous duty pay (37 U.S.C. sec. 301) and hostile fire or imminent danger pay (37 U.S.C. sec. 310)).

Explanation of Provision

The bill modifies the heading of Code section 112 to refer to "combat zone compensation" instead of "combat pay". The bill also makes conforming changes to cross-references elsewhere in the Code.

H. Limitation on Deduction for Certain Interest Paid by Corporation to Related Person (sec. 6102(f)(3) of the bill, sec. 7210(a) of the 1989 Act, and sec. 163(j) of the Code)

Present Law

Subject to certain limitations, a taxpayer may deduct interest paid or accrued on indebtedness within a taxable year (sec. 163(a)). The 1989 Act added a so-called "earnings stripping" limitation on interest deductibility with respect to certain interest paid by corporations to related persons (sec. 163(j)). If the provision applies to a corporation for a taxable year, it disallows deductions for certain amounts of "disqualified interest" paid or accrued by the corporation during that year. If in a taxable year a deduction is disallowed, under the provision, for an amount of interest paid or accrued in that year, the disallowed amount treated under the earnings stripping provision as disqualified interest paid or accrued in the succeeding taxable year.[9]

In order for the earnings stripping provision to apply to a corporation for a taxable year, two thresholds must be exceeded. To exceed the first threshold, the corporation must have "excess interest expense" as that term is defined in the Code for this purpose. To exceed the second threshold, the corporation must have a ratio of debt to equity as of the close of the taxable year in question (or on any other day prescribed by the Secretary in regulations) that exceeds 1.5 to 1. Excess interest expense is the excess (if any) of the corporation's net interest expense over the sum of 50 percent of the adjusted taxable income of the corporation plus any excess limitation carryforward from a prior year. Excess limitation is the excess (if any) of 50 percent of adjusted taxable income over net interest expense.

Explanation of Provision

The bill provides that the debt-equity threshold does not apply for purposes of applying the earnings stripping provision to a carryover of excess interest expense from a prior taxable year. Thus, the bill clarifies that excess interest carried forward from a year in which the debt-equity ratio threshold is exceeded may be deducted in a subsequent year in which that threshold is not exceeded, but only to the extent that such interest would not otherwise be treated as excess interest expense in the carryforward year.

For example, assume that in year 1 $20 of a corporation's interest expense is nondeductible due to the operation of the earnings stripping provision. The corporation carries forward the $20 of interest deduction that it could not use in year 1. Assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $400 of adjusted taxable income. The bill is intended to clarify that the $20 of interest carried forward from year 1 is deductible in year 2. This is because $70, the sum of the current net interest expense for year 2 ($50) plus the interest expense carried over from year 1 ($20), does not exceed one-half of adjusted taxable income in year 2.

As another example, assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $80 of adjusted taxable income. The bill is intended to clarify that the $20 of interest carried forward from year 1 is not deductible in year 2. This is because the current net interest expense for year 2 ($50) exceeds by $10 one-half of adjusted taxable income in year 2 ($80 divided by 2, or $40). Therefore, treating the year 1 carryover as an interest expense in year 2 causes the corporation to have excess interest expense equal to $30. But for the debt-equity safe harbor, the corporation would have a $30 interest expense disallowance in year 2 if the carried over amount were treated as having been paid in year 2. Under the bill, no actual year 2 interest can be disallowed. However, under these facts, none of the interest carried over from year 1 can be deducted in year 2. Instead, the interest carried over from year 1 is carried forward for potential deduction (subject to the same rules that applied to the carryforward in year 2) in a year subsequent to year 2.

[8] However, the amount of any make-up contribution cannot exceed the aggregate amount of employer contributions that would have been permitted under the plan contribution limits had the individual continued to be employed by the employer during the period of uniformed service.

[9] Disqualified interest is interest paid by a corporation to related persons that are not subject to U.S. tax on the interest received. (If, in accordance with a U.S. income tax treaty, interest income of a related person is subject to a reduced rate of U.S. tax, a portion of the interest paid to the related person is deemed to be interest on which no tax is imposed.)

As a third example, assume that in year 2 the corporation has a debt-equity ratio of 1 to 1 and $50 of current net and gross interest expense, all of which is disqualified interest, and that it earns $110 of adjusted taxable income. The bill is intended to clarify that $5 of interest carried forward from year 1 is deductible in year 2, and the other $15 of interest carried forward from year 1 is not deductible in year 2. This is because the current net interest expense for year 2 ($50) is $5 less than one-half of adjusted taxable income in year 2 (one-half of $110, or $55). Therefore, even if the debt-equity safe harbor had not been met in year 2, the corporation would have had $5 of excess limitation in year 2 had there been no carryover amount from year 1. On the other hand, treating the year 1 carryover as an interest expense in year 2 causes the corporation to have excess interest expense equal to $15. This $15 may be carried forward to a subsequent year.

I. Branch-Level Interest Tax (sec. 6102(f)(3) of the bill, sec. 1241 of the 1986 Act, and sec. 884 of the Code)

Present Law

Interest paid (or treated as if paid) by U.S. trade or business (i.e., a U.S. branch) of a foreign corporation is treated as if paid by a U.S. corporation and, hence, is U.S. source and subject to U.S. withholding tax of 30 percent, unless the tax is reduced or eliminated by a specific Code or treaty provision. The Treasury has regulatory authority to limit U.S. sourcing, and hence U.S. withholding, to the amount of interest reasonably expected to be deducted in arriving at the U.S. branch's effectively connected taxable income.

To the extent a U.S. branch of a foreign corporation has allocated to it under Treasury Regulation section 1.882-5 an interest deduction in excess of the interest actually paid by the branch (this generally occurs where the indebtedness of the U.S. branch is disproportionately small compared to the total indebtedness of the foreign corporation), the excess is treated as if it were interest paid on a notional loan to a U.S. subsidiary (the U.S. branch, in actuality) from its foreign corporate parent (the home office). This excess is subject to the 30-percent tax, absent a specific Code exemption or treaty reduction (sec. 884(f)(1)(B).

These branch-level interest taxes, along with the branch profits tax, were intended to reflect the view that a foreign corporation doing businesses in the United States generally should be subject to the same substantive tax rules that apply to a foreign corporation operating in the United States through a U.S. subsidiary.[10] Where a U.S. corporation pays interest to its foreign corporate parent, that interest, like the interest deducted by a U.S. branch of a foreign corporation, is also generally subject to a 30-percent U.S. withholding tax unless the tax is reduced by treaty. In the case of a U.S. subsidiary of a foreign parent corporation, the withholding tax applies without regard to whether the interest payment is currently deductible by the U.S. subsidiary. For example, deductions for interest may be delayed or denied under section 163, 263, 263A, 266, 267, or 469, but it is still subject (or not subject) to withholding when paid without regard to the operation of those provisions.

Explanation of Provision

The bill provides that the branch level interest tax on interest not actually paid by the branch applies to any interest which is allocable to come which is effectively connected with the conduct of a trade or business in the United States. Similarly, in the case of interest paid by the U.S. branch, the bill provides regulatory authority to limit U.S. sourcing, and hence U.S. withholding, to the amount of interest reasonably expected to be allocable to income which is effectively connected with the conduct of a trade or business in the United States. Thus, where an interest expense of a foreign corporation is allocable to U.S. effectively connected income, but that interest expense would not have been fully deductible for tax purposes under another Code provision had it been paid a U.S. corporation, the bill clarifies that such interest is nonetheless treated for branch level interest tax purposes like a payment by a U.S. corporation to a foreign corporate parent. Similarly, with regard to the Treasury's regulatory authority to treat an interest payment by a foreign corporation's U.S. branch as though not paid by a U.S. person for source and withholding purposes, the bill clarifies that the authority extends to interest payments in excess of those reasonably expected to be allocable to U.S. effectively connected income of the foreign corporation.

J. Determination of Source in Case of Sales of Inventory Property (sec. 6102(f)(4) of the bill, sec. 211 of the 1986 Act, and sec. 865(b) of the Code)

Present Law

Prior to the 1986 Act, the source of income derived from the sale of personal property generally was determined by the place of sale (commonly referred to as the "title passage" rule) (see, e.g., Treas. Reg. sec. 1.861-7, T.D. 6258, 1957-2 C.B. 368). While the 1986 Act generally replaced the place-of-sale rule for sales of personal property with a residence-of-the-seller rule (sec. 865(a)), the Act did not change the place-of-sale rule for most sales of inventory property (sec. 865(b)).

Before and after the 1986 Act, statutory rules for sourcing income from inventory sales have included those covering income from (i) purchasing inventory property outside the United States (other than within a U.S. possession) and selling it in the United States (sec. 861(a)(6)); (ii) purchasing inventory property in the United States and selling it outside the United States (sec. 862(a)(6)); (iii) selling outside the United States inventory property which has been produced by the taxpayer in the United States (or selling in the United States inventory property which has been produced by the taxpayer outside the United States) (sec. 863(b)(2)); and (iv) purchasing inventory property in a U.S. possession and selling it in the United States (sec. 863(b)(3)). Prior to the 1986 Act, these provisions were not limited in application to income from sales of inventory property, but rather covered sales of personal property generally.

In addition to statutory rules for sourcing items of income from transactions involving inventory property specified in the Code, such as those listed above, the Code both before and after the 1986 Act has contained other sourcing rules that do not make specific reference to property sales, both includes general regulatory authority to allocate and apportion between U.S. and foreign sources items of gross income, expenses, losses, and deductions other than those specified in sections 861(a) and 862(a) (sec. 863(a)). In carving income from the sale inventory property out of the general residence-of-the-seller rule of section 865, section 865(b) makes reference to the above statutory rules making specific reference to inventory property, but not to the general great of regulatory authority in section 863(a).

Explanation of Provision

The bill modifies the general provision relating to the sourcing of income from the sale of personal property (section 865) so that the cross-reference to sourcing rules applicable to inventory property includes a reference to all of section 863, rather than simply to section 863(b). The bill thus clarifies that, to the extent that the Secretary had general regulatory authority to provide rules for the sourcing of income from the sales of personal property prior to the 1986 Act, the Secretary retains that authority under present law with respect to inventory property. For example, this bill is not intended to increase the Secretary's regulatory authority under section 863(a) beyond the authority that he had under the law in effect prior to the enactment of the 1986 Act. The committee does not intend that any inference be drawn from this bill either as to the correctness of, or as to the post-1986 Act implications of, any judicial decision interpreting the scope of that pre-1986 Act authority.

K. Repeal of Obsolete Provisions (sec. 6102(f)(5) of the bill, sec. 10202 of the 1987 Act, and secs. 6038(a)(1)(F) and 6038A(b)(4) of the Code)

Present Law

A U.S. person who controls a foreign corporation must report certain information related to that foreign corporation as may be required by the Treasury Secretary (Code sec. 6038). Information reporting is also required with respect to certain foreign-owned domestic corporations (Code sec. 6038A). Included under each of these information reporting provisions is a requirement to report such information as the Treasury Secretary may require for purposes of carrying out the provisions of section 453C. Section 453C, relating to certain indebtedness treated as payment on installment obligations (the so-called "proportional disallowance rule"), was repealed in the Revenue Act of 1987.

Explanation of Provision

The bill repeals as obsolete the information reporting requirements of sections 6038 and 6038A relating to section 453C.

III. ADDITIONAL PENSION TAX TECHNICAL CORRECTIONS: ROLLOVER AND WITHHOLDING ON NONPERIODIC PENSION DISTRIBUTIONS

(Sec. 6103 of the bill and secs. 402(a)(31), 402(c), and 3405(c) of the Code)

Present Law

Under present law, as amended by the Unemployment Compensation Amendments Act of 1992 (P.L. 102-318) (the Unemployment Act) for years beginning after December 31, 1992, any part of the taxable portion of a distribution from a qualified pension or annuity plan or a tax-sheltered annuity (other than a minimum required distribution) can be rolled over tax free to an individual retirement arrangement (IRA) or another qualified plan or annuity, unless the distribution is one of a series of substantially equal payments made (1) over the life (or joint lives) of the participant and his or her beneficiary, or (2) over a specified period of 10 years or more (sec. 402).

A qualified retirement or annuity plan must permit participants (and other distributees) to elect to have any distribution that is eligible for rollover treatment paid directly to an eligible retirement plan specified by the participant (sec. 401(a)(31)). An eligible rollover distribution from a tax-

[10] Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., *General Explanation of the Tax Reform Act of 1986*, at 1038 (1987).

deferred annuity plan can be paid directly to another tax-deferred annuity plan. A distribution paid directly to an IRA is not taken into account for purposes of the rule limiting rollovers from one IRA to another to no more than one per year (sec. 408(d)(3)(B)) because it is not a rollover from one IRA to another IRA.

The plan administrator must notify participants of the direct rollover option within a reasonable period of time before a distribution is made. It is expected that the plan administrator will identify the portion of each distribution that is an eligible rollover distribution.

Withholding is imposed at a rate of 20 percent on any distribution that is eligible to be rolled over but that is not paid directly to an eligible retirement plan. Withholding is not required on employer securities. If a participant does not elect to have an eligible rollover distribution paid directly to an eligible retirement plan, the participant may roll over the distribution within 60 days as under prior law.

The following examples illustrate present law:

Example 1.—Suppose a participant receives a nonperiodic distribution of $10,000 from a tax-qualified plan. The distribution is an eligible rollover distribution. If the participant elects to have the distribution paid directly to an eligible retirement plan specified by the participant, the distribution will not be includable in income in the year of the distribution.

Example 2.—Same as example 1, except that if the participant does not elect to have the distribution paid directly to an eligible retirement plan, then the participant receives $8,000, and $2,000 is withheld by the plan administrator and deposited with the IRS. Because the distribution is an eligible rollover distribution, the participant may roll the distribution ($10,000) over to an IRA or other eligible retirement plan within 60 days. If the participant does so, the distribution will not be includable in income in the year of the distribution. The $2,000 withheld will offset the participant's Federal tax liability attributable to other income, or be refunded to the participant after he or she has filed an income tax return for the year.

Example 3.—Same as example 2, except that after electing to receive the distribution the participant decides to roll over only $8,000 ($10,000 less then amount withheld). In this case, the participant must include $2,000 in income for the year of the distribution.[1]

Explanation of Provisions

The bill clarifies that an eligible rollover distribution paid directly to an eligible retirement plan pursuant to section 401(a)(31) is considered to be a plan distribution followed by an immediate rollover (a "direct rollover"). Accordingly, because a direct rollover is considered a distribution, any applicable espousal consent rules must be satisfied just as if the distribution were paid directly to the participant. Alternative forms of distribution available under the transferor plan need not be preserved under the transferee plan.[2] In addition, because the direct rollover also is considered a rollover, the amount paid directly to an eligible retirement plan is not includable in income in the year of the distribution, and special NUA treatment no longer applies with respect to employer securities included in such transfer.

The bill clarifies that a distribution that is one of a series of periodic payments scheduled to be made over the life (or joint lives) of the participant and his or her beneficiary, or over a specified period of 10 years or more, is not an eligible rollover distribution, even if the form of the distribution may be modified by the participant. Whether distributions subsequent to any modification in the form of distribution (e.g., acceleration) are eligible rollover distributions is to be determined without regard to any distributions made before such modification.

The bill provides that a participant (or other distributee) is permitted to elect a direct rollover with respect to any portion of an eligible rollover distribution. Thus, a plan may not provide that a participant can directly roll over only the total amount of the distribution or none of the distribution. Withholding at a rate of 20 percent applies to the portion of the distribution not directly rolled over.

The bill clarifies that the portion of any eligible rollover distribution that represents unrealized appreciation in employer securities generally is subject to the provisions requiring the employer to offer the option of a direct rollover, notwithstanding the special rules pertaining to net unrealized appreciation (NUA) in employer securities. For example, suppose a plan participant receives a distribution of employer securities with a value of $15,000, $5,000 of which represents NUA. The total amount is subject to the direct rollover requirements and must be paid, if the participant elects, directly to an eligible retirement plan.

As under present law with respect to participant rollovers, to the extent that amounts attributable to appreciation in employer securities are paid directly to an eligible retirement plan, special NUA treatment no longer applies with respect to such securities. Furthermore, in the case of a distribution other than a lump-sum distribution, if any portion of a distribution that represents unrealized appreciation in employer securities is paid directly to an eligible retirement plan, special NUA treatment does not apply to the portion of the distribution that is paid to the participant. As under present law, withholding is not required with respect to employer securities distributed to the participant.

The bill provides that the following plan distributions are not eligible rollover distributions: (1) hardship distributions of amounts attributable to elective deferrals under qualified cash-or-deferred arrangements (sec. 401(k)) or tax-deferred annuity plans (sec. 403(b)); (2) withdrawals of elective deferrals that are qualified first-time homebuyer or educational distributions exempt from the additional tax on early withdrawals (sec. 401(k)(2)(B)(i)(V)); (3) corrective distributions of excess deferrals and contributions under qualified cash-or-deferred arrangements; (4) deemed distributions of loans described in section 72(p)(2) that are in default,[3] and (5) certain dividends paid to a plan with respect to employer securities and distributed in cash to participants or their beneficiaries (sec. 404(k)). In addition, so-called "P.S. 58" costs for group term life insurance are not eligible rollover distributions. Because such distributions are not eligible rollover distributions, they cannot be rolled over, are not subject to the direct rollover requirement, and are not subject to 20-percent withholding.

The bill provides that other corrective or deemed distributions similar to those described in the preceding paragraph are not eligible rollover distributions to the extent they are specifically identified by the Secretary in regulations. It is intended that the Secretary interpret this grant of regulatory authority restrictively, consistent with Congress' intent in the Unemployment Act to expand the number of distributions eligible for rollover treatment. The Secretary may find it appropriate in certain cases to exempt distributions from the direct rollover and 20-percent withholding requirements but preserve the ability of participants to roll over the distributions themselves.

The bill provides a de minimis exception to the direct rollover requirement, so that a plan does not have to permit a direct rollover of, or withhold upon at a 20-percent rate, distributions of $500 or less. The bill also provides that a plan does not have to permit a direct rollover of, or withhold upon at a 20-percent rate, and distribution to an alternate payee pursuant to a qualified domestic relations order (QDRO) within the meaning of section 414(p)(1). As under present law, such distributions can be rolled over by the participant if the distribution otherwise qualifies as an eligible rollover distribution. It is intended that the Secretary will provide appropriate rules to prevent abuse of the de minimis exception.

The bill provides that if the portion of any eligible distribution that is a minimum required distribution (sec. 401(a)(9)) is de minimis in relation to the portion of such distribution that is not directly rolled over, withholding at a rate of 20 percent applies to the entire portion of the distribution received by the participants. As under present law, such de minimis portion may not, however, be rolled over directly or by the participant to an eligible retirement plan. An amount will be considered de minimis in relation to the portion of the distribution paid to the participant if it represents no more than 10 percent of such portion.

The bill provides that a qualified defined benefit plan is an eligible retirement plan to which direct rollovers may be made, provided the plan permits the acceptance of such rollovers.

The bill provides that social security supplements described in section 411(a)(9) will be disregarded for purposes of determining whether a distribution is one of a series of substantially equal periodic payments. For example, if a participant is entitled to annuity payments of $500 per month for life, supplemented by monthly payments of $200 per month until he or she attains social security age, each monthly payment of $700 received before the social security age and each monthly payment of $500 received after such age are considered to be one of a series of substantially equal periodic payments for life. As such, none of the distributions are eligible rollover distributions. Other temporary periodic payments (e.g., certain disability benefits) similar in nature to social security supplements will be disregarded to the extent they are specifically identified by the Secretary in regulations. It is intended that the exception for temporary periodic payments be interpreted narrowly, consistent with Congress' intent in the Unemployment Act to expand the number of distributions eligible for rollover treatment.

The bill clarifies that, in the case of a series of periodic payments, the requirement

[1] The participant may also have to pay a 10 percent additional early withdrawal tax on the $2,000 if he or she has not yet attained age 59½.

[2] A direct rollover is to be distinguished from a trustee-to-trustee transfer under other provisions of the Code.

[3] This exception does not apply to loans that are treated as distributions when made under section 72(p)(1).

that a written explanation be provided to recipients of eligible rollover distributions (sec. 402(f)) is deemed satisfied if notice is provided within a reasonable period of time before the first payment of such series subject to the requirements of section 401(a)(31), as amended by the Unemployment Compensation Amendments Act of 1992. Similarly, an election by a distributee to have distributions paid directly to an eligible retirement plan applies to all distributions after the election is made and before the election is revoked.

In the case of a series of periodic payments that began before the effective date of the Unemployment Act, the notice and election requirements under the Act apply to the first payment of the series after December 31, 1992.

The bill clarifies that a distribution on or after January 1, 1993, generally is not an eligible rollover distribution if, taking into account distributions prior to January 1, 1993, it would not be an eligible rollover distribution. For example, if the first payment of a series of periodic distributions scheduled to be paid over a period of 15 years was received on January 1, 1983, distributions in such series received on or after January 1, 1993 are not eligible rollover distributions, even though payments will continue for only 5 more years after such date.

The bill provides that plan amendments to comply with the pension provisions under the Unemployment Act generally are not required to be made before the first plan year beginning on or after January 1, 1995, if (1) the plan is operated in accordance with the applicable provisions of the Act, (2) the plan is amended to comply with the required changes no later than the first day of the first plan year beginning after December 31, 1994, and (3) the amendment is retroactive to the effective date of the applicable provisions.

Finally, the bill provides that the delayed effective date for the direct rollover and withholding provisions applicable to certain tax-deferred annuity plans of State or local governments is extended to apply to qualified retirement plans and tax-sheltered annuity plans of State and local governments.

Effective Date

The provisions are effective as if included in the Unemployment Compensation Amendments Act of 1992 (P.L. 102-318).

SUBTITLE B. SOCIAL SECURITY, INCOME SECURITY AND HUMAN RESOURCES AND MEDICARE PROVISIONS

PARTS I AND II—SOCIAL SECURITY AND INCOME SECURITY TECHNICAL CORRECTIONS (SEC. 6201 and SECS. 6211-6214 OF THE BILL)

1. Redesignation of certain SSI provisions

Explanation of Provision

Two subparagraphs of the Social Security Act dealing with SSI are erroneously designated. The change would correct the erroneous designation.

2. Technical corrections related to OASDI in the Omnibus Budget Reconciliation Act of 1990

Explanation of Provision

The provision: (a) corrects two references to the definition of disability for widows in the Social Security Act to bring them into conformance with the provisions of the Omnibus Budget Act of 1990 (OBRA 90); (b) redesignates provisions of the Social Security Act related to representative payees to conform with provisions of OBRA 90; (c) clarifies the provision of OBRA 90 that establishes streamlined procedures for approval of fees for representatives of claimants for title II (social security) and title XVI (SSI) benefits; (d) eliminates a technical error in the language of the OBRA 90 provision eliminating advance tax transfers to the social security trust funds.

3. Corrections related to the income security and human resources provisions of the Omnibus Budget Reconciliation Act of 1990

Explanation of Provision

The provision makes several technical and conforming changes related to provisions enacted under OBRA 90 affecting designations of sections of law and appropriate cross references under Title XVI of the Social Security Act, and deletes a clause of Title XVI concerning representative payees that was inadvertently retained when a comparable provision in Title II was deleted by OBRA 90.

4. Correction of unemployment compensation amendments of 1992

The provision corrects a drafting error in the Unemployment Compensation Amendments of 1992 relating to Federal unemployment compensation accounts.

PART III—MEDICARE MISCELLANEOUS AND TECHNICAL AMENDMENTS

SUBPART A—AMENDMENTS RELATING TO PART A OF THE MEDICARE PROGRAM

1. Clarification of DRG payment window expansion (sec. 6221)

Present Law

Services provided by a hospital (or an entity wholly owned or operated by the hospital) to an inpatient of a hospital during the three days prior to admission are not separately reimbursed under part B of Medicare if they are diagnostic services or otherwise related to the admission.

Explanation of Provision

Clarify that this provision does not apply to hospitals that are not paid on the basis of diagnosis related groups (DRGs).

2. Essential Access Community Hospital Program (sec. 6222)

Present Law

(a) The Secretary of Health and Human Services is required to make grants to up to seven states to participate in the Essential Access Community Hospital (EACH) program.

(b) The Secretary may designate an urban hospital as an essential access community hospital if it meets the criteria for designation as a rural referral center.

(c) The Secretary may designate a hospital as an essential access community hospital if it is located in a state receiving an EACH program grant.

(d) Rural primary care hospitals are required to have written policies governing the provision of services, and have a physician, physician assistant, or nurse practitioner responsible for the execution of those policies.

(e) Medicare inpatient hospital benefits are subject to the inpatient hospital deductible and to coinsurance after 60 days of hospitalization during a spell of illness.

Explanation of Provision

(a) The number of states eligible for grants under the EACH program would be increased from seven to nine.

(b) The Secretary would be authorized to designate an urban hospital as an essential access community hospital if the hospital otherwise meets the criteria for designation.

(c) A State receiving a grant under the EACH program would be authorized to designate as an essential access community hospital or a rural primary care hospital a facility in an adjoining state if the facility was otherwise eligible for designation. The Secretary would be authorized to designate a facility as an essential access community hospital or a rural primary care hospital if the facility is not in a state receiving an EACH program grant if the facility is a member of a rural health network of a state receiving a grant.

(d) The requirements for written policies and procedures and the supervision of those procedures in rural primary care hospitals would be amended to clarify that the requirements are similar to those for hospitals. Specifically, rural primary care hospitals would be required to appoint a physician, as defined in section 1861(r)(1) of the Social Security Act, to supervise the implementation of the policies.

(e) The applicability of the inpatient hospital deductible and coinsurance to stays in rural primary care hospitals would be clarified. Other minor drafting errors would be corrected.

3. Treatment of certain military facilities (sec. 6223)

Present Law

Other than Indian Health Service hospitals, hospitals owned by, or under contract to, the Federal government are not eligible for reimbursement under Medicare. Uniformed services treatment facilities are private hospitals under contract to the federal government. The Assistant Secretary of Defense for Health Affairs has been directed to prepare a report on joint military/civilian health centers.

Explanation of Provision

The Secretary of Health and Human Services would be prohibited from taking action to recover certain amounts paid by medicare to uniformed services treatment facilities in Boston, Baltimore, and Seattle for services that were provided between October 1, 1986 and December 31, 1989, to members of the uniformed services or their dependents who were also eligible for medicare. The Secretary of Health and Human Services, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs shall conduct a study of the feasibility and desirability of establishing a joint medical facility among the Department of Defense, Department of Veterans Affairs, and other public and private entities. The study shall include the need to make changes in the Medicare and Medicaid programs in order to facilitate the establishment of such joint medical facility.

4. Nursing home reform technical (sec. 6224)

Present Law

The Omnibus Budget Reconciliation Act (OBRA) of 1990 included a clerical error in the nursing home reform provisions pertaining to the period of resident assessment.

Explanation of Provision

The clerical error would be corrected.

SUBPART B—AMENDMENTS RELATING TO PART B OF THE MEDICARE PROGRAM

1. Physician payment provisions (sec. 6231)

Present Law

(a) Overvalued Procedures.—OBRA 90 subjected all unsurveyed overvalued services to a 6.5 percent reduction unless the law specifically exempted them from the reduction. Unsurveyed services are those not included in earlier surveys conducted to determine relative values of physicians' services; these unsurveyed services were considered to be overvalued.

(b) Radiology Services.—OBRA 90 reduced the conversion factor for radiology services

paid on the basis of a radiology fee schedule to a geographically adjusted amount, not to exceed 9.5 percent. However, as drafted, OBRA 90 contained an error that permits the conversion factors for services below the target to increase.

(c) Anesthesia Services.—OBRA 87 established a fee schedule for anesthesia services based on a relative value guide for anesthesia services and local conversion factors. OBRA 90 reduced local conversion factors to a geographically adjusted amount, not to exceed 9.5 percent. However, as drafted, OBRA 90 contained an error that permits the conversion factors for services below the target to increase.

(d) Assistants at Surgery.—OBRA 90 specified that payment to a physician serving as an assistant at surgery cannot exceed 16 percent of the payment made for the global surgical service.

(e) Technical Components of Diagnostic Services.—OBRA 90 capped the reasonable charge for technical components of specified diagnostic services at the national median charge for the service in all localities.

(f) Statewide Fee Schedules.—OBRA 90 required the Secretary to treat the States of Nebraska and Oklahoma as statewide payment localities if they met certain requirements specified in the law. Each member of the Congressional delegation from those states and organizations representing urban and rural physicians would have to agree to the Statewide locality provision.

(g) Reciprocal Billing Arrangements.—OBRA 90 permitted physicians to submit a claim for a service provided by a second physician when the first physician was not available to provide the service. Such billing was permitted only in cases where the arrangement is temporary and reciprocal.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—OBRA 90 required the Secretary to study the effects of aggregating physician claims and report to Congress by December 31, 1992.

Explanation of Provision

(a) Overvalued Procedures.—The list of services specifically exempted from the 6.5 percent reduction contained certain errors. The provision deletes some procedures from the list of exempted services and corrects errors in the names of other services. The procedures deleted from the list of exempted services are: lobectomy; enterectomy; colectomy; cholecystectomy; and sacral laminectomy.

(b) Radiology Services.—The provision would specify that conversion factors below the geographically adjusted amount could not be increased. The provision makes other technical changes to OBRA 90.

(c) Anesthesia Services.—The provision would specify that conversion factors below the geographically adjusted amount could not be increased. The provision makes other technical changes to OBRA 90.

(d) Assistants at Surgery.—The provision clarifies that balance-billing limits apply to physicians serving as assistants at surgery.

(e) Technical Components of Diagnostic Services.—The provision specifies that the limits on payment for the technical component of diagnostic services do not apply to services whose payments were reduced under the OBRA 89 overvalued procedure list.

(f) Statewide Fee Schedules.—Due to constitutional concerns relating to the separation of powers between the executive and the legislative branches, the provision would eliminate the OBRA 90 requirement for agreement from members of Congress and stipulate instead that Nebraska and Oklahoma were statewide localities in 1991.

(g) Reciprocal Billing Arrangements.—The provision would amend OBRA 90 to clarify services that may be covered under reciprocal billing. All physician services, including services incident to physician services, would be covered. The provision would also permit reciprocal billing arrangements that are both informal or reciprocal (as in current law) or involve per diem or other fee for-time compensation.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—The provision would change the date that the study must be submitted to Congress from December 31, 1992 to December 31, 1993.

OBRA 90 also contains a number of technical and drafting errors that are corrected through minor and conforming amendments.

2. Ambulatory surgical centers (sec. 6232)

Present Law

(a) Payment Amounts.—Current law requires the Secretary to update ambulatory surgery center payment rates by July 1, 1987 and annually thereafter, as determined appropriate by the Secretary.

The OBRA 90 conferees had intended to include a provision requiring an annual update to ASC rates, but it was omitted from the law.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—OBRA 90 included a provision capping payments for IOLs at $200 in 1991 and 1992. As drafted, the statutory language could be interpreted as limiting payments for cataract surgery to $200. The OBRA 90 conferees also agreed to a provision providing for a process by which the fee for new technology intraocular lenses (IOLs) could be adjusted. Statutory language reflecting this agreement was inadvertently omitted from OBRA 90.

Explanation of Provision

(a) Payment Amounts.—The provision would set the update for ambulatory surgery services, beginning with fiscal year 1994, at the CPI–U for the 12 month period ending with March of the preceding year. The Secretary would be required to conduct a survey, based on a representative sample of procedures and facilities, beginning by July 1, 1993 and updated every 5 years thereafter, of the actual audited costs of ambulatory surgery facilities. The survey results would be used in establishing payment rates. The Secretary would be required to consult with appropriate trade and professional organizations in updating the list of procedures that can be performed in ambulatory surgery centers.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—The Secretary would be required to develop and implement a process for reviewing reimbursement for new technology intraocular lenses (IOLs). In order to be considered a new technology IOL, the device would have to be approved by the FDA. The Secretary would also be required to consider specific circumstances in determining whether to adjust the payment amount for new technology IOLs. The provision also specifies administrative procedures for reviewing and approving new technology IOLs.

3. Durable medical equipment (sec. 6233)

Present Law

(a) Updates to Payment Amounts.—OBRA 90 contains a drafting error that specified that the update to the Durable Medical Equipment fee schedule for 1991 and 1992 was minus 1 percent.

(b) Potentially Overused Items and Advance Determinations of Coverage.—OBRA 90 included two provisions regarding special carrier review of potentially overutilized items and advance determinations of coverage for certain items. These two provisions were combined in drafting so that they do not properly reflect the conference agreement.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—OBRA 90 provided for a system of upper and lower limits on DME fees. The OBRA 90 conferees agreed to a study of regional variations in DME equipment supplier costs which was not included in the statutory language.

(d) Oxygen Retesting.—OBRA 90 included a provision requiring periodic retesting of beneficiaries receiving oxygen if their initial blood gas reading value was at or above a partial value of 55.

Explanation of Provision

(a) Updates to Payment Amounts.—The provision would correct the OBRA 90 error by specifying that the 1991 and 1992 update is the CPI–U minus one percentage point.

(b) Potentially Overused Items and Advance Determinations of Coverage.—The provision would modify OBRA 90 with respect to treatment of potentially overused items. The Secretary may add items to the list of potentially overused items if they are marketed directly to beneficiaries, if offers to waive coinsurance are made, if items have been subject to consistent patterns of overutilization, or if a high proportion of claims for an item are denied based on absence of medical necessity. Payment for items on this list cannot be made unless the carrier has subjected the claim to special scrutiny or has determined in advance whether an item is medically necessary and covered by Medicare. Carriers would also be required to make advance coverage decisions for customized items and to meet criteria developed by the Secretary to assure that advance coverage decisions are made on a timely basis.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—The provision would require HCFA to collect data on supplier costs for DME and analyze them to determine costs attributable to service and product components and the extent to which they vary by type of equipment and geographic region. The HCFA administrator would be required to submit a report and recommendations for a geographic cost adjustment index for DME supplies and an analysis of the impact of such an index on Medicare payments.

(d) Oxygen Retesting.—The provision corrects the OBRA 90 language regarding the arterial blood gas values to require retesting when a beneficiary's initial value is at or above 55.

As drafted, OBRA 90 included several minor technical errors. Technical corrections are made to Sections 4152 and 4153.

4. Other Part B items and services (sec. 6234)

Present Law

(a) Revision of Information on Part B Claims.—Each Part B claim for which the entity submitting the claim knows or has reason to believe that there has been a referral by physician must include the name and provider number of the referring physician and must indicate whether the referring physician is an investor in the entity.

(b) Consultation for Social Workers.—OBRA 90 provided for direct reimbursement for the services of clinical psychologists and clinical social workers. The Secretary was required to develop criteria for psychologists' services under which psychologists would be required to consult with a patient's attending physician.

(c) Reports on Hospital Outpatient Payment.—OBRA 87 required the Prospective

Payment Assessment Commission (ProPAC) to conduct a study of Medicare payment for hospital outpatient services. Part of the study was to be submitted to Congress by July 1, 1990 and part by March 1, 1991. Section 1135(d)(6) of the Social Security Act also requires the Secretary to report to the Congress on the development of a prospective method for ambulatory surgery services.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—Payment for outpatient radiology and diagnostic services is limited to a blend of the hospital's costs and physician fee schedule that would apply if the procedure were performed in a physician's office.

(e) Payments to Nurse Practitioners in Rural Areas.—OBRA 90 provided for direct reimbursement of nurse practitioners and clinical nurse specialists in rural areas. While current law excludes the services of physician assistants, nurse midwives, certified registered nurse anesthetists, and psychologists from the definition of inpatient hospital care, payments for nurse practitioners and clinical nurse specialists were not included in this provision.

(f) Other Technical and Conforming Amendments.—Elderly or disabled employees and their spouses who are covered by employer health plans are not required to enroll in the same enrollment period applicable to others. However, they cannot enroll while enrolled in an employer group health plan. Coverage for such individuals begins generally on the first day of the month in which the individual is no longer enrolled in an employer group health plan. The OBRA 90 conferees intended to modify this provision, but statutory language to that effect was omitted from the law.

Explanation of Provision

(a) Revision of Information on Part B Claims.—The provision would require that the claim form include the unique physician identification number (UPIN) and would repeal the requirement that claims indicate whether the referring physician is an investor in the entity.

(b) Consultation for Social Workers.—Clinical social workers would be required to consult with a patient's attending physician in the same manner as clinical psychologists.

(c) Reports on Hospital Outpatient Payment.—The provision repeals Section 6137 of OBRA 89 and Section 1135(d)(6) of the Social Security Act.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—The provision would clarify that outpatient payment limits apply to diagnostic services and that the physician component of the limit is based on the resource based relative value scale.

(e) Payments to Nurse Practitioners in Rural Areas.—The provision would add the services of nurse practitioners and clinical nurse specialists to the list of services excluded from the definition of inpatient hospital services.

(f) Other Technical and Conforming Amendments.—The provision would modify the special enrollment period to allow individuals who have employer group health coverage to enroll in Part B at any time they are enrolled in the group health plan, rather than after they leave the plan.

If an individual enrolled in Part B while enrolled in the group health plan or in the first month after leaving the plan, Medicare coverage would begin on the first day of the month in which the individual enrolled (or, at the option of the individual) on the first day of any of the following three months).

Sections 4154 through 4164 of OBRA 90 include a number of minor and technical drafting errors, which are corrected through various technical and conforming amendments.

SUBPART C—AMENDMENTS RELATING TO PARTS A AND B (SEC. 6241)

Present Law

(a) Health Maintenance Organizations (HMOs).—OBRA 90 required the Secretary to submit a proposal to Congress by January 1, 1992 providing for a more accurate method for HMOs paid on a risk basis. The Secretary was required to publish a proposed rule by March 1, 1992. The Comptroller General was required to review and report to Congress by May 1, 1992 on recommendations to modify the proposed methodology. OBRA 90 also contained a number of minor and technical drafting errors.

(b) Peer Review Organizations (PROs).—OBRA 90 required Peer Review Organizations (PROs) to provide notice to State licensing entities when a physician is found to have furnished services in violation of Section 1154(a) of the Social Security Act. This subsection includes requirements that PROs review the quality of medical care and determine whether certain services are covered by Medicare. As drafted, OBRA 90 requires PROs to notify State boards in the case of a variety of administrative findings, as well as in the case of a problem regarding quality of care.

(c) Survey and Certification Requirements.—The Secretary is prohibited from imposing user fees on facilities for determining compliance with any requirement of Medicare. Current law could be interpreted to mean that user fees imposed pursuant to the Clinical Laboratory Improvement Act (CLIA) are prohibited. In addition, there are minor drafting errors regarding the survey and certification process.

Explanation of Provision

(a) Health Maintenance Organizations.—The provision would require the Secretary to revise the payment methodology for HMOs for contract years beginning with 1994. In making revisions, the Secretary would be required to consider (1) the difference in costs associated with beneficiaries with different health status; (2) the effects of using alternative geographic classifications; and (3) the difference in costs associated with beneficiaries for whom Medicare is the secondary payor. The Secretary would be required to submit a proposal to Congress on the revised payment methodology by January 1, 1993. The Secretary would also be required to publish a proposed rule before March 1, 1993 and the Comptroller General would be required to review and report to the Congress by May 1, 1993 on the appropriateness of the proposed rule. By August 31, 1992, the Secretary would be required to publish a final rule for contract years beginning on or after January 1, 1994.

(b) Peer Review Organizations.—PROs would not be required to notify State boards regarding administrative matters, but would continue to be required to notify them in cases of unnecessary or poor quality care. In addition, drafting errors in OBRA 90 would be corrected.

(c) Survey and Certification Requirements.—The law prohibiting user fees would be amended to clarify that user fees imposed under the Clinical Laboratory Improvement Act are not subject to the general ban on user fees.

The provision would correct minor and technical errors relating to a home dialysis demonstration program authorized under OBRA 90 and Medicare secondary payer requirements in OBRA 90. In addition, the provision would correct minor and technical errors in Sections 4201 through 4207 of OBRA 90.

SUBPART D—MEDICARE SUPPLEMENTAL INSURANCE POLICIES (SEC. 6251)

Present Law

Section 1882 of the Social Security Act, as most recently amended by the Omnibus Budget Reconciliation Act (OBRA) of 1990, provides for minimum standards for Medicare supplemental insurance (Medigap) policies.

(a) Preventing duplication.—The OBRA 1990 amendments strengthen prohibitions against the sale of duplicative coverage to Medicare beneficiaries. The sale of a Medigap policy to an individual already covered under a Medigap policy is prohibited, as is, in general, the sale of a Medigap policy to a Medicaid beneficiary. Insurers are required to obtain written information from applicants regarding existing health insurance coverage.

The language also appears to prohibit the sale of any health benefits that duplicate any health coverage (including Medicare) to which a Medicare beneficiary is entitled. This might include coverage provided under an employer group health plan, long-term care policies, hospital indemnity polices, and dread disease policies.

(b) Loss ratios and refund of premiums.—The OBRA 1990 amendments increased the minimum loss ratio standard for individual Medigap insurance policies from 60 percent to 65 percent. The standard is 75 percent for group policies. Policy issuers are required to provide a refund or credit against future premiums if needed to meet the loss ratio requirements. Loss ratios must be computed and reported in accordance with a uniform methodology specified by the National Association of Insurance Commissioners (NAIC).

(c) Pre-existing condition limitations.—The OBRA 1990 amendments prohibit medical underwriting and certain other practices with respect to medicare supplemental insurance policies for which an individual age 65 or older applies during the six month period beginning with the first month during which the individual is first enrolled for benefits under part B.

(d) Other miscellaneous technical corrections.—The conference report to accompany OBRA 1990 states the intent of the conferees that the National Association of Insurance Commissioners, in promulgating changes to the Model Medigap Regulations to conform with Federal requirements, would delete from section 12(C) all that follows "unless", which is an exception to limitations on certain sales commissions. The OBRA 1990 amendments also include a number of minor and technical drafting errors.

Explanation of Provision

(a) Preventing duplication.—The duplication provision would be clarified to continue to specifically prohibit the sale of a Medigap policy to an individual already covered under a Medigap policy and to prohibit, in general, the sale of a Medigap policy to a Medicaid beneficiary. Prior law would be restored with respect to the sale of other health insurance policies. That is, the sale of any health insurance, other than a Medigap policy, would not be considered duplicative if benefits are paid without regard to other health insurance coverage for which the individual is eligible. Other minor and technical drafting errors would be corrected.

(b) Loss ratios and refund of premiums.—The provision would clarify that the OBRA 1990 loss ratio standard would apply to policies sold or renewed after the effective date of

the provision. With respect to a refund or credit for policies issued prior to the effective date of the provision, the calculation would be based on aggregate benefits provided and premiums collected for all policies issued by an insurer in a state and based only on aggregate benefits provided and premiums collected under the policies after the effective date. Other minor and technical drafting errors would be corrected.

(c) Pre-existing condition limitations.—The provision would be clarified to apply to any policy that becomes effective during the six month period beginning with the first month that an individual who is 65 years of age or older is first enrolled for benefits under part B, irrespective of when the policy is issued or whether the application is submitted prior to the beginning of the six month period.

(d) Other miscellaneous technical corrections.—The statutory language would be clarified to restate the intent of the conferees that certain language be deleted from section 12(C) of the NAIC Model Regulations pertaining to sales commissions. The effective dates for various provisions would be modified so that in general, the effective dates would be the earlier of the date the state adopts standards required in OBRA 1990 or one year after the NAIC promulgates standards in accordance with OBRA 1990 requirements. The NAIC standards were promulgated on July 30, 1991. Other minor and technical drafting errors would be corrected.

SUBTITLE C. TARIFF AND CUSTOMS PROVISIONS

A. TECHNICAL AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULES (SEC. 6301 OF THE BILL)

1. Removal of German Democratic Republic (GDR) from Column 2 Rate List of Harmonized Tariff Schedule of the United States (HTSUS)

Present Law

General Note 3(b) to the HTSUS listed the "German Democratic Republic" among the countries subject to higher column 2 rates of duty. On October 2, 1991, the President acted to remove this designation (Presidential Proclamation 6343).

Explanation of Provision

Following German reunification, on October 31, 1990 most-favored-nation (MFN) column 1 tariff treatment already granted to West Germany was extended automatically to the former East Germany (GDR). The bill recognizes these developments by eliminating reference to the GDR from the HTSUS. Inclusion of this provision is necessary, notwithstanding the action of the President on October 2, 1991, in view of the Legislative Branch's exclusive authority with regard to import duties under Article I, section 8 of the Constitution.

2. Tapestry and upholstery fabrics

Present Law

The Customs and Trade Act of 1990, P.L. 101-382 (hereinafter referred to as "the Trade Act of 1990"), added several new subheadings to headings 5111 and 5112 of the HTSUS for tapestry fabrics and upholstery fabrics of a weight exceeding 300 grams per square meter. This had the effect of reducing the tariff rate from 36.1 *ad valorem* to seven percent *ad valorem* for these fabrics. New HTSUS subheading 5112.19.10 was renumbered as 5112.19.20 in the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508 (hereinafter referred to as "the Budget Reconciliation Act").

Explanation of Provision

Addition of the words "of a weight exceeding 300 g/m2" to HTSUS subheading 5112.19.20 had the effect of inadvertently raising the column 1 duty rate on certain lighter weight tapestry and upholstery fabrics, which are now classified in subheading 5112.19.60 due to the weight criterion in subheading 5112.19.20. The bill deletes those words in order to restore prior HTSUS tariff treatment. The change applies retroactively to allow importers to apply for reassessment of duties levied since October 1, 1990.

3. Gloves

Present Law

In the Budget Reconciliation Act, HTSUS subheading 6216.00.47 was deleted; subheading 6216.00.49 was redesignated as 6216.00.52 and was indent so that its description aligned with that of subheading 6261.00.46 (which had been redesignated from 6216.00.44). The Budget Reconciliation Act also redesignated subheading 6116.10.25 as 6116.10.45. The tariff treatment of these gloves had been modified by the Trade Act of 1990.

Explanation of Provision

When the above changes were made, the superior text "Other", place just above the deleted 6261.00.47, inadvertently was not stricken. The bill strikes the word "Other". The bill also redesignates new HTSUS subheading 6116.10.45 as 6116.10.48 in order to avoid reusing a previously-used subheading number. These corrections will avoid confusion in classifying goods and comparing trade data.

4. Agglomerate stone floor and wall tiles

Present Law

The Trade Act of 1990 added a new HTSUS subheading 6810.19.12 for agglomerate marble floor tiles. This had the effect of reducing the applicable tariff rate from 21 percent *ad valorem* to 4.9 percent *ad valorem* for these types of tiles. The provision as written applies only to geological marble and not to other types of materials that may be commonly referred to as "marble" but are not recognized as such by the Explanatory Notes to the Harmonized Commodity Description and Coding System, as interpreted and applied by the U.S. Customs Service.

Explanation of Provision

The bill changes the description for HTSUS subheading 6810.19.12 from "agglomerate marble tiles" to floor and wall tiles of stone agglomerated with binders other than cement. This rewording covers tiles produced from chips or dust of various natural stones mixed with a plastic resin binding material. The change applies retroactively to allow importers to apply for reassessment of duties levied since January 1, 1989.

5. 2,4-Diaminobenzenesulfonic acid

Present Law

Under HTSUS heading 9902.30.43, which grants a duty suspension to 2,4-Diaminobenzenesulfonic acid, "2921.51.50" is cited as the HTSUS subheading under which imports of this chemical enter.

Explanation of Provision

The above cited subheading number is incorrect. The bill provides the correct HTSUS subheading (2921.59.50) under which imports of 2,4-Diaminobenzenesulfonic acid enter.

6. Machines used in the manufacture of bicycle parts

Present Law

The Trade Act of 1990 suspended the duty on machines used to manufacture bicycle wheels by adding a new HTSUS heading, 9902.84.79. The machines covered include "wheeltruing" and "rim punching" machines. Heading 9902.84.79 refers only to HTSUS subheading 8479.89.90, which covers "machines and mechanical appliances."

Explanation of Provision

The bill reflects that wheeltruing machines are covered by HTSUS subheading 9031.80.00 and rim punching machines are covered by HTSUS subheading 8462.49.00. These two additional subheadings are now referenced in heading 9902.84.79. The change applies retroactively to allow importers to apply for reassessment of duties levied since October 1, 1990.

7. Copying machines and parts

Present Law

HTSUS heading 9902.90.90 provides duty-free treatment for parts and accessories of electrostatic copying machines. The Trade Act of 1990 amended this subheading to cover parts and accessories intended for attachment to electrostatic copiers. Heading 9902.90.90 refers to subheading 8472.90.80 as the provision that covers parts and accessories for attachment to electrostatic copiers.

Explanation of Provision

The bill provides that parts intended for attachment to electronic copiers are covered by HTSUS subheading 8473.40.40. This additional subheading is now referenced in heading 9902.90.90. The change applies retroactively to allow importers to apply for reassessment of duties levied since January 1, 1989.

B. CLARIFICATION REGARDING THE APPLICATION OF CUSTOMS USER FEES (SEC. 6302 OF THE BILL)

Present Law

The Trade Act of 1990 provided that, in the case of agricultural products of the United States processed and packed in foreign trade zones, the *ad valorem* merchandise processing fee (MPF) would be applied solely to the value of the *foreign* material used to make the container; it exempted the value of the *domestic* agricultural products from the MPF. Customs has ruled that, for all products not covered by this provision and in the absence of an express provision to the contrary, the MPF would be assessed on both the domestic and foreign value of the merchandise entering from foreign trade zones.

Explanation of Provision

This provision clarifies that the MPF is to be applied only to the *foreign* value of the merchandise entered from a foreign trade zone. It is the intention of the Committee that the phrase "the merchandise subject to duty" shall be construed in its broadest sense. Thus, the phrase would encompass imported merchandise that enters duty-free under Chapters 1-97 of the HTSUS. The provision applies to all unliquidated entries from foreign trade zones beginning December 1, 1986. The provision also provides that the provision made by section 111(b)(2)(D)(iv) of the Trade Act of 1990 regarding the application of the MPF to processed agricultural products will also apply to all unliquidated entries from Foreign Trade Zones beginning December 1, 1986.

C. TECHNICAL AMENDMENTS TO THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988 (SEC. 6303 OF THE BILL)

Present Law

Section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. 2902 (hereinafter referred to as "the Trade Act of 1988"), provides the President the authority to proclaim certain tariff reductions pursuant to trade agreements with foreign countries. Paragraph (a)(2) provides the President the authority to reduce tariff rates in exist-

ence as of August 23, 1988, at which time the Tariff Schedules of the United States (TSUS) were in effect. Pursuant to Title I, Subtitle B of the Trade Act of 1988, the TSUS were replaced by the HTSUS effective January 1, 1989. Tariff negotiations in the Uruguay Round of Multilateral Trade Negotiations have been conducted on the basis of tariff rates under the HTSUS rather than the TSUS.

Explanation of Provision

The bill amends the Trade Act of 1988 to reflect the fact that any tariff reductions that might be proclaimed by the President pursuant to section 1102(a) of the Trade Act of 1988 will be based upon the tariff rates under the HTSUS as of January 1, 1989.

D. TECHNICAL AMENDMENT TO THE TRADE ACT OF 1990 (SEC. 6304)

Present Law

The Trade Act of 1990 provides for transportation in bond of Canadian lottery material.

Explanation of Provision

The bill replaces the phrase "entered or withdrawn from warehouse for consumption" in the "Effective Date" section of the Trade Act of 1990 with "entered for transportation in bond". This had been done to clarify that Canadian lottery material is not entered into the United States for consumption.

E. TECHNICAL AMENDMENT REGARDING CERTAIN BENEFICIARY COUNTRIES (SEC. 6305 OF THE BILL)

Present Law

The Trade Act of 1990 amended the Caribbean Basin Economic Recovery Act to provide duty reductions on certain leather products. An identical provision was included in the Andean Trade Preference Act.

Explanation of Provision

The bill clarifies that such duty reductions apply only to products that are made of leather, not to textile and apparel articles subject to textile agreements.

F. CLARIFICATION OF FEES FOR CERTAIN CUSTOMS SERVICES (SEC. 6306 OF THE BILL)

Present Law

19 U.S.C. 58(c) authorizes the Customs Service to provide reimbursable services to air couriers operating in express consignment carrier facilities and in centralized hub facilities. In September 1990, Customs interpreted the present statute to prevent Customs from providing reimbursable services during daytime hours to centralized hub facilities. In June 1992, the Comptroller General also ruled that, under current law, Customs could not provide daytime reimbursable services to centralized hub facilities.

Explanation of Provision

This provision is intended to make a technical correction in existing law to clarify that Customs may provide daytime reimbursable services to centralized hub facilities during daytime hours, just as the agency currently provides to express consignment carrier facilities. The provision also clarifies that Customs may be reimbursed for all services related to the determination to release cargo, and not just "inspectional" services. These services, which include the costs of Customs inspectors and aids, canines, and entry data processors, are reimbursable regardless of whether they are performed on site or not. In many cases these services are not provided at the express consignment carrier facility or centralized hub facility but are related to the release determination and, therefore, are properly reimbursable. It is not intended that the services subject to reimbursement pursuant to 19 U.S.C. 58c are to be expanded beyond those related to the release determination if such other services are already covered by general user fees under 19 U.S.C. 58c(a). Services covered by this provision continue to be the same services subject to reimbursement prior to the effective date of these provisions.

It is the intention of the Committee that the Customs Service's allocation of full-time employees, as provided in appropriation bills, shall not be reduced or affected in any way by this provision. The Committee intends reimbursable services positions to be in addition to positions currently allocated to Customs.

TITLE VII. INCOME SECURITY AND RELATED PROGRAMS

SUBTITLE A. MISCELLANEOUS IMPROVEMENTS IN THE OASDI PROGRAM

1. Use of Social Security Numbers by State and Local Court Systems for Jury Selection Purposes (sec. 7001 of the bill)

Present Law

The Privacy Act of 1974 prohibits States from requiring individuals to provide social security numbers for identification purposes unless the State was doing so prior to January 1, 1975, or unless the State is specifically permitted to do so under Federal law (e.g., for tax administration, drivers license and motor vehicle registration).

Explanation of Provision

Courts typically use computerized jury source lists within their jurisdiction to select jurors. The proposal would allow them to use the social security numbers of prospective jurors to eliminate duplicate names and the names of convicted felons from the jury source lists.

2. Repeal of the Facility of Payment Provision (sec. 7002 of the bill)

Present Law

The maximum family benefit (MFB) is a limit on the total amount of social security benefits that can be paid to a worker and his or her dependents. As a general rule, if there is cause to reduce the benefit of one dependent member of a family that is subject to the MFB because of excess earnings or some other factor, the amount reduced is redistributed and paid to the other dependent family members. However, if all the dependents are living in the same household, the check of the individual affected by the reduction is not actually reduced or withheld, and no actual redistribution occurs. This procedure, known as the facility of payment provision, was originally intended as an administrative simplification, but adds complexity and confusion in today's computerized administrative environment.

Explanation of Provision

The facility of payment provision would be repealed so that a family member's benefit could be reduced when appropriate and benefits redistributed within the MFB to other family members.

3. Conform Social Security Definition of Disability for Children to the SSI Definition for Children (sec. 7003 of the bill)

Present Law

The basic definition of disability, inability to engage in any substantial gainful activity by reason of a physical or mental impairment, is the same under the Social Security Disability Insurance program and the Supplemental Security Income program. In the SSI program, however, the law further provides that children under the age of 18 are considered disabled if they suffer an impairment of "comparable severity" to one that would prevent an adult from working. The Disability Insurance program has no similar provision applicable to children, although under the program there are certain limited circumstances in which a child must establish disability prior to attaining age 18.

Explanation of Provision

The proposal would establish a "comparable severity" definition of disability for children under the Disability Insurance program that is identical to the definition in the SSI program.

4. Increased Penalties for Unauthorized Disclosure of Social Security Information (sec. 7004 of the bill)

Present Law

The Social Security Act contains provisions prohibiting the unauthorized disclosure of personal and other information obtained in administering the Act. The Act provides that any person who violates these provisions and makes an unauthorized disclosure can be found guilty of a misdemeanor and, upon conviction, punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both. Under the Act, these penalty provisions are also applicable to anyone who fraudulently attempts to obtain information as to the date of birth, employment, wages, or benefits of another individual.

Explanation of Provision

The proposal would make unauthorized disclosure of information and fraudulent attempts to obtain personal information under the Social Security Act a felony. Each occurrence of a violation would be punishable by a fine not exceeding $10,000, imprisonment not exceeding 5 years, or both.

SUBTITLE B. FOSTER CARE; SUBSTANCE ABUSE PREVENTION AND TREATMENT; AND RELATED PROGRAMS

PART I—FOSTER CARE, ADOPTION, AND CHILD WELFARE SERVICES

GENERAL DISCUSSION

Over the last several years, committees of Congress, representatives of State organizations involved in the delivery of child welfare services, advocacy groups interested in the welfare of children, and many other organizations and individuals have been focusing their attention on the problems that confront the Nation's child welfare and foster care systems.

As a result of these deliberations, there is a growing consensus that the child welfare and foster care systems are in trouble, and in need both of reform and substantial additional resources to respond to the growing number of children who are victims of abuse and neglect.

As witnesses at the Committee's hearings on this issue have testified, many of these children are coming into the child welfare system as the result of parental substance abuse. A number of States have reported dramatic increases in the number of children being placed in foster care as the result of substance abuse. Data also show that there are growing numbers of very young children (infants under age 1) entering the foster care system. Hearings by the Finance Committee developed extensive testimony on the problem of increasing numbers of infants who have been damaged by parental substance abuse, and who are simply being abandoned by their parents.

Although substance abuse is a factor in a great many foster care cases, there are also many children who enter the system as the result of problems of other kinds, such as a

poor single parent's incapacity to cope with and nurture her children, sexual or physical abuse, neglect, lack of housing, or untreated psychological or emotional problems of either child or parent.

Comprehensive national data on children in the child welfare and foster care systems are not available. However, statistics from individual States reflect what experts agree is a nationwide phenomenon of increasing, and increasingly complex, foster care caseloads.

For example, between 1984 and 1989 New York's caseload increased from 27,000 to 62,000. And although recently the caseload in the State has slowed, there are areas in New York City where more than 10 percent of all infants are being placed in foster care. Many of them are the fragile children of substance abusers, children who typically remain in foster care for extended periods of time.

In Illinois, the caseload continues to grow rapidly, with an increase of more than 20 percent in the last year.

Last year in the State of Texas there were more than 90,000 investigations of abuse and neglect, an increase of more than 10 percent over the prior year. Substance abuse has been found to be a factor in nearly half of all cases.

In Los Angeles County, the number of children in foster care has increased by 80 percent over the last five years, and more than 2,500 drug-exposed infants were referred to the county's Department of Children's Services last year.

Nationwide the number of children in foster care has increased by 50 percent over the last five years, and now exceeds 400,000.

Children who have entered the foster care system are not leaving it at the same rate as in the early 1980's. For example, statistics from California indicate that children entering foster care in January 1988 stayed longer in placement than those entering in January 1985. In three years, the proportion of children still in foster care after 18 months increased 43 percent.

Reports of child abuse climbed to 2.7 million in 1991, more than three times the number in 1980.

Sources of Federal funding for child welfare and foster care services.—Currently, Federal funding for child welfare and foster care services is available to the States under the following Social Security Act programs:

(1) The social services block grant (title XX). It is estimated that States use about 25 percent of the $2.8 billion in title XX funds for child welfare-related services (the rest of the money goes for a wide variety of social services such as child care, and homemaker and respite care services for the aged, blind and disabled).

(2) The child welfare services program (title IV–B), which provides matching grants to States for a variety of child welfare services of their choosing. The program is authorized at a level of $325 million. The appropriation for fiscal year 1992 is $274 million.

(3) The foster care and adoption assistance programs (title IV–E), which provide Federal matching at the Medicaid matching rate to States for cash maintenance payments on behalf of AFDC-eligible foster care children and special needs children who are adopted. Fifty percent Federal matching is available for administering these programs, and for certain costs related to placing children in foster care. States may draw down Federal matching payments on an open-ended entitlement basis. The appropriation for fiscal year 1992 is $2.4 billion.

(4) The Independent living program, which provides grants to States for programs to help young people in foster care make the transition from foster care to independent living. In fiscal year 1992, States may draw down their share of $70 million in Federal entitlement funds for this purpose.

State funding.—Despite these sources of Federal funding, the child welfare and foster care systems are largely funded by State and local governments. According to the best data available, about 62 percent of the costs of these systems are borne by State and local governments. Over the last decade, States and localities have been particularly hard hit by the combination of rapid growth in the number of reports of child abuse and neglect, the increase in foster care caseloads, and the erosion of the real value of the title XX social services block grant, which is a major source of Federal funding for preventive services. Over the period 1977–1992 title XX funding declined in real terms by 55.4 percent.

Funding for title IV–B, of which, at the time of the child welfare reform legislation of 1980, was expected to grow significantly in order to assist States in providing preplacement preventive services and other services to promote family and child welfare, has grown only modestly since 1981. And although Federal matching for foster care placement and administrative costs under title IV–E grew substantially from $30 million in 1981 to $747 million in 1991, States have been using these new 50 percent matching funds to implement the requirements mandated by the 1980 child welfare reform legislation (the Adoption Assistance and Child Welfare Act of 1980), a process that is still incomplete.

a. Funding for foster care related services (sec. 7101 of the bill)

Present Law

Title IV–B of the Social Security Act authorizes $325 million a year to be used by the States to provide child welfare services. The fiscal year 1992 appropriation for child welfare services is $273.9 million. States generally have broad discretion in determining the nature of the services they wish to provide, and the population to which they will be provided. The Federal matching share is 75 percent. Funds are allocated to the States under a formula that takes into account the State's relative number of children under age 21 and per capita income.

States are not required to report how they use title IV–B funds, and there are no official data available at the Federal level that show the purposes for which States are using Federal dollars. States may provide services without regard to family income.

As noted above, at the time the Child Welfare and Adoption Assistance Act of 1980 was enacted, it was envisaged that the IV–B program would become a major source of funding for services aimed at preserving families and preventing foster care placement. However, an analysis of State child welfare plans conducted by the American Public Welfare Association concludes that in fiscal year 1990, only 4 percent of all funding for child welfare services will come from Federal title IV–B funding.

Explanation of Provision

Funding.—As the problems facing the child welfare and foster care systems have become more acute, State and local agencies have become increasingly interested in developing new strategies to try to strengthen families and prevent family disruption, as well as to reunite families after a child has been placed in foster care.

As Charles Hayward, Secretary of the Delaware Department of Services for Children, Youth, and Their Families, told the Committee on Finance at a hearing last year:

Child welfare programs "have become little more than emergency rooms responding—as we will continue to do—to reports of child abuse and neglect. We are using our limited resources to provide the most expensive treatment and intervention approaches in acute family crises. In short, we are doing too little too late. We need to do more. The future of America's families is at stake."

The Committee's bill is designed to respond to the need of the States for increased funding for child welfare services, while seeking to direct the use of these new funds for specific kinds of services that States are beginning to find most successful in strengthening and preserving families.

Title IV–B is amended to provide entitlement matching funds to States to enable them to develop and provide innovative services programs aimed at preventing unnecessary placement in foster care; helping families to be reunited after a child has been in foster care; promoting planned living arrangements for children who have been placed in foster care, including placement in adoption, where appropriate; and other family support services that the State may choose to provide.

States will be entitled to their share of $150 million in fiscal year 1993, $250 million in fiscal year 1994, $300 million in fiscal year 1995, $350 million in fiscal year 1996, and $400 million in fiscal year 1997 and years thereafter. The Federal matching share will remain at 75 percent. Allotment of funds will be on the same basis as is used under the current title IV–B program (which reflects the size of the State's population under age 21 and per capita income).

Services.—Funds may be used for the planning, development, expansion, and operation of the following services:

(1) preplacement preventive services designed to help children at risk of foster care placement remain with their families (including adoptive families) where appropriate;

(2) reunification services designed to help children return to the families (including adoptive families) from which they have been removed, where appropriate;

(3) followup services designed to sustain and further strengthen families (including adoptive families) after a child has returned home from foster care placement;

(4) where appropriate, services to help children be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

(5) respite care to provide assistance for any foster care family or adoptive family and any other family that the State agency determines needs such care in order to preserve family stability, with priority to the family of a child with a medical condition or physical, mental, or emotional handicap that requires special assistance (as determined by the Secretary); and

(6) family support services to strengthen the functioning of a family (including an adoptive or foster care family), including services designed to improve parenting skills.

State and local agencies throughout the country are trying out service programs that shift the emphasis from child rescue to preserving the family as a whole. It is the intent of the Committee to encourage the development of these services programs so that

they will be widely available to the families that need them.

One type of service that fits this description is what are known as "family preservation" services. Although there are a number of different family preservation program "models" in more than 30 States across the Nation, these programs have certain characteristics in common. When the agency receives a report about child neglect or abuse, if it determines that such intervention is appropriate, it will immediately provide intensive services to the family to try to prevent the need for placement in foster care. These services may include practical concrete services, family therapy, and individual psychological support and counseling. They are characterized by small caseloads for the caseworker, 24-hour a day availability of staff, and by the fact that they are ordinarily provided in the home. In some States, this same intensive approach to services is also being adapted for use in programs to reunite children who have been placed in foster care with their parents. Michigan's Families First program is an example of this approach.

The Committee also anticipates that States will choose to use funds provided by this bill to establish "family support centers," which are aimed at helping families before serious trouble occurs. The State of Maryland, for example, has established such centers in a number of communities around the State where young men and women who want help in becoming better parents may come to receive health and nutrition counseling, encouragement and assistance in completing their education, training in job skills, and guidance in child-rearing skills.

Evaluation.—An authorization of $8 million a year for five years will be provided to enable the Secretary of HHS to evaluate State programs receiving funds under this program. The Secretary will be allowed to conduct these evaluations through contracts with independent research organizations.

States may also use funds available to them under the new Part B funding authority to conduct their own evaluations of their services programs under regulations of the Secretary.

The Secretary must develop procedures to facilitate the coordination of evaluation efforts undertaken by HHS and by the States and must provide technical assistance to the States in planning and designing their evaluations.

In designing the evaluations conducted by the Department of HHS, the Secretary must consult with representatives of organizations representing State and local program administrators; private, nonprofit organizations with an interest in child welfare; and with individuals and organizations that have experience in evaluating child welfare or other related services programs.

Evaluations by the Secretary and by the States must use outcome measures of children and families that can be compared with similar outcome measures of children and families that did not receive these services. The Secretary must assure that an appropriate portion of the evaluations conducted by him will use experimental and control groups.

Beginning in fiscal year 1995, the Secretary must issue an annual report to the Ways and Means and Finance Committees on the status and findings of all evaluations undertaken by the Department. The report shall also include a summary description of State evaluations paid for with these Federal funds.

The Committee expects that both the Secretary of Health and Human Services and the States will use funds made available to them under this bill to rigorously evaluate these new programs, so that at the end of the five-year period during which these evaluations are authorized, there will be the kind of evidence necessary to design even more effective strategies to protect families and children.

By December 1, 1996, based on evaluations conducted by the Secretary and the States, the Secretary must submit a report to the Ways and Means and Finance Committees with recommendations for legislation to improve services provided to families and children under title IV–B so as to strengthen families, to reduce the number of cases in which it is necessary to remove a child from home and place the child in foster care, to promote the reunification of families of children who have been placed in foster care, and to promote planned, permanent living arrangements for children, including adoption, where appropriate.

State plan/reporting requirements.—In order to receive funding for services, each State must submit, on an annual basis, an amendment to its title IV–B plan. The plan amendment must be approved by the Secretary, and must include a detailed description of how the State intends to use its share of the new money. In addition, the State must submit an annual report to the Secretary that summarizes activities actually carried out with funds made available under this legislation. The State must also develop a statement of goals that it expects to achieve over the 5-year period 1993–1997, which must be submitted to the Secretary by January 1, 1993.

State maintenance of effort.—As a condition of receiving funds under this program, States must provide the Secretary with written assurances that State and local funds expended for the purpose of providing child welfare services (excluding foster care maintenance and adoption assistance payments) will be maintained at a level that equals or exceeds the level of funding for these services in fiscal year 1991.

b. Demonstration projects to improve coordination of services (sec. 7102 of the bill)

Present Law

There are a large number of categorical programs serving families and children. However, little systematic effort has been made to coordinate them at the Federal, State, or local level.

Explanation of Provision

The Committee provision addresses the problem of poor coordination of services for families and children by providing Governors with an incentive to develop programs to improve the coordination of services at the State and local levels of government. In addition, it is intended to promote coordination at the Federal level by requiring the Secretaries of Health and Human Services, Education, and Agriculture, as well as the Attorney General, to work together to develop recommendations for the improved delivery of services.

It is the Committee's hope that the Nation's Governors, who placed such an instrumental role in reforming the welfare system, will now turn their attention to the child welfare and foster care systems, and, by their example, will show the way to reform of these systems as well.

As an incentive, beginning October 1, 1992, the Secretary will be required to permit up to 15 States to use Federal title IV–E foster care administrative and child placement (entitlement) matching funds (not to exceed $3 million per year for any one State) to conduct pilot projects to improve the coordination of assistance for families and children. Applications for approval of projects must be submitted by the Governor.

Projects may last up to three years. They must provide for improved coordination of the child welfare, foster care, and adoption assistance programs with several or all of the following programs designed to assist families and children: programs under the Social Security Act (Aid to Families with Dependent Children, Child Support Enforcement, JOBS, Medicaid, and Maternal and Child Health), WIC, education programs, mental health programs, juvenile justice programs, substance abuse programs, programs for the developmentally disabled, and other programs determined by the State and approved by the Secretary.

At the present time, many, if not most, families receiving child welfare services also receive welfare assistance through the Aid to Families with Dependent Children program. The Family Support Act of 1988 made a wide variety of services available to these families, and the Committee hopes that States will look for ways to link these systems together to help families before a crisis arises. The Committee believes that State and local governments can achieve significant improvement in their delivery of services to families by better integration of these Social Security Act services, as well as other services listed above.

In determining which States are to receive demonstration grants, the Committee anticipates that the Secretary will give priority to demonstration projects that are Statewide where he believes that this will best serve the purpose of the provision. Although the Committee recognizes that the amount of funding provided to a State under this bill will not by itself pay for major new Statewide programs, it is hoped that it will provide Governors with an incentive to look for ways to improve the delivery of services on a Statewide basis.

Any State approved by the Secretary to operate such a demonstration project will be required to conduct an evaluation and report the results of the evaluation to the Secretary. States may use regular IV–E administrative/placement matching funds for evaluation.

States receiving grants will be required to identify both Federal and State legislative and non-legislative policies (including administrative structures) that impede or inhibit coordination of the delivery of services to families and children. States must provide the Secretary with information on the steps they have taken or intend to take to eliminate or reduce problems in coordination that result from State or local statutes and policies. They must also provide the Secretary with information on barriers they have identified in Federal legislation and policy that limit States' ability to coordinate services for families and children.

The Secretaries of HHS, Agriculture, and Education, and the Attorney General, will be required to review Departmental policies to determine what changes in regulations and procedures can be made without legislative changes to improve coordination of services for children and families at the Federal, State, and local levels. In undertaking this review, they must consult with representatives of State and local governments.

A report including recommendations for making both legislative and nonlegislative

changes to improve coordination must be submitted to the Congress by July 1, 1993, and must include a description of any technical assistance that the Departments will provide to the States to assist them in program coordination.

c. Measure to facilitate adoption (sec. 7103(a) of the bill)

Present Law

Under present law, there must be a review of the status of each foster care child at least every six months by a court or by an administrative panel to determine the necessity for and appropriateness of the child's placement in foster care, as well as the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

Explanation of Provision

Present law is amended to require, in the case of a child who is legally free for adoption, that the court or administrative body conducting the case review must determine and document for the child the specific steps being taken by the State agency to find an adoptive family for the child, or must make a finding that adoption placement would be inappropriate for the child. This provision is effective for reviews conducted on or after October 1, 1993.

d. Federal matching for certain adopted children (sec. 7103(b) of the bill)

Present Law

Title IV-E provides Federal matching for foster care maintenance payments made on behalf of an AFDC-eligible child. If the foster child is subsequently adopted by a family that is not an AFDC family, and that adoption is disrupted, the child is no longer considered to be an AFDC-eligible child. Therefore, when the child returns to foster care, it is no longer eligible for Federally-matched foster care payments, and is also not eligible for adoption assistance payments if it is placed for adoption with a subsequent family.

Explanation of Provision

Beginning October 1, 1992, States will be allowed to claim title IV-E matching in the case of a child who has previously been determined to be eligible for adoption assistance payments under title IV-E, but who has returned to foster care because the adoption has been set aside by the court. The child would be eligible for foster care maintenance payments, as well as for adoption assistance to facilitate adoption by a second family.

e. Tax deduction for costs of adopting a special needs child (sec. 7104 of the bill)

Present Law

Taxpayers are not allowed to deduct expenses related to adopting a child in determining their Federal income tax liability.

Explanation of Provision

Taxpayers may deduct certain allowable expenses (up to a maximum of $3000) of adopting a special needs child. Allowable expenses include reasonable and necessary adoption fees, court costs, attorneys fees, and other expenses directly related to the legal adoption of the child which are eligible for reimbursement under the title IV-E adoption assistance program. Title IV-E defines a special needs child as a child with respect to whom the State has determined that there exists a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or medical condition or physical, mental, or emotional handicap) that makes it difficult to find an adoptive home for the child.

The provision is effective for adoptions occurring after December 31, 1992.

f. Study of "reasonable efforts" (sec. 7105 of the bill)

Present Law

In order for a State to be eligible for title IV-E funding, the State plan must specify that, in each case, reasonable efforts will be made prior to the placement of a child in foster care to prevent the need for foster care and make it possible for the child to return home (sec. 471(a)(15)). The statute also provides that for each child entering foster care after October 1, 1983, a judicial determination must be made that there were reasonable efforts to prevent placement in foster care (sec. 472(a)(1)).

Explanation of Provision

Not later than 90 days following enactment, the Secretary of HHS must establish an Advisory Committee to study the implementation of the current law requirement that reasonable efforts must be made to prevent the need for removal of a child from the child's home, and to make it possible for the child to return home. The Advisory Committee must submit a report to the Secretary and the Congress with recommendations for improving the implementation of this requirement by January 1, 1994.

The Advisory Committee shall consist of no fewer than 9 members and shall include representatives of: private, nonprofit organizations with an interest in child welfare (including organizations that provide child protective, foster care, or adoption services); hospitals with a significant number of boarder babies; State and local public agencies with responsibility for child protective, foster care, or adoption services; and State and local judicial bodies with jurisdiction over family law.

g. Require placement in least restrictive, most appropriate setting (sec. 7106(a) of the bill)

Present Law

Current law (sec. 475(5)(A)) requires that each State's child welfare and foster care programs must provide for a case plan for each foster care child that is designed to achieve placement in "the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interests and special needs of the child."

Explanation of Provision

The current law requirement specifying that each child must have a case plan designed to achieve placement in "the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interests and special needs of the child" will be modified to require placement in "the least restrictive (most family like) *and most appropriate* setting available and in close proximity to the parents' home, consistent with the best interests and special needs of the child". The provision is effective October 1, 1992.

It is generally agreed by individuals working in the field of foster care that if a child must be placed outside the family home, it is ordinarily desirable that the child be placed in a family-like situation. In most cases this means placement in a foster family home. However, in writing the "least restrictive" requirement in 1980, the Congress included language, quoted above, that also requires that the placement be "consistent with the best interests and special needs of the child."

It has come to the attention of the Committee that, despite this language requiring placement consistent with the best interests and special needs of the child, there has sometimes been a tendency on the part of State and local agencies to equate the requirement for placement in the "least restrictive" setting as tantamount to requiring placement in a foster home despite the fact that for a particular child, an alternative setting might be more appropriate.

For example, the Committee is aware of situations where youths have been placed in foster homes that are ill-equipped to deal with their emotional or other needs, with the result that a youth may be moved from one unsatisfactory foster home to another before his or her problems become so acute that alternative placement is recognized as necessary.

The Committee's amendment is designed to emphasize the need for States to evaluate each child's needs and situation, and to balance the requirement for placement in the least restrictive setting with the need to place the child in a setting that is appropriate to the child's needs. In most cases this will be in a foster home, but this should not be the presumption without considering the needs of the child. The Committee believes that each child's needs should be evaluated on an individual basis, and the placement that is selected for the child should take into account the kind of setting and services that are most appropriate for the child.

h. Participation by citizen review volunteers (sec. 7106(b) of the bill)

Present Law

The statute requires the review of the status of each child in foster care no less frequently than every six months by either a court or by administrative review to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

In addition, each child in foster care must have a dispositional hearing held in a court of competent jurisdiction or by an administrative body appointed or approved by the court within 18 months after the original placement, and periodically thereafter, to determine the future status of the child.

Currently, 22 States use citizen volunteers to review foster care cases and to make recommendations at administrative reviews and court hearings. There is no specific statutory language authorizing citizen participation in these processes.

Explanation of Provision

The statute is amended to specify that, to the extent determined appropriate by the State, case reviews may include the participation by citizen volunteers in making recommendations at either the court or administrative reviews and dispositional hearings described above. The provision is effective upon enactment.

i. Demonstration projects to facilitate return home for an AFDC child (sec. 7107 of the bill)

Present Law

Under present law, if a child is removed from an AFDC home and placed in foster care, the family is not eligible for an AFDC payment on behalf of the child until the month that the child returns home. If the

child is the only dependent child in the family, the family will not be eligible for any AFDC payment until the month that the child returns home.

Explanation of Provision

The Secretary of HHS shall enter into an agreement with up to 6 States to conduct demonstration projects to test and evaluate whether family reunification can be facilitated by allowing a family to receive AFDC for the month prior to the month in which a child returns home from foster care (in an amount which the family would be eligible to receive if the child were living in the home). For that month, States may also provide for a payment to meet special needs, such as a bed or other furniture or equipment that the child may need. Demonstration projects may last up to 3 years. No project may be conducted after January 1, 1997.

j. Enhanced federal funding for data collection systems (sec. 7108 of the bill)

Present Law

There is no provision for enhanced Federal matching to encourage States to develop and install statewide data collection and information retrieval systems to administer the title IV-B and title IV-E programs, or for implementing a provision included in the 1986 Budget Reconciliation Act requiring States to establish Statewide information systems.

The 1986 legislation included an amendment mandating certain studies and reports to Congress related to the feasibility of establishing a system for the collection of certain foster care and adoption data. The amendment, which added a new section 479 to the Social Security Act, required the Secretary of HHS to establish an Advisory Committee on Adoption and Foster Care Information.

On October 1, 1987, the Advisory Committee submitted to the Congress the results of a study which identified the types of data necessary to assess on a continuing basis the incidence, characteristics and status of adoption and foster care. On May 26, 1989, the Secretary of HHS submitted to Congress a report, due on July 1, 1988, proposing a method of establishing, administering and financing a system for the collection of data relating to adoption and foster care in the United States. However, HHS has not yet promulgated regulations providing for the implementation of the information system. The law requires final implementation of the system no later than October 1, 1991.

Explanation of Provision

Effective January 1, 1993, States may claim 90 percent Federal matching funds for costs of planning, designing, developing, or installing a statewide data collection and information retrieval system (including the full cost of the hardware components of such system) that is approved by the Secretary for purposes of administering the title IV-B child welfare and title IV-E foster care and adoption assistance programs, and that meets the requirements of section 479.

To be eligible for Federal matching funds, a system must be determined by the Secretary as likely to provide more efficient, economical, and effective administration of the title IV-E and title IV-B programs.

Matching will be available until September 30, 1995, by which time a system meeting the requirements of section 479 must be in place. Systems must be capable of interfacing with the State's AFDC system to verify AFDC eligibility of a foster care child. Title IV-E Federal administrative matching funds may be used to pay for operating costs with respect to IV-E eligible children. Title IV-B funds may also be used to pay for operating costs (although they may not be used to draw down IV-E matching funds).

k. Extend and improve the independent living program (sec. 7109 of the bill)

Present Law

In 1985 the Committee on Finance approved the establishment of the independent living program to help youths make the transition from foster care to independent living. The amendment was included in the Budget Reconciliation Act of 1985. As amended, it allows States to provide services to all youths age 16 who are in foster care, including those who are not receiving title IV-E maintenance payments. States may also provide services to youths up to age 21 whose foster care payments ceased after they attained age 16.

Independent living program services may include those that enable participants to seek a high school diploma or take part in vocational training; provide training in daily living skills, budgeting, locating housing and career planning; provide for counseling; coordinate services; establish outreach programs; and provide an independent living plan in the youth's case plan.

The statute authorizes $50 million dollars in entitlement funding for fiscal year 1990 (increased from $45 million in prior years); $60 million in 1991; and $70 million in 1992. For fiscal years 1991 and 1992, States are required to provide 50 percent Federal matching for amounts above $45 million. The program is not authorized beyond fiscal year 1992.

Explanation of Provision

The independent living program, designed to assist foster care youths in making the transition from foster care to independent living, will be modified to:

(1) extend the program permanently; and

(2) allow youths in independent living programs to accumulate assets sufficient to enable them to establish their own households (as determined by the State agency) without losing eligibility for maintenance payments or Medicaid.

These provisions are effective October 1, 1992.

A study of the program by Westat, Inc., under contract with the Department of HHS, found that youths who had been in foster care were a troubled population. In the study population, two-thirds of 18-year-olds did not complete high school or a GED, and 61 percent had no job experience. In addition, 38 percent had been diagnosed as emotionally disturbed, 17 percent had a drug abuse problem, 9 percent had a health problem, and 17 percent of the young women were pregnant. The group also lacked placement stability. During the time they were in foster care 58 percent experienced at least three living arrangements and approximately 30 percent of the youth had been in substitute care for an average of nine years.

Housing is also a significant problem. According to a 1985 study, an estimated 7500 youth who were discharged from foster care were homeless in New York City. A 1984 study found that more than one in four children who grew up in foster care and were then questioned as young adults reported severe or moderate housing problems.

It is the belief of the Committee that the changes in the independent living program contained in this bill will enable States to provide assistance to foster care youths in addressing these and other serious problems that they commonly encounter.

l. Improvements in child welfare training (sec. 7110 of the bill)

Present Law

Title IV-B of the Social Security Act (section 426(a)(C)) authorizes such sums as may be necessary to enable the Secretary of Health and Human Services to make grants to public or private nonprofit institutions of higher education for training personnel for work in the field of child welfare.

Explanation of Provision

The current child welfare statute authorizing Federal funding for child welfare training is amended to ensure that students who receive training under this provision actually work in the child welfare system, and to make students and institutions more accountable for the use of funds by reinforcing the link between child welfare study and actual practice in the child welfare field. The amendment would:

(1) require students receiving stipends to: participate in a related field placement on a regular basis, and to commit to and complete full-time post-graduation employment in a public or private non-profit child welfare agency (one year for each year of support received);

(2) require institutions receiving funds to: provide appropriate student supervision and support, including formal agreements with local child welfare agencies for the onsite training of recipients; develop and implement curricula which reflect current knowledge and best practices in delivering child welfare services, and consult with child welfare agencies in developing such curricula; and implement a system to track (for a period of three years) students who receive training in family and child welfare services to determine the percentage of trainees who secure and retain employment in the child welfare field; and

(3) allow those already working in the child welfare system (including either a public or private non-profit agency) to be eligible for stipends in order to complete degree requirements.

These provisions are effective for grants awarded on or after January 1, 1993.

In addition, the Secretary of HHS is required, not later than April 1, 1993, to publish final regulations establishing guidelines to assist States in using Federal matching funds that are authorized under current law for the purpose of providing training for individuals who are employed or preparing for employment by State and local child welfare agencies.

The Secretary is also required to develop and publish a model staff recruitment, training, and staff retention program for use by such agencies, by April 1, 1993.

The present law authority to match State expenditures for training of foster and adoptive parents and for training staff of approved child care institutions providing care to foster and adopted children, which will expire at the end of fiscal year 1992, is extended for three years.

m. Health care plans for foster children (sec. 7111 of the bill)

Present Law

The State agency is required to have a case plan for each foster child in its care. The case plan must include, to the extent available and accessible, the health and education records of the child, including the names and addresses of the child's health and educational providers; the child's school record; a record of the child's immunizations; the child's known medical problems; and other relevant health and education information concerning the child.

Explanation of Provision

Each child's case plan must also include a record indicating that the child's foster care provider was advised (where appropriate) of the child's eligibility for early and periodic screening, diagnostic, and treatment services under title XIX (Medicaid). The provision applies to case plans established or reviewed on or after January 1, 1993.

n. Demonstration projects (secs. 7112 and 7113 of the bill)

Present Law

There is no specific statutory authority for demonstration projects under the foster care and adoption assistance programs.

Explanation of Provision

The Secretary of Health and Human Services is authorized to approve up to 10 demonstration projects under which States will be given more flexible spending authority and will not be required to meet certain requirements of the child welfare and foster care programs.

Demonstrations may include:

(1) projects to prevent family dissolution;

(2) Projects to promote reunification of a foster child with the child's own family;

(3) projects to expedite permanent placement of children who are in foster care, are boarder babies, were abandoned at or shortly after birth, have parents addicted to drugs, or were abused;

(4) projects to train individuals who live in a community to provide family support services to other families in the community with children at risk of being placed in foster care,

(5) Projects that provide "adult mentoring" services by adult volunteers to at-risk children or young adults who are in need of additional, on-going contact with adult role models, such as "The Club" (Career and Life United in Boston), sponsored by the Action for Boston Community Development Inc.; or

(6) projects to test an innovative approach to other significant child welfare services issues.

Projects may be statewide or may be operated in part of a State. The Secretary must approve at least 2 and not more than 4 applications by States with populations of less than 1.5 million; at least 3 and not more than 5 by States with populations between 1.5 and 7 million, and at least 2 and not more than 4 by States with populations over 7 million. The Secretary must approve no more than 4 applications for any one geographical region of the country.

States that apply for demonstration grants must commit to carrying out the project for not less than two and not more than five consecutive fiscal years.

States that are approved to conduct Statewide demonstration projects will receive a grant that reflects the sum of the amount paid to the State for fiscal year 1992 for child welfare services and foster care; the State's share of any increase in the appropriation for the child welfare program over the level for 1992; and 20 percent of the amount that would have been payable to the State for the immediately preceding fiscal year under the child welfare program if the State were not authorized to conduct a demonstration project. (For projects that are not Statewide, these amounts will be adjusted to reflect the portion of the State's foster care caseload that is within the area being served by the demonstration.)

All demonstrations must be evaluated by an entity or entities selected by the secretary. The cost of evaluations (over and above ordinary State reporting costs) will be paid by the Secretary.

In addition, the State of New York would be allowed to conduct a deficit-neutral demonstration project to test how to enhance the practices and procedures that will expedite the discharge of children from foster care, including the appropriate reunification of children with their families, or the adoption of children by suitable adoptive parents. In order for the demonstration to be approved, the State must agree to conduct an evaluation approved by the Secretary.

o. Quality reviews (secs. 7114, 7115 and 7116 of the bill)

Present Law

Section 427 of the Social Security Act sets forth specified child protections that must be in place in order for a State to receive its allotment of appropriated title IV–B (child welfare) funds in excess of $141 million. These "incentive funds" have grown in importance, rising from just 10 percent ($15.3 million) of the total amount appropriated for title IV–B in 1982, to 49 percent ($132.9 million) of the appropriation for 1992.

In 1980, following the enactment of the Adoption Assistance and Child Welfare Act of 1980, the Department of Health and Human Services identified a total of 18 child protections required by section 427. In what came to be known as "427 reviews," the caseload of each State receiving incentive funds is examined to determine compliance with these child protections. States are not required to initiate this review process, but nearly all States have elected to do so.

Three separate case record surveys are conducted in each state (an initial, subsequent, and triennial review) by a team composed of Federal, regional, and State personnel. Each of these reviews demands a higher level of compliance, and a State must have successfully passed the preceding review before proceeding to the next one.

If a State is found out of compliance, the Department issues a disallowance against the State's allotment of incentive funds for the coming fiscal year. States may appeal the disallowance to the Departmental Appeals Board, but the Department routinely withholds from a State the amount of the disallowance until the appeals process is completed.

The "427 review" process has been criticized on various grounds, and the Congress several times has acted to restrict HHS from disallowing Federal funds because a State failed to review.

In addition to the "427 reviews," the Department reviews expenditures made under the title IV–E foster care and adoption assistance programs. Section 471(a)(13) requires States to arrange for periodic and independent audits of their activities under titles IV–B and IV–E at least every three years. Section 471(b) allows the Secretary to withhold or reduce payments to States upon a finding that a State plan no longer complies with State plan requirements, or, in the State's administration of the plan, there is substantial failure to comply with its provisions.

In practice, the Secretary may disallow expenditures for Federal reimbursement under title IV–E as a result of several review procedures. These include audits conducted pursuant to section 471(a)(13); audits conducted by the HHS Inspector General; regional office reviews of quarterly expenditure reports submitted by States as part of the claims reimbursement process; or Federal financial reviews. States may appeal disallowances to the Departmental Appeals Board.

Explanation of Provision

The Secretary of Health and Human Services is required to submit to the Committee on Finance and the Committee on Ways and Means recommendations for legislation to establish a system for (1) the review of each State child welfare program, and (2) the provision of technical assistance to State programs. The term "child welfare program" is defined to mean all activities engaged in by the State under parts IV–B and IV–E of the Social Security Act.

Recommendations must include provisions requiring each State child welfare program to be reviewed periodically to determine whether and the degree to which the program complies with State plan requirements, and the extent to which the amounts claimed to have been expended by the State for foster care maintenance payments and adoption assistance are eligible for Federal reimbursement. In addition, recommendations must specify the criteria that are to be used to assess whether the State's program has complied with Federal requirements, and the degree of such compliance.

In developing the recommendations, the Secretary must consult with representatives of State agencies administering child welfare programs; representatives of private, nonprofit organizations which have an interest in child welfare; and such other individuals as the Secretary may determine. The recommendations are due prior to May 1, 1993.

The provision of the Omnibus Budget Reconciliation Act of 1989 that prohibits the Secretary from collecting any funds from States as a result of a disallowance made in connection with a section 427 triennial review for any year prior to 1991 would be amended to extend the prohibition to apply to reviews for any fiscal year prior to 1993. In addition, the prohibition would apply to all reviews, not just triennial reviews.

The Department of HHS would be required to pay claims as submitted by a State within 90 days of receipt unless a deferral or disallowance has been issued within that time period.

p. Commission on childhood disability (sec. 7117 of the bill)

Present Law

The Social Security definition of disability that is applicable to adults in both the Title II Disability Insurance and Title XVI Supplemental Security Income programs requires that an individual be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last at least 12 months or result in death. To be found disabled, an adult must have impairments that either meet or equal published listings of severely disabling conditions, or be found because of a combination of medical and vocational factors (age, education, work experience) to be unable to engage in any kind of substantial work.

The SSI program which provides for benefits to disabled children under age 18, modifies this definition by providing that a child is disabled if he or she suffers from any medically determinable physical or mental impairments. Prior to the Supreme Court decision in the *Zebley* case, SSA published childhood medical listings of impairments that children had to meet or equal to be found disabled. *Zebley* required that SSA revise its regulation to provide for the childhood equivalent of vocational factors used in the determination of adult disabilities. SSA published regulations in February, 1991 that require the assessment of children's abilities

to engage in age appropriate activities. This assessment is required to determine if children are disabled in circumstances where their impairments are severe but do not meet or equal the medical listings.

Explanation of Provision

The Secretary of Health and Human Services would be required to establish a 15 member Commission on the Evaluation of Disability in Children within 90 days of enactment. The Commission would be charged, in consultation with the National Academy of Sciences, with conducting a study of the effects of the current definition of disability as it applies to children and making recommendations as to any appropriate changes in the definition. The Commission would also be charged with studying whether the need by families for assistance in meeting high costs of medical care for children with serious physical or mental impairments, whether or not they are eligible for disability benefits under title XVI, might appropriately be met through expansion of Federal health assistance programs.

The Commission would be composed of recognized experts in fields of medicine dealing with children, psychology, education and rehabilitation, law, disability program administration, and other fields of expertise as determined by the Secretary. It would be required to report its findings and recommendations, including any recommendations for legislative or administrative change, to the Committee on Finance and the Committee on Ways and Means by September 1, 1994.

PART II—SUBSTANCE ABUSE PREVENTION AND TREATMENT PROGRAMS) (SEC. 7121 OF THE BILL)

Present Law

Neither title IV-B (Child Welfare Services program) nor title XIX (Medicaid) currently provides for the establishment of comprehensive substance abuse prevention and treatment programs for pregnant women and parents with children.

Explanation of Provision

Title IV-B is amended to authorize $75 million for fiscal years 1993 and 1994, $100 million for fiscal years 1995 and 1996, and $125 million for fiscal year 1997 in entitlement matching funds to pay for non-medical substance abuse treatment support services for pregnant women and caretaker parents with children. Support services include home visitation services, nutrition services, child care, and parenting education; substance abuse prevention, treatment, and followup services; and any other services determined by the State to be necessary and appropriate to support the participation of an individual in the program. Funds may also be used for the costs of developing and administering a program.

Funds are allocated to States under the same formula that is used for other title IV-B services (which reflects per capita income and child population). Federal matching is at the Medicaid matching rate. The Governor is given the authority to determine which agency in the State will administer the programs.

Medicaid-eligible pregnant women and caretaker parents and their children will be eligible for both existing medical services (funded through the Medicaid program) and substance abuse treatment support services (funded through the new title IV-B program). The State may also use these new funds to pay for support services to other low income pregnant women and caretaker parents and their children, regardless of their eligibility for Medicaid. States are required to give priority for participation in these programs to individuals who are referred to them by the State child welfare agency.

In order to be eligible for funds, the Governor must provide the Secretary of HHS with assurances that services provided with these funds will be coordinated with services provided under the Medicaid and Maternal and Child Health programs, and must report annually on the status of the programs funded under this title. States must also maintain their current level of spending for substance abuse treatment support services.

To be eligible for Federal funding, a program must make available (either directly or through arrangements with others) substance abuse prevention, treatment, and follow-up services; prenatal, gynecological, and pediatric medical services; home visitation; nutrition services; transportation services; child care; parenting education; and such other social and medical services as are determined to be necessary by the State and are allowed under regulations of the Secretary. Services may be provided in either residential or non-residential facilities.

The creation of comprehensive substance abuse programs will be optional with the States. Programs may be established in those areas that the State determines have particular need for such programs.

PART III—AID TO FAMILIES WITH DEPENDENT CHILDREN

1. AFDC assets test (sec. 7131 of the bill)

Present Law

Under provisions of the Omnibus Budget Reconciliation Act of 1981, a family is ineligible for aid if its resources (reduced by any obligations or debts with respect to such resources) exceed $1,000 or such lower amount as the State may determine. This limit does not include a home owned and occupied by the family, or the ownership interest in an automobile (up to such limit as the Secretary prescribes in regulations).

Explanation of Provision

With respect to AFDC recipients, States may, at their option, disregard amounts (non to exceed $8,000) placed in a designated account (including an individual retirement account) or other mechanism approved by the State agency for the purpose of enabling a member of the family to attend a post-secondary education institution or training program. At their option, States may also disregard amounts set aside to enhance employability by other means (such as purchase of an automobile necessary for work), or to purchase a home.

Amounts withdraw from these accounts and used for a nonqualifying purpose must be counted as unearned income.

The provision is effective beginning October 1, 1993. The Secretary of HHS is required to conduct a study of the use made of the provision. Any recommendations the Secretary may have with respect to modifications of the provision must be submitted to the Committee on Finance and the Committee on Ways and Means by January 1, 1997. No new accounts may be approved after September 30, 1997.

2. Disregard of Income and Resources Related to Self-Employment (sec. 7132 of the bill)

Present Law

There is no provision in the AFDC statute that allows a State to disregard income and resources related to ownership and operation of commercial enterprises.

Explanation of Provision

In determining a family's eligibility for AFDC, States may, at their option, exclude as a resource the first $10,000 of the net worth (assets reduced by liabilities with respect thereto) of all microenterprises owned in whole or in part by a member of the family.

In addition, they may consider as earned income to the family only the net profits of such microenterprises. The term "net profits" is defined to mean the gross receipts of the business, minus amounts paid as principal or interest on a loan to the microenterprise, transportation expenses, inventory costs, amounts expended to purchase capital equipment, cash retained by the microenterprise for future use by the business, taxes paid by reason of the business, any premiums paid for insurance against loss and the losses incurred by the business that are not reimbursed by the insurer by reason of a deductible, and the reasonable costs of obtaining one motor vehicle necessary for the conduct of the business.

These special rules for counting income and resources may apply with respect to any microenterprise for a period not to exceed two years.

The term "microenterprise" is defined to mean a commercial enterprise which has five or fewer employees, one or more of whom owns the enterprise.

States that choose this option must ensure that caseworkers are able to properly advise recipients of aid of the option of forming a microenterprise, and will encourage individuals who are interested to participate in a program designed to assist them in such an effort.

The provision is effective October 1, 1992.

3. Delay in AFDC-UP Mandate for Outlying Jurisdictions (sec. 7133 of the bill)

Present Law

The Family Support Act of 1988 required all States to implement the AFDC Unemployed Parent (AFDC-UP) program by October 1, 1990. The requirement for Puerto Rico, Guam, and the Virgin Islands is effective October 1, 1992.

Explanation of Provision

The requirement for implementation of the Unemployed Parent program is delayed until such time as the limitations on Federal matching payments to these jurisdictions for purposes of making AFDC maintenance payments are repealed (section 1108(a) of the Social Security Act).

4. State Option to Use Retrospective Budgeting Without Monthly Reporting (sec. 7134 of the bill)

Present Law

In determining AFDC benefits for recipients, States have the option of using retrospective budgeting under which benefits are based on the family's income and circumstances in a prior month, rather than the current month. However, they may use retrospective budgeting only in cases where families are required to report monthly on their income, resources, and other relevant factors.

Explanation of Provision

Beginning with fiscal year 1993, States would be allowed to determine AFDC benefits using retrospective budgeting without regard to whether the family is required to make monthly reports.

PART IV—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

1. Temporary Increase in Federal Matching Rate (sec. 7141 of the bill)

Present Law

The Family Support Act of 1988 provided for replacement of the Work Incentive (WIN)

program with a new Job Opportunities and Basic Skills Training (JOBS) program. The legislation provides Federal matching funds to the States through a capped entitlement mechanism aimed at assuring each State its share of Federal entitlement dollars. The amount of the entitlement is $600 million in fiscal year 1989, $800 million in 1990, $1 billion in 1991, 1992, and 1993, $1.1 billion in 1994, and $1.3 billion in 1995.

The Federal match for the JOBS program is 90 percent for expenditures up to the amount allotted to the State for the WIN program in fiscal year 1987. For additional amounts, the Federal match is at the Medicaid matching rate, with a minimum Federal match of 60 percent for non-administrative costs and for personnel costs for full-time staff working on the JOBS program. The match for other administrative costs is 50 percent. State matching for amounts above the 1987 WIN allocation must be in cash. States receive an amount equal to their WIN allotment for fiscal year 1987 ($126 million for all States). Additional funds are allocated on the basis of each State's relative number of adult recipients.

Explanation of Provision

The Federal matching rates on Federal funding above the WIN allocation are increased by 15 percentage points in fiscal year 1993, 10 percentage points in 1994, and 5 percentage points in 1995. In addition, the cap on funding for fiscal years 1993 and 1994 is increased by $100 million (to $1.1 billion in 1993 and $1.2 billion in 1994). A maintenance of effort provision would require that State and local funds expended for the costs of operating a JOBS program be maintained at their prior year levels.

2. Provision Affecting Indian Tribes (sec. 7142 of the bill)

Present Law

The Family Support Act of 1988 provides Federal funding for JOBS programs administered by Indian tribes whose applications for funding have been approved by the Secretary of HHS. The formula for funding each program is based on the number of adult members of the Indian tribe that receive AFDC. This formula excludes those Indians who live on the Indian reservation but belong to another tribe.

Explanation of Provision

All Indians who live on the reservation, regardless of whether they are members of the tribe, will be counted in determining the tribe's allocation of funds. The provision is effective October 1, 1993.

3. Modification of Work Supplementation Program (sec. 7143 of the bill)

Present Law

Title IV-F of the Social Security Act provides for two kinds of work programs for AFDC recipients. Under the work supplementation program a State may reserve the sums that would otherwise be payable to participants in AFDC and use such sums instead for the purpose of providing and subsidizing jobs as an alternative to the AFDC grant. Jobs may be provided to an AFDC recipient either by the AFDC agency or by any other employer. In practice, States have generally used the work supplementation program to subsidize wages of recipients who take jobs with private employers.

Under the Community Work Experience program (CWEP), a State may require an individual to work in a public job in exchange for the welfare grant, with the number of hours that an individual may be required to work limited to the amount of AFDC payable with respect to the individual's family divided by the greater of the Federal minimum wage or the applicable State minimum wage.

Under both programs, recipients may not be assigned to any established unfilled position vacancy.

Explanation of Provision

Under the work supplementation program, the prohibition against assigning an individual to an unfilled position vacancy is repealed. Assignments to work supplementation positions must be in the private sector. The provision is effective with respect to assignments made on or after October 1, 1992.

PART V—COMMUNITY WORKS PROGRESS DEMONSTRATIONS

(sec. 7151 of the bill)

A Community Works Progress demonstration program is established under title XI of the Social Security Act. The Secretary of HHS, in consultation with the Secretary of Labor, will administer the program. The Secretary must award grants to 3 urban projects and 2 projects that are Statewide. Demonstrations may last up to 4 years. Entities that will be eligible to apply for grants include both public and private nonprofit organizations.

Approvable projects will include those projects that the Secretary determines will serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and child care.

For each of fiscal years 1994, 1995, 1996, and 1997, each entity that has an application for a grant approved by the Secretary shall be entitled to payments in an amount equal to its expenditures to carry out the demonstration. The amounts authorized shall be $100 million in each of fiscal years 1994, 1995, 1996, and 1997. No more than 25 percent of funds may be used for capital costs.

In awarding grants, the Secretary shall consider the following factors: unemployment rate; proportion of population receiving public assistance; per capita income; degree of involvement and commitment demonstrated by public officials; the likelihood that the project will be successful; the contribution that the project is likely to make toward improving the life of residents in the community; geographic distribution; the extent to which the project will emphasize the development of projects encouraging team approaches to work on real, identifiable projects; the extent to which private and community agencies will be involved; and such other criteria as the Secretary may establish.

Those eligible to participate in projects will include individuals who are receiving, eligible to receive, or at risk of becoming eligible to receive, AFDC; individuals receiving, eligible to receive, or (while participating in a project) have exhausted, unemployment compensation; and non-custodial parents of children who are receiving AFDC.

Participants who are receiving benefits under the unemployment compensation and aid to families with dependent children programs will receive, in addition to such benefits, compensation in an amount equal to 10 percent of the average of the amount of AFDC and unemployment compensation paid to recipients of these benefits in the area served by the project. To the extent feasible, participants will receive compensation in the form of a single check for wages rather than in the form of separate benefit checks. Individuals not receiving either unemployment compensation or AFDC will be compensated in an amount equal to the Federal minimum wage, or the applicable State minimum wage, whichever is greater.

The Secretary may approve an application that provides for an alternative method of compensation so long as it does not reduce the amount received by a participant below the minimum wage and assures a bonus payment to AFDC and unemployment compensation beneficiaries who participate in the project.

In order to assure that each individual will have time to seek alternative employment or to participate in an alternative employability enhancement activity, no individual may participate for more than 32 hours a week.

Individuals participating in projects will be eligible for assistance to meet necessary costs of transportation and child care, as well as necessary costs of uniforms or other work materials.

Approved demonstrations must ensure that the project will not result in displacement of currently employed workers and will not impair any contracts for services or any collective bargaining agreements existing at the time the project commences. There must also be assurances that there will be consultation with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the project.

In approving grants, the Secretary must assure that there will be rigorous evaluation of the projects. Up to 3 percent of the amount granted to each entity may be used for this purpose. Interim reports to the Finance and Ways and Means Committees are due annually, with a final report due four years after the first grant is awarded.

The Secretary must publish the grant application notice no later than January 1, 1993.

PART VI—SUPPLEMENTAL SECURITY INCOME

1. Prevention of Adverse Effects on SSI Eligibility When Spouse or Parent is Absent Due to Military Service (sec. 7161 of the bill)

Present Law

If the parent or spouse of family members who receive SSI payments resides in the household and then is required to be absent from the household because of an active military duty assignment, this absence can cause the family member to lose benefits or eligibility for SSI. This is because absence from the household causes more of the income of the absent member to be attributed to those receiving SSI in the household. Also, if the military duty assignment involves armed conflict, the service member may receive hazardous duty pay. This additional income, if sent back to the household, can also reduce the SSI payments or cause ineligibility of family members.

Explanation of Provision

The proposal would ensure that service members' absence from their households on active military duty and receipt of hazardous duty pay would not result in a reduction in SSI benefit amounts or a loss of SSI eligibility for their spouses or children at home.

2. SSI Eligibility for Children of Armed Forces Personnel in Puerto Rico and U.S. Territories (sec. 7162 of the bill)

Present Law

SSI benefits are generally continued for children who are U.S. citizens and who ac-

company their parents on U.S. military assignments to foreign countries. Benefits do not continue if the parents are stationed in Puerto Rico or in the territories or possessions of the United States.

Explanation of Provision

The proposal would continue SSI benefits to children who are U.S. citizens if they received SSI benefits in the United States and then accompany their parents on U.S. military assignment to Puerto Rico or territories or possessions of the United States. The provision is effective upon enactment.

3. Definition of Disability for Children under Age 18 Applied to All Individuals under Age 18 (sec. 7163 of the bill)

Present Law

The SSI law provides a definition of disability applicable to children. The SSI program defines a child as someone who is under age 18, except for individuals under age 18 who are married or are heads of household.

Explanation of Provision

The proposal would extend the SSI childhood definition of disability to any person under age 18. The provision is effective October 1, 1992.

4. Valuation of Certain In-Kind Support and Maintenance When There Is a Cost of Living Adjustment in SSI Benefits (sec. 7164 of the bill)

Present Law

Under present law, a person who lives in the household of another person and receives in-kind support and maintenance (ISM) from the household has his or her SSI benefit reduced by an amount equal to one-third of the full Federal SSI benefit. Regulations provide for a similar reduction when an individual lives in his or her own household and receives in-kind support and maintenance, or lives in another person's household and receives food or shelter, but not both.

Under the two-month retrospective accounting system that generally governs SSI benefit calculations, the values of the deductions for receipt of ISM are determined using the Federal SSI benefit level that was in effect two months prior to the current month. As a result, when a cost of living adjustment (COLA) increases the Federal benefit level and an individual's benefit payment each January, the amount deducted because of ISM from the individual's January and February benefits remains based on the lower Federal benefit level for November and December. In March, when retrospective accounting causes the deduction for ISM to be recalculated and increased based on the higher January Federal benefit standard, the individual's benefit is then decreased. This is confusing for SSI recipients, whose benefits are increased in January and February due to the COLA, then are decreased beginning in March due to retrospective accounting for ISM.

Explanation of Provision

The proposal would require the use of the Federal benefit level for the current month in determining the value of ISM to be used in calculating an individual's SSI payment for that month. This would ensure that benefits beginning in January contain the proper COLA increase and would eliminate the benefit reduction for ISM that now occurs in March. The provision is effective with respect to benefits paid after calendar year 1992.

5. Elimination of Obsolete Provisions Relating to Treatment of the Earned Income Tax Credit (sec. 7165 of the bill)

Present Law

Beginning in 1991, the Earned Income Tax Credit (EITC) was excluded from the tests of income and resources under the SSI program by the Omnibus Budget Reconciliation Act of 1990. However, provisions of Title XVI of the Social Security Act, which authorizes the SSI program, were not changed to conform.

Explanation of Provision

The change would delete provisions of Title XVI that define EITCs as earned income for SSI purposes, and that provide for adjustment to SSI benefits for individuals who receive advance payment of EITCs.

PART VII—OTHER INCOME SECURITY PROVISIONS

1. Measurement and Reporting of Welfare Dependency (sec. 7171 of the bill)

Present Law

Currently there is no mechanism to collect statistical data that can be used to assess welfare dependency in the United States.

Explanation of Provision

The Secretary of Health and Human Services is required to develop indicators and rates related to the level of welfare dependency in the United States, and predictors that are correlated with welfare dependency. In addition, the Secretary must assess the data needed to report annually on these indicators, rates, and predictors, including the ability of existing data collection efforts to provide such data, and any additional data collection needs.

Not later than two years after the date of enactment, the Secretary must provide an interim report with conclusions resulting from the development and assessment described above to designated Committees of Congress.

A temporary Advisory Board on Welfare Dependency will be created, composed of 12 members with equal numbers appointed by the House of Representatives, the Senate, and the President. The Board will be composed of experts in the fields of welfare research and statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues. The Board will provide advice and recommendations to the Secretary on the development of indicators, rates, and predictors of welfare dependence, and the identification of data collection needs and existing data collection efforts. It will also provide advice on the development and presentation of the annual welfare dependency report.

The Secretary will be required to prepare an annual report on welfare dependency that attempts to identify indicators, rates, and predictors of welfare dependency and trends in dependency, and provide information and analysis on the causes of dependency. The first report is due not later than 3 years after the date of enactment.

2. Extend National Commission on Children (sec. 7172 of the bill)

Present Law

The National Commission on Children was established in 1987 as a bipartisan commission to develop recommendations for public and private sector policies to improve opportunities for children and youths to become healthy, secure, educated, economically self-sufficient, and productive adults. Its final report, "Beyond Rhetoric: A New American Agenda for Children and Families," was issued on June 24, 1991. The Commission is still in the process of developing information to inform the public about the status of children and on proposals to address their needs through public and private sector programs.

Explanation of Provision

The proposal would allow the Commission to complete its work by extending the terms of the members to December 31, 1992, and by providing Commission staff until March 31, 1993 to close down the Commission's operations. It also eliminates a conflict in provisions of OBRA 90 regarding an interim reporting date for the Commission by specifying the correct date in 1990.

3. Require Study of Program Coordination (sec. 7173 of the bill)

Present Law

Although the AFDC, food stamp, and medicaid programs all serve low income families, the eligibility rules and procedures for these programs vary significantly.

Explanation of Provision

Not later than six months after the date of enactment, the Secretary of HHS and the Secretary of Agriculture are required to report jointly to the President and the Congress on (1) program rules which govern the AFDC, food stamp, and medicaid programs; (2) how the program rules differ; (3) which rules require statutory action in order to achieve uniformity; and (4) which rules could be made uniform without statutory change.

The rules to be included in the report must include all rules related to administrative procedures, resources, definitions of countable income, and definitions of income disregards and exemptions. Income eligibility rules are not to be included.

4. Declaration of Citizen Alien Status (sec. 7174 of the bill)

Present Law

Section 1137(d) of the Social Security Act specifies that States must require, as a condition of eligibility for the AFDC, medicaid, unemployment compensation, and food stamp programs, a declaration in writing by each adult individual (or, in the case of a child, by another individual on the child's behalf), stating whether the individual is a citizen or national of the U.S., and if not, that the individual is in a satisfactory immigration status.

Explanation of Provision

The statute would be amended to allow one adult member of a family or household to sign a declaration on behalf of other adults in the household. In addition, in the case of a newborn child, an adult would be permitted to sign a declaration on behalf of the child no later than the next redetermination of the eligibility of the family or household. The provision is effective October 1, 1992.

5. Exclusion of Income Received by Indians from Interests Individually Held in Trust or Restricted Lands (sec. 7175 of the bill)

Present Law

Under present law, up to $2,000 per payment received by an Indian from tribally-owned trust lands is exempted from consideration under SSI, AFDC, and other Federal welfare programs. This income is distributed on a per capita basis to tribal members, but the land which produces the income is owned by the tribe as a whole and managed by the Bureau of Indian Affairs. The value of individually-owned trust or restricted Indian lands is excluded from resources under the SSI and AFDC programs, but income paid to the Indian owner from leases of these lands is counted as income.

Explanation of Provision

In determining eligibility and benefit levels under the SSI and AFDC programs, up to $4,000 per year of income paid to an Indian would be exempted when that income is derived from leases of individually-owned trust or restricted Indian lands. The provision is effective October 1, 1992.

6. Extension of Demonstration to Expand Job Opportunities (sec. 7176 of the bill)

Present Law

The Family Support Act of 1988 established a demonstration project under which not less than 5 nor more than 10 nonprofit organizations were authorized to conduct demonstration projects to create employment opportunities for certain low-income individuals. The amount authorized for these grants is $6.5 million for each of fiscal years 1990, 1991, and 1992.

Explanation of Provision

The demonstration project would be continued for 2 additional years. Prior to January 1, 1994, the Secretary must issue a final report to the Congress, including an evaluation of the projects and any recommendation the Secretary determines to be appropriate.

7. Disclosure of Information to Railroad Retirement Board (sec. 7177 of the bill)

Present Law

The Railroad Unemployment Repayment Tax requires railroad employers to repay loans made from the Railroad Retirement Account to the Railroad Unemployment Insurance Account. The Railroad Retirement Board (RRB) does not have access to tax return information filed under the Railroad Unemployment Repayment Tax provision.

Explanation of Provision

The proposal would amend the Internal Revenue Code to allow the RRB to obtain Railroad Unemployment Repayment Tax information needed to assure and verify proper repayment of the loans. The provision is effective upon enactment.

8. Provision Relating to Misuse of Social Security and Related Symbols (sec. 7178 of the bill)

Present Law

The misuse of words, letters, symbols and emblems of the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) is prohibited by law, in order to prevent organizations from conducting mailings or solicitations that might create the false impression among recipients that a product was endorsed, approved or authorized by SSA or HCFA. The Secretary of Health and Human Services is authorized to impose civil monetary penalties for misuse, not to exceed $5,000 per violation or, in the case of a broadcast or telecast, $25,000 per violation. The total amount of penalties that may be imposed on an individual or organization is limited to $100,000 a year.

Explanation of Provision

The proposal would strengthen the deterrent against mass mailings that use deceptive practices by making each piece of mail violation, and by eliminating the $100,000 ceiling on annual penalties. It would add the names, letters, symbols, or emblems of the Supplemental Security Income (SSI) and Medicaid programs as protected items. It would also add a more inclusive prohibition against the use of the names or symbols that are presented in a manner which "reasonably could be interpreted or construed as conveying" a relationship to SSA or HCFA.

The Department of Justice would no longer have to issue a formal declination of action before the Secretary could pursue a civil monetary penalty. The Secretary of HHS would be required to report annually to the Congress concerning deceptive practices involving SSA and actions taken against violations.

The provision is effective with respect to violations occurring after the date of enactment.

TITLE VIII. MISCELLANEOUS REVENUE PROVISIONS

SUBTITLE A. PROVISIONS RELATING TO CONTRIBUTIONS TO CHARITIES

1. Repeal application of minimum tax to gifts of all appreciated property (sec. 8001 of the bill and sec. 57(a)(6) of the Code)

Present Law

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair-market value of property contributed to a charitable organization.[1] However, in the case of a charitable contribution of inventory or other ordinary-income property, short-term capital gain property, or certain gifts to private foundations, the amount of the deduction generally is limited to the taxpayer's adjusted basis in the property.[2] In the case of a charitable contribution of tangible personal property, a taxpayer's deduction is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair-market value of the property exceeds its adjusted basis (sec. 57(a)(6)). However, in the case of a contribution made in a taxable year beginning in 1991 or made before July 1, 1992, in a taxable year beginning in 1992, this rule does not apply to contributions of tangible personal property.

Reasons for Change

The committee believes that the temporary AMT exception for contributions of appreciated tangible personal property has induced additional charitable giving. Thus, by permanently extending this rule and expanding it to apply to all appreciated property gifts, taxpayers will be allowed the same charitable contribution deduction for both regular tax and alternative minimum tax purposes. This will provide an additional incentive for taxpayers to make contributions of appreciated property.

In addition, to reduce uncertainty and disputes arising out of charitable contributions of property, the committee believes that the Treasury Department should develop a proposed procedure under which the Secretary's position as to the value of tangible personal property can be ascertained for Federal income tax purposes prior to the donation of such property to a charity.

Explanation of Provision

Permanent AMT relief for donated appreciated property

The bill permanently repeals section 57(a)(6). Thus, the difference between the fair-market value of donated appreciated property (real, personal, or intangible property) and the adjusted basis of such property is not treated as a tax preference item for alternative minimum tax (AMT) purposes. If a taxpayer makes a gift to charity of property (other than inventory or other ordinary income property, short-term capital gain property, or certain gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim a deduction for both regular tax and AMT purposes in the amount of the property's fair-market value (subject to present-law percentage limitations).[3]

Treasury report on advance valuation procedure

The Treasury Department is directed to report to Congress not later than one year after enactment on the development of a procedure under which taxpayers could elect to seek agreement with the IRS as to the value of tangible personal property prior to the donation of such property to a qualifying charitable organization, including the setting of possible threshold amounts for claimed value (and the payment of fees by taxpayers), possible limitations on applying the procedure only to items with significant artistic or cultural value, and recommendations for legislative action needed to implement the proposed procedure.

Effective Date

the provision is effective for contributions made in calendar years ending on or after December 31, 1992 The Secretary of Treasury is required to report to Congress not later than one year after enactment on the development of an advance valuation procedure for certain charitable contributions of tangible personal property.

2. Allocation and apportionment of deductions for charitable contributions (sec. 8002 of the bill and new sec. 864(g) of the Code)

Present Law

Taxpayers may elect to claim a credit against U.S. tax liability for certain foreign taxes which they incur. The foreign tax credit is limited to the amount of U.S. tax otherwise payable on foreign source taxable income. Thus, the foreign tax credit is not available against U.S. tax on U.S. source taxable income. A shift in the source of net income from foreign to U.S. may increase net U.S. tax for some taxpayers by reducing the foreign tax credit limitation and thus the amount of the foreign tax credit which may be claimed.

For purposes of the foreign tax credit limitation, foreign source taxable income generally is computed by (1) determining the items of gross income that are from foreign sources, and then (2) subtracting from those items the taxpayer's deductions that are allocated or apportioned to foreign source gross income. A shift in the allocation or apportionment of expenses from U.S. source to foreign source gross income decreases foreign source taxable income, and thus, may increase U.S. tax by reducing the foreign tax credit limitation.

In general, the primary statutory rule for allocating and apportioning deductions between foreign and domestic income is that there shall be deducted from foreign and domestic source gross income, respectively, the expenses, losses, and other deductions prop-

[1]The amount of the deduction for a taxable year with respect to a charitable contribution may be reduced depending on the type of property, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

[2]Sections 170 (e)(3) and (e)(4) provide for an augmented deduction for certain corporate contributions of inventory property for the care of the ill, the needy, or infants, and for scientific research.

[3]Contributions of inventory or other ordinary income property, short-term capital gain property, and certain gifts to private foundations continue to be governed by present-law rules.

erly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income (secs. 861(b), 862(b), and 863(b)). In addition, for a taxpayer that is a member of an affiliated group of corporations, expenses that are not directly allocated or apportioned to any specific income producing activity generally must be allocated and apportioned under a so-called "one-taxpayer rule"—that is, as if all of the members of the affiliated group were a single corporation (sec. 864(e)(6)).

Charitable contribution deductions generally are treated as not definitely related to any gross income or income producing activity, and therefore are apportioned ratably and subject to the one-taxpayer rule.[4]

Regulations proposed in March 1991 would alter the general rule requiring ratable apportionment of charitable contributions in cases where the use of the contribution is restricted either to purely domestic or purely foreign uses.[5] Under the proposal, a charitable contribution deduction generally would be allocated solely to U.S. source gross income if the taxpayer both designates the contribution for use solely in the United States and reasonably believes that the contribution would be so used. Conversely, a charitable contribution deduction would be allocated solely to foreign source gross income if the taxpayer knows or has reason to know that the contribution would be used solely outside the United States or that the contribution necessarily may be used only outside the United States.

Reasons for Change

The committee understands that to the extent a taxpayer's charitable contribution deductions are apportioned to foreign source income, a reduction in the taxpayer's allowable foreign tax credit may occur. The committee is concerned that the limitation on the foreign tax credit resulting from the present-law apportionment of such deductions might discourage certain taxpayers with multinational business operations from making donations to charities. The committee also is concerned that the approach for allocating and apportioning charitable deductions set forth in the 1991 proposed Treasury regulations would have the effect of creating an inappropriate distinction between contributions put to foreign charitable uses, on the one hand, and domestic charitable uses, on the other. In order to provide an incentive for multinational companies to make charitable donations, and to avoid creating a disparity between charities on the basis of the location of their beneficiaries, the committee believes it is appropriate to mandate that a specified portion of all charitable contribution deductions be allocated solely to U.S. source gross income.

Explanation of Provision

Under the bill, for purposes of computing the source of taxable income for the foreign tax credit limitation, taxpayers are permitted to allocate 55 percent of their charitable contribution deductions to gross income from U.S. sources. The remaining 45 percent of charitable contribution deductions must be apportioned ratably between U.S. source gross income and foreign source gross income. As under present law, all corporations included in an affiliated group are treated as a single corporation for purposes of the ratable apportionment of the residual 45 percent of charitable contribution deductions.

For example, assume that a corporation (which is not a member of an affiliated group of corporations) earns $1,000,000 of gross income from foreign sources and $500,000 of gross income from domestic sources for a taxable year. Further assume that it makes charitable contributions that are deductible during the year in the amount of $100,000. Under the bill, $55,000 (55 percent of $100,000) of the charitable contributions are allocated to U.S. source gross income. The residual amount of charitable contributions, $45,000, is subject to ratable apportionment on the basis of gross income. Thus, of this residual amount, $30,000 is apportioned to foreign source gross income and $15,000 is apportioned to U.S. source gross income. Of the total amount of charitable contributions, $70,000 is allocated and apportioned to U.S. source gross income and $30,000 is allocated and apportioned to foreign source gross income.

Now assume that the corporation has a wholly owned domestic subsidiary which earns $500,000 of gross income for the taxable year, all from sources outside the United States, and makes no deductible charitable contributions. In this case, the parent corporation's charitable contributions are allocated and apportioned as follows. As under the previous example, 55 percent are allocated directly to domestic source gross income. The residual amount, however, is apportioned under the one-taxpayer rule. Thus, of the residual amount, $33,750 is apportioned to foreign source gross income and $11,250 is apportioned to U.S. source gross income. Of the total amount of charitable contributions, $66,250 is allocated and apportioned to U.S. source gross income and $33,750 is allocated and apportioned to foreign source gross income.

Effective Date

The provision is effective for charitable contributions made on or after July 1, 1993.

3. Substantiation and information disclosure requirements for certain charitable contributions (secs. 8003-8004 of the bill and sec. 170 of the Code)

Present Law

An individual taxpayer who itemizes deductions must separately state (on Schedule A to the Form 1040) the aggregate amount of charitable contributions made by cash or check and the aggregate amount made by donated property other than cash or check.

A taxpayer is not required to provide specific information on his or her return regarding a claimed charitable contribution made by cash or check; nor in such a case is a donee organization required to file an information return with the IRS, regardless of the amount of cash or check involved. However, taxpayers must provide certain information (on Form 8283) if the amount of the claimed contribution for all noncash contributions exceeds $500.[6]

A payment (regardless of whether it is termed a "contribution") in exchange for which the payor receives an economic benefit is not deductible under section 170, except to the extent that the taxpayer can demonstrate that the payment exceeded the fair-market value of the benefit received from the charity.[7]

The Internal Revenue Code does not require a tax-exempt organization that is eligible to receive tax-deductible contributions to state explicitly, in its solicitations for support from members or the general public, whether an amount paid to it is deductible as a charitable contribution or whether all or part of the payment constitutes consideration for goods or services furnished by the organization to the payor.[8] In contrast, tax-exempt organizations that are *not* eligible to receive tax-deductible contributions are required to state expressly in certain fundraising solicitations that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes (sec. 6113).

Reasons for Change

Difficult problems of tax administration arise with respect to fundraising techniques in which an organization that is eligible to receive deductible contributions provides goods or services in consideration for payments from donors. Organizations that engage in such fundraising practices often do not inform their donors that all or a portion of the amount paid by the donor may not be deductible as a charitable contribution. Consequently, the committee believes that there will be increased compliance with present-law rules governing charitable contribution deductions if taxpayers who claim charitable contributions of $100 or more are required to obtain substantiation from the donee indicating the amount of the contribution and whether any goods, service, or privilege were received by the donor in exchange for making the contribution. In addition, the committee believes it is appropriate that, in all cases where a charity receives a *quid pro quo* contribution (i.e., a payment made partly as a contribution and partly in consideration for goods or services furnished to the payor by the donee organization) the charity should inform the donor that the deduction under section 170 is limited to the amount by which the payment exceeds the value of goods or services furnished, and provide a good faith estimate of the value of such goods or services.

Explanation of Provision

The provision includes two parts:

(1) *Substantiation requirement.*—Section 170 is amended to provide that no deduction is

[4] Treas. Reg. sec. 1.861-8(e)(9)(iv); Notice 89-91, 1989-2 C.B. 406, 409.

[5] Proposed Treas. Reg. sec. 1.861-8(e)(12), INTL-116-90, 1991-1 C.B. 949.

[6] If the claimed deduction for a noncash gift exceeds $5,000 per item or group of similar items (other than certain publicly traded securities) a qualified appraiser must sign the Form 8283, and an authorized representative of the donee charity also must sign the Form 8283, acknowledging receipt of the gift and providing certain other information. In certain situations, information reporting by the donee charity is required if it subsequently disposes of donated property (sec. 6050L).

[7] See Rev. Rul. 67-246, 1967-2 C.B. 104.

Under current IRS practice, certain small items and token benefits (e.g., key chains and bumper stickers) that have insubstantial value are disregarded, such that the full amount of the contribution is deductible. Rev. Proc. 90-12, 1990-1 C.B. 471, provides that tokens or benefits given to the donor in connection with a contribution will be considered to have insubstantial value if (1) the payment occurs in the context of a fundraising campaign in which the charity informs patrons how much of their payment is a deductible contribution, *and* (2) *either* (a) the fair-market value of all the benefits received in connection with the payment is not more than two percent of the payment, or $50, *whichever is less, or* (b) the payment made by the patron is $25 or more (adjusted for inflation) and the only benefits received in connection with the payment are token items (e.g., key chains or mugs) which bear the organization's name or logo and which (in the aggregate) are within the limits for "low-cost items" under section 513(h)(2).

[8] However, Schedule A to the Form 1040 (and the accompanying instructions) inform taxpayers that if they made a contribution and received a benefit in return, the value of that benefit must be subtracted in calculating the charitable contribution deduction.

allowed under that section for any contribution of $100 or more[9] unless the taxpayer has written substantiation from the donee organization of the contribution (including a good faith estimate of the value of any good or service that has been provided to the donor in exchange for making the gift to the donee).[10]

This provision does not impose an information reporting requirement upon charities; *rather, it places the responsibility upon taxpayers* who claim an itemized deduction for a contribution of $100 or more to request (and maintain in their records) substantiation from the charity of their contribution (and any good or service received in exchange).[11] Taxpayers may not simply rely on a cancelled check as substantiation for a donation in excess of $100.

Under the provision, the substantiation must be obtained by the taxpayer prior to filing his or her return for the taxable year in which the contribution was made (or if earlier, the due date, including extensions, for such return).[12] Substantiation is not required if the donee organization files a return with the IRS (in accordance with Treasury regulations) reporting information sufficient to substantiate the amount of the deductible contribution.

(2) *Information disclosure for quid pro quo contributions.*—Charitable organizations that receive *quid pro quo* contributions (meaning a payment made partly as a contribution and partly in consideration for goods or services furnished to the donor) will be required, in connection with the solicitation or receipt of the contribution, to (1) inform the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money (and the value of any property other than money) contributed by the donor over the value of the goods or services provided by the organization, and (2) provide the donor with a good faith estimate of the value of goods or services furnished to the donor by the organization.[13]

The disclosure requirement applies to all *quid pro quo* contributions regardless of the dollar amount of the contribution involved (i.e., even in cases with donations less than $100, and the disclosure must be made by the charity *in connection with either* the solicitation or receipt of the contribution. Thus, for example, if a charity receives a $75 contribution from a donor, in exchange for which the donor receives a dinner valued at $40, then the charity must inform the donor that only $35 is deductible as a charitable contribution. However, the provision will not apply if only *de minimis*, token goods or services are given to a donor (see Rev. Proc. 90-12, discussed above), nor will the provision apply to transactions that have no donative element (e.g., sales of goods by a museum gift shop that are not, in part, donations).

The provision also provides that penalties ($10 per contribution, but capped at $5,000 per particular fundraising event or mailing) may be imposed upon charities that fail to make the required disclosure, unless the failure was due to reasonable cause. The penalties will apply if an organization either fails to make any disclosure in connection with a *quid pro quo* contribution or makes a disclosure that is incomplete or inaccurate (e.g., an estimate not determined in good faith of the value of goods or services furnished to the donor).

Effective Date

The provision is effective for contributions made on or after January 1, 1993.

4. Corporate sponsorship payments received by tax-exempt organizations in connection with public events (sec. 8005 of the bill and sec. 513 of the Code)

Present Law

Although exempt from Federal income tax, tax-exempt organizations generally are subject to the unrelated business income tax (UBIT) on income derived from a trade or business regularly carried on[14] that is not substantially related to the performance of the organization's tax-exempt functions (secs. 511–514). Contributions or gifts received by tax-exempt organizations generally are not subject to the UBIT. However, present-law section 513(c) provides that an activity (such as advertising) does not lose its identity as a separate trade or business merely because it is carried on within a larger complex of other endeavors.[15] If a tax-exempt organization receives sponsorship payments in connection with conducting a public event, the solicitation and receipt of such sponsorship payments may be treated as a separate activity. The Internal Revenue Service (IRS) has taken the position that, under some circumstances, such sponsorship payments may be subject to the UBIT.[16]

Reasons for Change

The committee believes that the UBIT should not apply to the receipt of sponsorship payments (in return for which the sponsor is identified) by tax-exempt organizations *in connection with their conduct* of public events, provided that substantially all activities in conducting the event are not subject to the UBIT and the net proceeds from the event are used for a charitable, educational, or other purpose described in section 170(c)(2)(B). In such a case, acknowledging support of a sponsor generally is incidental to the tax-exempt organization receiving such support. However, this safe-harbor rule should not apply to payments in exchange for which the tax-exempt organization provides advertising or promotion of the payor's specific products or services.

Explanation of Provision

Under the bill, the term "unrelated trade or business" does not include the activity of soliciting and receiving qualified sponsorship payments with respect to any qualified public event.

"Qualified sponsorship payments" are defined as any payment by a person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any substantial return benefit other than the use of the name or logo or such person's trade or business in connection with a qualified public event. For purposes of the provision, use of a name or logo or a person's trade or business in connection with a public event does not include advertising or promotion of such person's particular products or services. For example, advertising or promotion of a sponsor's products or services not within the safe harbor provided for by the bill includes a call to action to purchase the sponsor's products, superlative description or qualitative claim about the company (or its products or services), direct comparison with other companies, price or value information, inducements to buy, or endorsements.[17]

The term "qualified public event" is defined as any public event conducted by an organization described in paragraph (3), (4), (5), or (6) of section 501(c),[18] if (1) substantially all the activities of the organization in conducting the event are not subject to the UBIT (e.g., the activities are substantially related to the exempt purposes of the organization, the activities are not regularly carried on, or the volunteer labor or some other present-law UBIT exception applies); and (2) the net proceeds from the event are used for a purpose described in section 170(c)(2)(B).[19]

Examples of public events governed by the provision include intercollegiate athletic

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[9] Separate payments shall generally be treated as *separate contributions and shall not be aggregated* for the purposes of applying the $100 threshold. In cases of contributions paid by withholding from wages, the deductions from each paycheck shall be treated as separate payments.

[10] If the donee organization provided no goods or services to the taxpayer in consideration of the taxpayer's contribution, the written substantiation must include a statement to that effect.

[11] In the case where a taxpayer makes a noncash contribution, the taxpayer is required to obtain from the charity a receipt that describes the donated property (and indicates whether any good or service was given to the taxpayer in exchange), but the provision does not require the charity to value the property it receives from the donor.

[12] The provision requires that the written acknowledgment provide information sufficient to substantiate the amount of the deductible contribution, but the acknowledgment need not take any particular form. Thus, for example, acknowledgments may be made by letter, postcard, or computer-generated forms. Further, a donee organization may prepare separate acknowledgment for each contribution, or may provide donors with periodic (e.g., annual) acknowledgments that set forth the required information for each contribution of $100 or more made by the donor during the period.

The committee expects that a charitable organization that knowingly provides a false written substantiation to a donor will be subject to the penalties provided for by section 6701 for aiding and abetting an understatement of tax liability.

[13] It is intended that the disclosure be made in connection with the solicitation or receipt of the contribution, such that the disclosure is reasonably likely to come to the attention of the donor. For example, a disclosure of the required information in small print set forth within a larger document might not meet the requirement.

[14] In determining whether a trade or business is regularly carried on, regard must be had to the frequency and continuity with which the business activities are conducted and the manner in which such activities are pursued. Specific business activities of a tax-exempt organization will ordinarily be deemed to be regularly carried on if they manifest a frequency and continuity, and are pursued in a manner, generally similar to comparable commercial activities *of taxable entities. See Treas.* Reg. sec. 1.513-1(c)(1).

[15] See *United States v. American College of Physicians*, 475 U.S. 834 (1986) (holding that activity of selling advertising in medical journal was not substantially related to the organization's exempt purposes and, as a separate business under section 513(c), was subject to tax).

[16] See Announcement 92-15, 1992-5 I.R.B. 51 (announcing proposed audit guidelines distinguishing sponsorship payments in return for which there is more acknowledgement of sponsor—and thus no UBIT liability—in contrast to sponsorship payments in return for which substantial economic benefits are conferred upon the sponsor and UBIT liability may be asserted by the IRS).

[17] The committee intends that corporate sponsorship announcements or representations that meet the Public Broadcasting System (PBS) National Program Funding Standards and Practices generally will be considered permissible identification of a sponsor by use of its name or logo (or that of a division or subsidiary) and not advertising or promotion of the sponsor's particular products or services for purposes of the safe-harbor rule provided for by the bill. See *PSB National Program Funding Standards and Practices* (February 1990).

[18] In addition, State colleges and universities described in section 511(d)(2)(B) would be eligible for the UBIT exception provided for by the proposal.

[19] The purposes enumerated in section 170(c)(2)(B) are "religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sport competition (but only if no part of its activities involve the provision or athletic facilities or equipment), or for the prevention of cruelty to children or animals."

events, concerts, museum exhibitions, State and agricultural fairs, fine-arts festivals, and charitable golf tournaments (provided that the other requirements of the provision are satisfied). Identifying a sponsor of a qualified public event (or incorporating the sponsor's name into the official name of the event) will fall within the safe harbor provided for by the provision, even if the amount of the sponsorship payment owed by the sponsor is contingent upon a factor such as attendance or broadcast ratings.

No inference is intended as to the tax treatment under present-law rules of sponsorship (or other) payments not governed by the provision, or sponsorship payments received in connection with events held prior to the date of enactment.[20]

Effective Date

The provision is effective for sponsorship payments received in connection with events conducted after the date of enactment.

SUBTITLE B. FOREIGN PROVISIONS

1. Pass-through treatment for certain dividends paid by a regulated investment company to foreign persons (sec. 1601 of the bill and secs. 871, 881, 897, 1441, and 1422 of the Code)

Present Law

Regulated investment companies

A regulated investment company ("RIC") is a domestic corporation that, at all times during the taxable year, is registered under the Investment Company Act of 1940 as a management company or as a unit investment trust, or has elected to be treated as a business development company under that Act (sec. 851(a)).

In addition, to qualify as a RIC, a corporation must elect such status and must satisfy certain tests (sec. 851(b)). These tests include a requirement that the corporation derive at least 90 percent of its gross income from dividends, interest, payments with respect to certain securities loans, and gains on the sale of other disposition of stock or securities of foreign currencies, or other income derived with respect to its business of investment in such stock, securities, or currencies.

A RIC generally is treated as a conduit for Federal income tax purposes. Conduit treatment is accomplished by permitting a RIC to deduct dividends paid to its shareholders in computing its taxable income. The amount of any distribution generally is not considered as a dividend for purposes of computing the dividends paid deduction unless the distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class (sec. 562(c)). For distributions by RICs to shareholders who made initial investments of at least $10,000,000, however, the distribution is not treated as non-pro rata or preferential solely by reason of an increase in the distribution due to reductions in administrative expenses of the company.

A RIC generally may pass through to its shareholders the character of its long-term capital gains. It does this by designating a dividend it pays as a capital gain dividend to the extent that the RIC has net capital gain (i.e., net long-term capital gain over net short-term capital loss). These capital gain dividends are treated as long-term capital gain by the shareholders. A RIC generally also can pass through to its shareholders the character of tax-exempt interest from State and municipal bonds, but only if, at the close of each quarter of its taxable year, at least 50 percent of the value of the total assets of the RIC consists of these obligations. In this case, the RIC generally may designate a dividend it pays as an exempt-interest dividend to the extent that the RIC has tax-exempt interest income. These exempt-interest dividends are treated as interest excludable from gross income by the shareholders.

The Internal Revenue Service has stated its position that if a RIC has two or more classes stock and it designates the dividends that it pays on one class as consisting of more than that class's proportionate share of a particular type of income, the designations are not effective for Federal tax purposes to the extent that they exceed the class's proportionate share of that type of income (Rev. Rul. 89-81, 1989-1 C.B. 226). Thus, in order to achieve all the tax effects provided under the Code for such RIC dividends, a capital gain dividend or an exempt-interest dividend must be pro rata within a class of RIC stock, and, with respect to any one class of RIC stock, generally cannot (under the Service's interpretation of present law) exceed that proportion of the relevant capital gain or exempt interest income of the RIC that the amount of dividends paid to shareholders of that class of stock bears to the total amount of dividends paid by the RIC.

U.S. source investment income of foreign persons

Under the Code, the United States generally imposes a flat 30-percent tax, collected by withholding, on the gross amount of U.S. source investment income payments, such as interest and dividends, to nonresident alien individuals and foreign corporations ("foreign persons") (secs. 871(a), 881, 1441, and 1442). Under treaties, the United States may reduce or eliminate such taxes. Even taking into account U.S. treaties, however, the tax on a dividend generally is not entirely eliminated. Instead, U.S. source portfolio investment dividends received by foreign persons generally are subject to U.S. withholding tax at a rate of at least 15 percent.

Interest

There is no 30-percent gross-basis U.S. tax with respect to U.S. source bank deposit interest that is not effectively connected with the conduct of a trade or business within the United States. Nor is there such a tax on the amount includible in gross income as original issue discount on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

Nor is there 30-percent gross-basis U.S. tax on so-called "portfolio interest." Portfolio interest includes interest (including original issue discount) which would be subject to the gross-basis U.S. tax but for the fact certain requirements are met with respect to the obligation on which the interest is paid, and with respect to the interest recipient (or the location of the interest recipient). Pursuant to these requirements, the obligation must be in registered form or be "foreign-targeted". The U.S. person who otherwise would be required to withhold tax must receive a statement that the beneficial owner of the obligation is not a United States person. If the obligation was issued by a corporation or a partnership, the recipient of the interest must not be a "10-percent shareholder" of the corporation or partnership. A corporate recipient of the interest must be neither a controlled foreign corporation receiving interest from a related person, nor (unless the obligor is the United States) a bank receiving the interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business. The payment of interest must not be to any person within a foreign country (and must not be a payment addressed to, or for the account of, persons within a foreign country) with respect to which the Treasury Secretary has determined that exchange of information is inadequate to prevent evasion of U.S. income tax by U.S. persons. This last requirement does not currently affect the exemption from tax on interest, as no such determinations have been made to date.

Capital gains

Under the Code, foreign persons generally are not subject to U.S. tax on gains realized on the disposition of stock or securities issued by a U.S. person (other than a "U.S. real property holding corporation," as described below), unless the gain is effectively connected with the conduct of a trade or business in the United States. This exemption does not apply, however, to the extent that the foreign person is a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year. Foreign persons receiving capital gain dividends from U.S. RICs have been treated as receiving capital gains not subject to U.S. tax, rather than dividends subject to the ordinary U.S. withholding tax on dividends (see Rev. Rul. 69-244, 1969-1 C.B. 215).

Under the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended, gain or loss or a foreign person from the disposition of a U.S. real property interest is subject to net basis tax as if the taxpayer were engaged in a trade or business within the United States and the gain or loss were effectively connected with such trade or business. In addition to fee ownership of U.S. real property, U.S. real property interests include (among other things) any interest in a domestic corporation unless the taxpayer establishes that the corporation was not, during a 5-year period ending on the date of the disposition of the interest, a U.S. real property holding corporation (which is defined generally to mean a corporation the fair market value of whose U.S. real property interests equals or exceeds 50 percent of the sum of the fair market values of its real property interests and any other of its assets used or held for use in a trade or business).

Under FIRPTA, a distribution by a real estate investment trust ("REIT") to a foreign person is, to the extent attributable to gain from sales or exchanges the the REIT of U.S. real property interests, treated as gain recognized by the foreign person from the sale or exchange of a U.S. real property interest. Under Treasury regulations, a REIT is generally required to withhold tax upon such a distribution to a foreign person, at a rate of 34 percent times the maximum amount of that distribution that could be designated by the REIT as a capital gain dividend (Treas. Reg. sec. 1.1445-8(a)(2), (b)(1), and (c)(2)).

In view of the nature of a REIT, an interest in a REIT may in some cases be considered to be a U.S. real property interest. However, an interest in a domestically-controlled REIT is not considered a U.S. real property interest. Also, the foreign ownership percent

[20] In addition, the committee is concerned about the tax treatment of royalties and other payments that may be received by the U.S. Olympic Committee and Atlanta Committee for the Olympic Games, Inc., in connection with the 1996 Games of the XXVI Olympiad. The committee expects that, under general UBIT rules (see Rev. Rul. 82-178, 1981-2 C.B. 135), royalty income derived from licensing Olympic trademarks, emblems, and designations, as well as all income from broadcasting, filming, and videotaping the Olympics will be treated as exempt from the UBIT.

of taxable appreciation in the value of a U.S. real property interest held by a domestically-controlled REIT is subject to tax in the hands of the REIT under special FIRPTA rules upon distribution of the U.S. real property interest by the REIT.

Reasons for Change

The committee recognizes that there is a distinction between the U.S. tax treatment of certain U.S. source portfolio interest, bank deposit interest, short term original issue discount, and capital gains income earned *directly* by foreign investors, on the one hand, and the U.S. tax treatment of dividends earned by foreign investors on their stock investments in RICs that realize the same types of interest and gain income, on the other. The committee believes that this distribution is inappropriate because it discourages small foreign investors from investing in, and obtaining the advantages of diversification and expert management available through the use of, U.S. mutual funds. The committee believes that the tax treatment of interest on certain debt obligations, and short-term capital gains, generally should "flow through" to shareholders of RICs. At the same time, however, the committee believes that investors should not be able, by interposing a RIC between themselves and their investments in U.S. debt obligations and stock, to circumvent existing provisions designed to preclude abuse of the rules that reduce U.S. tax on investments by foreign persons.

Explanation of Provision

In general

Under the provision, a RIC that earns certain interest income which would not be subject to U.S. tax if earned by a foreign person generally may, to the extent of such income, designate a dividend it pays as deriving from such interest income. A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, just as if the foreign person had earned the interest directly. Similarly, a RIC that earns an excess of net short-term capital gains over net long-term capital losses, which excess would not be subject to U.S. tax if earned by a foreign person, generally may, to the extent of such excess, designate a dividend it pays as deriving from such excess. A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, just as if the foreign person had realized the excess directly.

Interest-related dividends

Under the bill, a RIC could, under certain circumstances, designate all or a portion of a dividend as an "interest-related dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. An interest-related dividend received by a foreign person generally would generally be exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442.

This exemption would not apply, however, to the extent that the foreign person is a 10-percent shareholder (as defined in the portfolio obligation rules) with respect to the RIC. The exemption would not apply to a dividend on shares of RIC stock unless the withholding agent has received a statement, as required under the portfolio interest rules, that the beneficial owner of the shares in not a U.S. person. The exemption would not apply to a dividend paid to any person within a foreign country (or dividends addressed to, or for the account of, persons within such foreign country) with respect to which the Treasury Secretary has determined, under the portfolio interest rules, that exchange of information is inadequate to prevent evasion of U.S. income tax by U.S. persons.

In addition, the exemption generally would not apply to dividends paid to a controlled foreign corporation to the extent such dividends are attributable to income received by the RIC on a debt obligation of a person with respect to which the recipient of the dividend is a related person. Nor would the exemption generally apply to dividends to the extent such dividend is attributable to income received by the RIC on indebtedness issued by any corporation or partnership with respect to which the recipient of the dividend is a 10-percent shareholder with respect to any entity the obligations of which are held by the RIC. In these two cases, however, the RIC remains exempt from its withholding obligation unless the RIC knows that the dividend recipient is such a controlled foreign corporation or 10-percent shareholder. To the extent that an interest-related dividend received by a controlled foreign corporation is attributable to interest income of the RIC that would be portfolio interest if received by a foreign corporation, the dividend would be treated as portfolio interest for purposes of the de minimis rules, the high-tax exception, and the same country rules of subpart F (see sec. 881(c)(4)).

The aggregate amount designated as interest-related dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in section 855) generally is limited to the qualified net interest income of the RIC for the taxable year. The qualified net interest income of the RIC equals the excess of (a) the amount of qualified interest income of the RIC over (b) the amount of expenses of the RIC properly allocable to such interest income.

Qualified interest income of the RIC is the sum of bank deposit interest that currently is exempt from the gross-basis tax under section 871, short term original discount that is currently exempt from the gross-basis tax under section 871, and any interest (including original issue discount on an obligation) which is in registered form, unless it is earned on an obligation issued by a corporation or partnership in which the RIC is a 10-percent shareholder.

Where the amount designated as an interest-related dividend is greater than the qualified net interest income described above, then the portion of the distribution so designated which constitutes an interest-related dividend will be only that proportion of the amount so designated as the amount of the qualified net interest income bears to the amount so designated.

By reason of the pro rata distribution rule of current law, the designation of all or a portion of any distribution as a qualified interest dividend generally must be pro rata with respect to all shares of the company of the same class, and may not apply specially to any share of stock as compared with any other shares of stock of the company in that same class. If the RIC has more than one class, moreover, the committee similarly does not intend to permit a RIC to designate dividends as interest-related dividends disproportionately as between classes. The committee understands that this intent is consistent with present law as interpreted by the Internal Revenue Service in Rev. Rul. 89-81. Even if the Internal Revenue Service were to have erred in its interpretation of present law, however, the committee intends for the rule announced in Rev. Rul. 89-81 to apply in the case of dividends designated as interest-related dividends under the provisions of this bill.

For example, assume that a RIC with only one class of stock has $5000 of qualified net interest income for the taxable year, and $5000 of other income. Assume that the RIC properly pays as a dividend $10,000 pro rata to its 1000 equal shareholders, half of whom are foreign, resulting in a $10 dividend to each shareholder. Under the bill, the RIC could designate a maximum of $5 of the amount of the dividend to any foreign shareholder as an interest-related dividend.

As another example, assume that a RIC with the same income as above has two classes of stock—common and preferred—and properly pays a dividend of $8000 to the common stockholders, and $2000 to the preferred shareholders. Under the bill, the RIC can designate $1000 of the preferred stock dividend, on a pro rata basis, as an interest-related dividend, and $4000 of the common stock dividend, on a pro rata basis, as an interest-related dividend. However, if only $3000 of the common stock dividend is designated an interest-related dividend, the difference between $3000 and $4000 could not be used to increase the $1000 cap on the amount of the preferred stock dividend may for tax purposes, be so designated.

Short term capital gain dividends

Under the bill, a RIC could also, under certain circumstances, designate all or a portion of a dividend as a "short term capital gain dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. For purposes of the U.S. gross-basis tax, a short term capital gain dividend received by a foreign person generally would be exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442. This exemption would not apply to the extent that the foreign person is a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year. In this case, however, the RIC remains exempt from its withholding obligation unless the RIC knows that the dividend recipient has been present in the United States for such period.

The aggregate amount designated as short term capital gain dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in section 855) is generally limited to the excess of (a) the RICs' net short-term capital gains over net long-term capital losses, less (b) the amount of expenses of the RIC allocable to such net gains. Where the amount so designated is greater, however, than this excess, then the portion of the distribution so designated which constitutes a short term capital dividend will be only that proportion of the amount so designated as the amount of the excess bears to the amount so designated. In addition, as in the case of interest-related dividends, the designation of all or a portion of any distribution as a short term capital gain dividend generally must be pro rata with respect to shares of the same class, and governed by a rule of proportionality as between different classes.

As is true under current law for distributions from REITs, the bill provides that any distribution by a RIC to a foreign person shall, to the extent attributable to gains from sales or exchanges by the RIC of an asset (for example, stock) that is considered a U.S. real property interest, be treated as

gain recognized by the foreign person from the sale of exchange of a U.S. real property interest. As under current law in the case of a REIT, the committee intends that the RIC shall be required to deduct and withhold, under section 1445, a tax equal to 34 percent of the amount of the dividend so treated. The bill also extends the special rules for domestically-controlled REITs to domestically-controlled RICs.

Effective Date

In general, the provision is effective with respect to taxable years of RICs beginning after date of enactment. However, the provision exempting an interest in a domestically-controlled RIC from treatment as a U.S. real property interest is effective on the date of the provision is enacted.

2. Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit (sec. 6102 of the bill, and sec. 59(a)(2) and new sec. 965 of the Code)

Present Law

In general

Under present law, U.S. citizens, residents, and corporations are subject to U.S. taxation on their worldwide incomes. The U.S. tax on foreign income may be offset by a credit for foreign income taxes incurred. Foreign corporations, including foreign corporations controlled by U.S. taxpayers, generally are subject to U.S. taxation only on income earned in the United States.

"Deferral" refers to the practice of not taxing the income of a U.S.-controlled foreign corporation until that income is distributed to the controlling U.S. shareholders. The term "deferral" is employed because the net U.S. tax liability—equal to the difference between the U.S. tax and the credit for foreign taxes—is "deferred" until such income is distributed as a dividend.

The controlled foreign corporation (subpart F) rules of the Code provide for exceptions to the general rule of deferral (sec. 951–964). Certain U.S. shareholders of a controlled foreign corporation are subject to current U.S. taxation on their pro rata portions of the foreign corporation's "subpart F income." Subpart F income typically is income that is relatively movable from one taxing jurisdiction to another and that is subject to low effective rates of foreign tax.

Alternative minimum tax foreign tax credit

Under present law, taxpayers are subject to an alternative minimum tax ("AMT"), which is payable, in addition to all other tax liabilities, to the extent that it exceeds the taxpayer's regular income tax liability. The tax is imposed at a flat rate of 20 percent, in the case of corporate taxpayers, on alternative minimum taxable income ("AMTI") in excess of a phased-out exemption amount. The rate for noncorporate taxpayers is 24 percent. Alternative minimum taxable income is the taxpayer's taxable income increased for certain tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the exclusion or deferral of income resulting from the regular tax treatment of those items.

Taxpayers are permitted to reduce their AMT liability by an AMT foreign tax credit. The AMT foreign tax credit for a taxable year is determined under principles similar to those used in computing the regular tax foreign tax credit, except that (1) the numerator of the AMT foreign tax credit limitation fraction is foreign source AMTI[1] and (2) the denominator of that fraction is total AMTI.[2]

The AMT foreign tax credit for any taxable year generally may not offset a taxpayer's entire pre-credit AMT. Rather, the AMT foreign tax credit generally is limited to 90 percent of AMT computed without an AMT net operating loss deduction, an AMT energy preference deduction, or an AMT foreign tax credit.[3] For example, assume that a corporation has $10 million of AMTI, has no AMT net operating loss or energy preference deductions, and is subject to the AMT. In the absence of the AMT foreign tax credit, the corporation's tax liability would be $2 million. Accordingly, the AMT foreign tax credit cannot be applied to reduce the taxpayer's tax liability below $200,000. Any unused AMT foreign tax credit may be carried back 2 years and carried forward 5 years for use against AMT in those years under the principles of the foreign tax credit carryback and carryforward set forth in section 904(c).

Reasons for Change

The committee recognizes that, in certain cases, the 90-percent limitation on the use of the AMT foreign tax credit may not allow for sufficient relief of double taxation. However, the committee understands that, because of the availability of deferral, the timing of U.S. taxation on active business income earned through controlled foreign corporations can be at the discretion of the U.S. shareholder. Therefore, the committee believes that it is appropriate to link legislative relief from the 90-percent limitation on the use of the AMT foreign tax credit to the unavailability of deferral on income earned through controlled foreign corporations.

Explanation of Provision

In general

Under the bill, a domestic corporation is permitted to elect to be exempt from the 90-percent limitation on the utilization of the AMT foreign tax credit. As explained more fully below, any corporation that does so elect, and any other domestic corporation that is related to the electing corporation, thereby foregoes the benefits of deferral with respect to the income of all controlled foreign corporations of which they are U.S. shareholders.

Domestic corporations affected by an election

The election may be made by any domestic corporation. If the election is made, the loss of deferral applies to all domestic corporations that are members of an expanded affiliated group of corporations, as defined for purposes of this election, that includes the electing corporation. On the other hand, only corporations that actually make the election are entitled to the exemption from the 90-percent limit on the use of the AMT foreign tax credit.

Under the bill, membership in an expanded affiliated group is determined by applying the affiliated group definitions of section 1504, substituting a greater-than-50-percent stock ownership threshold for the 80-percent ownership threshold. The bill treats foreign corporations as includible corporations solely for the purpose of determining whether any domestic corporation is a member of the group. Under the bill, membership in the expanded affiliated group is determined by treating stock owned by attribution under the rules of section 1563 as owned directly. Under the bill, a corporation is considered to be controlled if *either* the 50-percent vote *or* the 50-percent value test is met. Finally, under the bill stock is disregarded for purposes of determining expanded affiliated group membership if it is limited and preferred as to dividends and does not participate in corporate growth to any significant extent.

Loss of deferral

As described above, the benefits of deferral are foregone by any domestic corporation included in an expanded affiliated group that includes an electing corporation. Generally, all of the earnings and profits for the taxable year of a controlled foreign corporation with respect to which the domestic corporation is a U.S. shareholder are treated as subpart F income, for purposes of determining the amount of subpart F income to be included in the income of the domestic corporation pursuant to section 951. Under the bill, as under present law, subpart F income does not include earnings and profits attributable to income from sources within the United States which is effectively connected with the conduct of a U.S. trade or business (except to the extent that the income is exempt from tax or subject to a reduced rate of taxation pursuant to a U.S. treaty obligation). Nor does subpart F income include any foreign trade income of a foreign sales corporation (FSC). Such income remains taxable to the FSC to the extent provided under current law. Also as under present law, subpart F income is not reduced on account of certain illegal payments.

Under the bill, as under present law, certain amounts of earnings and profits are not included in subpart F income if it is established to the satisfaction of the Treasury Secretary that those amounts of earnings could not have been distributed to the U.S. shareholders because of currency or other restrictions or limitations imposed under the laws of any foreign country. The committee intends that such legal restrictions or limitations be taken into account only if they are publicly promulgated, generally applicable to all similarly situated persons (whether controlled or uncontrolled), and not actually avoided by the foreign corporation or other persons, and if the process prescribed by local law for obtaining a waiver of such restrictions, if any, has been exhausted. No inference is intended regarding the meaning of the corresponding provision of current law.

Under the bill, as under the present-law rules of subpart F, earnings and profits are determined without regard to the adjustments for LIFO inventories, installment sales, and the completed contract method of accounting that generally apply to the determination of earnings and profits, except, under regulations, to the extent that the failure to make such adjustments would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.

For the second taxable year subject to the provision, and any subsequent taxable year, amounts of subpart F income included in the gross income of the U.S. shareholder are re-

[1]This is modified on an elective basis by section 4422 of the bill.

[2]Similar to the regular tax foreign tax credit, the AMT foreign tax credit is subject to the separate limitation categories set forth in section 904(d). Under the AMT foreign tax credit, however, the determination of whether any income is high taxed for purposes of the high-tax-kick-out rules (sec. 904(d)(2)) is made on the basis of the applicable AMT rate rather than the highest applicable rate of regular tax.

[3]Certain domestic corporations operating solely in one foreign country with which the United States has an income tax treaty in effect are not subject to the 90-percent limitation on the use of the AMT foreign tax credit if certain other specified criteria are satisfied (sec. 59(a)(2)(C)).

duced by the shareholder's pro rata share of any deficits in earnings and profits in post-effective-date taxable years which precede that year, and for which the foreign corporation was a controlled foreign corporation.

In addition, deficits in earnings and profits (taking into account the same adjustments to earnings and profits that apply for purposes of determining subpart F income under the election) for years beginning prior to the effective date of the bill will reduce amounts of subpart F income included in the gross incomes of U.S. shareholders only to the extent that those deficits would have reduced subpart F inclusions under the qualified deficit rules of present law.

The election under the bill applies to the taxable year for which it is first effective and to all subsequent taxable years, and may be revoked only with the permission of the Secretary of the Treasury. In the event that an expanded affiliated group is enlarged, whether by incorporation or acquisition, any prior election under the bill by any member of the expanded affiliated group will have deferral consequences for the new member, and any prior election under the bill by a new member will have deferral consequences for the entire expanded affiliated group.

Effective Date

The provision is effective for taxable years of domestic corporations beginning after December 31, 1992, and taxable years of controlled foreign corporations ending with or within such taxable years of domestic corporations.

3. Income from investments by domestic gas or electric utilities in foreign gas or electric utilities (sec. 8103 of the bill and sec. 864 and new sec. 965 of the Code)

Present Law

In general

As explained above, U.S. persons generally are subject to U.S. taxation on their worldwide incomes. The U.S. tax on foreign income may be offset by a credit for foreign income taxes incurred. Foreign corporations, including foreign corporations controlled by U.S. taxpayers, generally are subject to U.S. taxation only on income earned in the United States. In limited cases, income of a U.S.-controlled foreign corporation is included, under Code section 951, in the income of U.S. persons owning stock of the foreign corporation. Such inclusions are sometimes referred to as "subpart F" inclusions.

Where stock in a foreign corporation is owned by a U.S. shareholder, the shareholder's income subject to U.S. tax generally includes the foreign corporation's earnings only to the extent of dividends received from the foreign corporation by the U.S. shareholder. When a dividend is paid, a U.S. corporation owning at least 10 percent of the voting stock of the foreign corporation is treated as if it had paid a share of the foreign income taxes paid by the foreign corporation (sec. 902(a)). This is sometimes referred to as the "indirect" or "deemed-paid" foreign tax credit. The income of the dividend recipient is increased, or "grossed up," by the amount of the indirect credit (sec. 78). An indirect foreign tax credit generally is also available to a U.S. corporate shareholder meeting the requisite ownership threshold with respect to inclusions of subpart F income from controlled foreign corporations (sec. 960(a)).[1]

A U.S. corporation may also be deemed to have paid taxes paid by a second- or third-tier foreign corporation. That is, where a first-tier foreign corporation pays a dividend to a 10-percent-or-more U.S. corporate shareholder, then for purposes of deeming the U.S. corporation to have paid foreign tax, the first-tier foreign corporation may be deemed to have paid a share of the foreign taxes paid by a second-tier foreign corporation of which the first-tier foreign corporation owns at least 10 percent of the voting stock, and from which the first-tier foreign corporation received dividends. The same principle applies to dividends from a second-tier or third-tier foreign corporation. No taxes paid by a second- or third-tier foreign corporation are deemed paid by the first- or second-tier foreign corporation, respectively, unless the product of the percentage ownership of voting stock at each level from the U.S. corporation down equals at least 5 percent (sec. 902(b)). Under present law, foreign taxes paid below the third tier of foreign corporations are not eligible for the indirect foreign tax credit.

Foreign tax credit limitation

The foreign tax credit is limited by the amount of U.S. tax otherwise payable on foreign source taxable income. For purposes of the foreign tax credit limitation, foreign source taxable income is computed by (1) determining the items of gross income that are from foreign sources, and then (2) subtracting from those items the taxpayer's deductions that are allocated or apportioned to foreign source gross income. Generally it is left to the Treasury to provide detailed rules for the allocation and apportionment of expenses.

In the case of interest expense, the Code and the regulations generally are based on the approach that money is fungible and that interest expense is properly attributable to all business activities and property of a taxpayer, regardless of any specific purpose for incurring an obligation on which interest is paid. (Exceptions to the fungibility concept are recognized or required, however, in particular cases.) The Code provides that for interest allocation purposes all members of an affiliated group of corporations generally are to be treated as a single corporation (the so-called "one-taxpayer rule"), and that allocation must be made on the basis of assets rather than gross income.

The term "affiliated group" in this context is defined by reference to a modified version of the rules for determining whether corporations are eligible to file consolidated returns. An affiliated group generally excludes any corporation that is foreign, and any corporation less than 80 percent of the stock of which is owned by members of the affiliated group (see Treas. Reg. sec. 1.861-11T(d)(6)(i)).

Example

Assume that a U.S. corporation owns 10 percent of the voting stock of a foreign corporation. Assume that each corporation owns operating assets valued at $10,000 for these purposes, each has debt to unrelated parties of $5000, and each has interest expense of $500 on that debt. Assume that none of this interest would be directly allocated to any particular stream of gross income under current law. Assume that the stock of the foreign corporation that is owned by the U.S. corporation is valued at $500 for purposes of the U.S. parent's allocation of interest. All the operating assets of the U.S. corporation produce U.S. source income, and all the operating assets of the foreign corporation produce foreign source, general limitation income. A foreign country levies tax on the income of the foreign subsidiary at a 34-percent rate.

Assume that in 1993, the U.S. corporation earns $1,000, before taking into account interest deductions, in taxable income from its U.S. operations, and receives a dividend from its foreign subsidiary. Assume that the amount of the dividend plus the section 78 gross-up for indirect foreign tax credits equals $50, and that the amount of the foreign tax credit associated with that dividend is $17. The entire amount of the foreign source income of the U.S. corporation is subject to the general foreign tax credit limitation. Total taxable income of the U.S. corporation for 1993 is $550—$1,000 from U.S. operations, plus $50 foreign source, general limitation income, less $500 of interest expense. Assume that U.S. tentative tax on this amount is $187, and that the only income tax credit to which the U.S. corporation is entitled is the foreign tax credit.

The amount of foreign source taxable income, and therefore foreign tax credit limitation, depends on how the $500 of interest expense of the U.S. corporation is apportioned between U.S. and foreign source gross income. On these facts, the U.S. corporation has $10,500 worth of assets, about 5 percent of which generate foreign source general limitation income, and the other approximately 95 percent of which generate U.S. source income. Therefore, about 5 percent of its interest expense, or $23.81, would be apportioned to foreign source general limitation income. Foreign source taxable income is $26.19 ($50 minus $23.81). The foreign tax credit limitation is $8.90, computed as $26.19 of foreign source taxable income divided by entire taxable income ($550), multiplied by the tentative U.S. tax of $187. Final U.S. tax for 1993 equals $178.10 ($187 minus $8.90). Total worldwide tax on the $550 of income equals $195.10 ($178.10 plus $17), even though the U.S. corporation and its foreign subsidiary are both subject to local nominal tax rates of 34 percent. It may be argued that the $8.10 excess of tax over the tax which would be computed at the nominal 34-percent rates constitutes double taxation of $23.81 of the U.S. corporation's income.

Reasons for Change

The committee believes that the U.S. tax law should not be a barrier to direct investments in foreign regulated gas and electric utilities by U.S. persons engaged (directly or indirectly through subsidiaries) in the same business domestically. The committee believes that current law, and in particular the interest allocation rules of current law, imposes such a barrier to such investments that take the form of ownership of stock in the foreign utility company. The committee understands that a number of planning techniques designed to avoid this problem are unavailable where both the U.S. corporation and the foreign issuer are regulated gas and electric utility companies. First, the committee understands that in such a case the foreign government or regulatory body may not permit U.S. interests to obtain a controlling share in the foreign utility. Second, the legal and capital structures of such utilities, and the prices such utilities charge for services, are also regulated, and typically beyond the control of a U.S. investor.

While the committee believes that tax law should not impose artificial barriers to direct investments in foreign utility operations, the committee believes that if the Code is amended so that the U.S. regulated gas and electric utility investor is entitled to elect a regime under which interest allo-

[1] Unlike the indirect foreign tax credit for actual dividend distributions, the indirect credit for subpart F inclusions can be available to individual shareholders in certain circumstances if an election is made (sec. 962).

cation rules are applied taking into account the assets, income, and expenses of foreign utilities operations in which the U.S. person is a direct investor, then it is appropriate to link that election with loss of the U.S. investor's deferral of U.S. tax on the income generated by foreign operations in which the U.S. person is a direct investor.

Explanation of Provision

In general

The bill provides that certain U.S. affiliated groups predominantly engaged in regulated gas or electric utility operations may elect, for purposes of allocating interest to determine their foreign tax credit limitations, to treat their investments in the stock of certain foreign utility companies as if the U.S. affiliated group owned a proportionate share of the foreign utility's assets, and incurred a proportionate share of the foreign utility's interest expense. If the election is made, the U.S. affiliated group is taxable currently on its share of the earnings of certain foreign corporations in which it owns stock. Thus the bill permits the U.S. affiliated group to make an election whereby, in exchange for foregoing the benefits of deferral, it avoids double-counting the amount of interest expense treated as the cost of holding the assets of the foreign utility companies in whose stock the U.S. affiliated group has invested.

Qualified utility group

An election under the bill can only be made with respect to a qualified utility group. Once made, the election applies to the year for which made and all subsequent years unless revoked with the consent of the Secretary. The bill defines such a group as any affiliated group (within the meaning of the one-taxpayer rule applicable for interest allocation purposes) with respect to which four criteria are met.

First, at least 80 percent of the group's gross income must be attributable to the production, transmission, or distribution of electricity, or the distribution of gas. Second, no more than 65 percent of the average daily total capital of the group for the taxable year can take the form of debt. Third, at least one member of the group must be regulated by one or more State regulatory commissions with respect to the distribution of gas or electricity. Fourth, if the affiliated group is a member of an "expanded affiliated group," as that term is described in Item 2, above ("Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit"), then the affiliated group cannot be considered a qualified utility group if the first three criteria are not met with respect to the expanded affiliated group.

Foreign regulated gas or electric utilities

If the election is made, then the bill changes, among other things, the interest allocation treatment of certain investments by qualified utility group members in foreign corporations that are foreign regulated gas or electric utilities. In order to be an investment that gives rise to this interest allocation change, the investment must be in the form of direct ownership of voting stock in the foreign corporation, in a proportion sufficient to permit the group member to receive deemed-paid credits for taxes paid by the foreign corporation. Thus, the investment must include direct ownership by members of the qualified utility group of at least 10 percent of the voting stock of the foreign regulated gas or electric utility.

In order for the foreign corporation to be a foreign gas or electric utility, at least 80 percent of its gross income must be attributable to the production, transmission, or distribution of electricity, or the distribution of gas. No more than 65 percent of the average daily total capital of the corporation for the taxable year can take the form of debt. Finally, the activities of the foreign corporation described above must be regulated by one or more regulatory commissions established pursuant to foreign law.

Effect of the election

Making the election results in a number of consequences. These include the loss of deferral on the earnings of certain foreign corporations, and modification of the rules under which interest is allocated for purposes of computing the foreign tax credit limitation.

Loss of deferral

Any investment of a member of the qualified utility group, or of any member of the expanded affiliated group (as that term is described in Item 2, above ("Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit")) to which any member of the qualified utility group belongs, which investment may result in the member being entitled to credits for foreign income taxes paid by a foreign corporation, results in treatment of the foreign corporation as a controlled foreign corporation of which the group member is a U.S. shareholder. (Thus, second- and third-tier foreign corporations may be treated as controlled foreign corporations as a result of the election.) Second, all of the earnings of all foreign corporations that are (or are treated under the election) as controlled foreign corporations are treated as subpart F income, as described in Item 2, above ("Election not to apply 90-percent limitation on alternative minimum tax foreign tax credit")

Interest allocation

Under the bill, the interest expense of any qualified utility group which is subject to the election is allocated and apportioned based upon two hypothetical allocations and apportionments taking into account the assets and interest expense of any foreign regulated gas or electric utility that is a member of the so-called "expanded group." The "expanded group" for purposes of allocating interest is the qualified utility group, plus any foreign regulated gas or electric utility in which the qualified utility group members directly own voting stock in a proportion sufficient to permit the qualified utility group members to receive credits for foreign income taxes paid by the foreign corporation. (Thus, only the assets and expenses of first-tier foreign corporations are taken into account for this purpose.)

First, a hypothetical interest allocation is performed as if the qualified utility group members had directly owned their pro rata shares of the assets of, and had directly incurred their pro rata shares of the interest expenses of, the foreign corporations in the expanded group. The pro rata shares generally are determined, for this purpose, by reference to the same proportion that determines the pro rata share income inclusions under sub part F (as applied after taking into account the election). They are to be appropriately reduced, however, to take into account the extent (if any) to which subpart F inclusions are reduced because of the blocked income rule.

The amount of interest that would be allocated and apportioned to foreign source gross income on the basis of adding the pro rata share of any foreign regulated gas or electric utility's interest and assets to the interest and assets of the qualified utilities group, as described above, is then reduced to arrive at the amount of qualified utility group interest actually allocated and apportioned to foreign source income. The reduction equals the amount resulting from a second hypothetical allocation and apportionment, namely, the amount of interest that would be allocated and apportioned to foreign source gross income taking into account only the pro rata share of the assets of the foreign regulated gas or electric utility, and the pro rata share of the interest expense incurred by the foreign regulated gas or electric utility. If there is more than one such foreign corporation in the expanded group, they are treated as a single corporation for this purpose.

If the amount of interest that would be allocated and apportioned to foreign source gross income, taking into account only the interest and assets of the foreign regulated gas or electric utility (or utilities), is equal to or greater than the amount that would be so allocated and apportioned considering the expanded group as a whole, then the interest expense of the members of the qualified utility group generally will not be apportioned to gross income from foreign sources. On the other hand, if the latter amount is greater than the former, then the interest expense of the qualified utility group generally will be apportioned to gross income from foreign sources to the extent of the difference.[2]

Consistent with the rules governing interest allocation under current law, it is intended that borrowings between the qualified utility group and the affected foreign regulated gas or electric utilities, and stockholdings in the foreign regulated gas or electric utilities, will be eliminated for purposes of determining the total interest expense of the relevant corporations, computing the reduction in foreign-allocated interest expenses to account for foreign regulated gas or electric utilities, and computing appropriate asset ratios.

Examples

Assume that a member of a group of U.S. corporations, an affiliated group for purposes of the one-taxpayer interest allocation rules, owns 10 percent of the stock of a foreign corporation. Assume that each corporation owns operating assets valued at $10,000 for these purposes, each has debt to unrelated parties of $5000, and each has interest expense of $500 on that debt. Assume that none of this interest would be directly allocated to any particular stream of gross income under current law. All of the operating assets of the U.S. corporation produce U.S. source income, and all of the operating assets of the foreign corporation produce foreign source, general limitation income. A foreign country levies tax on the income of the foreign subsidiary at a 34-percent rate. The U.S. affiliated group is a qualified utility group, and the foreign corporation is a foreign regulated gas or electric utility. Together the qualified utility group and the foreign corporation form an "expanded group" as that term is used in the provision.

Assume that the affiliated group and the foreign corporation are calendar year taxpayers, and that the qualified utility group

[2] In either case, allocation and apportionment of interest expense of the qualified utility group to gross income from foreign sources may still occur pursuant to the Secretary's existing regulatory authority, including the authority to make direct allocations. The bill is not intended to change the scope of that authority, except insofar as other changes in the law brought about by the bill (e.g., the loss of deferral) would necessitate adjustments in the interest allocation regulations.

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makes an election for its 1993 taxable year under the bill. Assume that the foreign corporation's pre-tax earnings and profits for 1993 equal $500. Assume that the foreign corporation has no earnings or foreign income taxes in any prior year, and that the foreign corporation bears $170 in foreign income taxes for 1993. Assume that the qualified utility group earns $1000, before taking into account interest deductions, in taxable income from its U.S. operations.

Under the bill, the qualified utility group includes an additional $50 in income under subpart F (taking into account $17 of the foreign corporation's foreign taxes deemed paid under Code section 960 and the resulting gross-up), its pro rata share of the $500 of pre-tax earnings and profits of the foreign corporation. Thus, pre-credit U.S. tax on the qualified utility group equals 34 percent of $550, or $187. Further under this bill, the qualified utility group is treated for interest allocation purposes as having $11,000 in assets, $1000 of which generate foreign source income, and having $550 in interest expense. *One eleventh, or $50, of this interest expense* is hypothetically apportioned to foreign source gross income. That expense is then reduced by the amount of the pro rata portion of the interest expense of the foreign corporation ($50) that would be apportioned to foreign source income taking into account only the pro rata portion of the assets of the foreign corporation ($1000). In the example, all of those assets produce foreign source income, so the reduction is the full amount of the $50 pro rata share of the foreign corporation's interest expense is allocated or apportioned to foreign source gross income. For purposes of computing the foreign tax credit limitation, then, the qualified utility group's foreign source taxable income equals $50, the full amount of the subpart F inclusion under the bill. The foreign tax credit limitation equals one eleventh of $187, or $17, which is the full amount of foreign taxes deemed paid by the qualified utility group.

As another example, assume the same facts as above, except that the foreign corporation has only $400 of interest expense. Assume no changes in the assets, earnings and profits, or taxes of the foreign corporation. As a consequence, $9.09 of interest expense incurred by the qualified utility group is allocated and apportioned to foreign source gross income ($40.09, or one eleventh of $440, minus $40). Foreign source taxable income is thus $40.91, or $50 minus $9.09, the foreign tax credit limitation of the qualified utility group is $13.91, or $187 times $40.91 divided $550.

Effective Date

The provision applies to taxable years of domestic corporations beginning after December 31, 1992, and to taxable years of foreign corporations which end with or within such taxable years of domestic corporations.

4. Commodities income of a controlled foreign corporation (sec. 8104 of the bill and sec. 954(c) of the Code)

Present Law

As explained above, when a U.S.-controlled foreign corporation earns so-called "subpart F income," the United States generally taxes the corporation's 10-percent U.S. shareholders currently on their pro-rata share of that income.

One category of income that is considered subpart F income is "foreign personal holding company income." Foreign personal holding company income generally consists of passive types of income such as interest, dividends, annuities, and net gains from the disposition of certain types of property. Subject to a number of exceptions, foreign personal holding company income includes the excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. Under one such exception, gains and losses from commodities transactions are not taken into account for purposes of measuring foreign personal holding company income if they are "active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities.[1]

Current temporary regulations interpret the statute by determining the amount of business that is "substantially all" of the CFC's business using a taxable income test.[2] Under the regulations, substantially all of a controlled foreign corporation's business is considered to be as an active producer, processor, merchant, or handler of commodities if its active commodities business operations give rise to at least 85 percent of its taxable income for the taxable year.

The legislative history to the Tax Reform Act of 1986 specified that the exception for active producers, processors, merchants, and handlers of commodities applies only to foreign corporations actively engaged in commodities business.[3] It does not apply to foreign corporations primarily engaged in such financial transactions as the trading of futures. In order to be engaged in the active conduct of a commodities business, a controlled foreign corporation generally must hold commodities as inventory or similar property and incur substantial expenses in the ordinary course of a commodities business.[4] Regularly taking delivery of physical commodities generally indicates the existence of an active commodities business, but it does not of itself determine the issue. Other characteristics of companies actively engaged in commodities business include: *engaging in substantial processing activities* and incurring substantial expenses with respect to commodities prior to their sale, including (but not limited to) concentrating, refining, mixing, crushing, aerating, and milling; engaging in significant activities and incurring substantial expenses relating to the physical movement, handling, and storage of commodities, including (but not limited to) preparation of contracts and *invoices, arrangement of freight, insurance, or* credit, arrangement for receipt, transfer, or negotiation of shipping documents, arrangement of storage or warehousing, and dealing with quality claims; owning and operating physical facilities used in the activities described above; owning or chartering vessels or vehicles for the transportation of commodities; and producing the commodities sold.[5]

Reasons for Change

Under current law, a single corporation may engage in the active businesses of processing wheat into flour and of processing oranges into juice concentrate, without generating subpart F income. Similarly, a single corporation may engage in the steel business without generating subpart F income under current law. By contrast, a single corporation that engages in both the active wheat processing business and the steel business loses deferral on its wheat business income. Furthermore, a single corporation engaged in the active wheat processing business, that also earns commodities income from other activities which do not satisfy the active business requirements for exclusion from subpart F, generates subpart F income from both activities if the active wheat business did not constitute substantially all of its business as interpreted by Treasury regulations. The Committee believes that a controlled foreign corporation should be permitted to avoid subpart F treatment of its active wheat business income in both of the latter two cases, whether or not the active wheat processing business constitutes substantially all of its business. On the other hand, the committee believes that it is appropriate to continue to subject to current U.S. income tax net gains from primarily financial transactions involving commodities that do not qualify for the present-law exception for bona fide hedging transactions.

Explanation of Provision

The bill expands the exception from the definition of foreign personal holding company income for active business gains and losses from the sale of commodities. Under the provision, active business gains and losses from the sale of commodities by a controlled foreign corporation as an active producer, processor, merchant, or handler of commodities are not taken into account for purposes of determining the foreign corporation's foreign personal holding company income. Thus, the bill eliminates the "substantially all" requirement of present law. As under present law, the exception does not apply to any gains or losses of a foreign corporation derived from primarily financial transactions (e.g., the trading of commodities futures), even if the foreign corporation also is engaged in an active commodities business as a producer, processor, merchant, or handler.

The bill does not alter the present-law criteria for determining whether a foreign corporation is an active producer, processor, merchant, or handler of commodities. Thus, for example, in order to exclude commodity gains and losses under the active business exception, a controlled foreign corporation must hold the commodity giving rise to the *gain or loss as inventory or similar property*, and must regularly engage in the production, processing, or handling and storage of the commodity.

Effective Date

The provision is effective for taxable years of foreign corporations beginning after December 31, 1992.

5. Treasury study on competitiveness (sec. 8105 of the bill)

Present Law

The United States imposes taxes that affect economic behavior, as do other countries.

Reasons for Change

The U.S. economy is the world's largest and by some measures U.S. citizens are better off than those of other countries. By other measures, however, some believe that the U.S. economy is losing ground. The U.S. growth rate of per capita gross domestic product (GDP) has been lower than that of many other developed countries for the past two decades. The growth in labor productivity in manufacturing has lagged behind that of other countries for the past three decades. The saving and investment rates are among

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[1] Other exceptions to the subpart F income classification of commodities gains and losses include an exception for bona fide hedging transactions and an exception for certain foreign currency gains and losses.

[2] Temp. Treas. Reg. sec 1.954-2T(f)(3)(iv).

[3] S. Rep. No. 99-313, 99th Cong., 2d Sess. 367 (1986).

[4] Temp. Treas. Reg. sec. 1.954-2T(f)(3)(iii).

[5] S. Rep. No. 99-313, at 367-369.

the lowest of all developed countries.[1] In addition, the nation has experienced large trade deficits for a number of years.

The committee is concerned that these trends may forebode a reduced standard of living for U.S. residents relative to that of other countries and poor performance of U.S. companies. The committee believes that if the United States is to compete effectively in this world, the committee must know how our tax laws affect the ability of American companies trying to sell goods and services here and around the globe. Specifically, the committee wants to know more about how our neighbors and competitors across the world treat savings under their tax laws, how they tax capital, how they treat research expenses, how they treat corporate earnings, and how they tax the foreign income of multinational corporations.

The committee is particularly interested in the implications for American competitiveness of recent developments in Western Europe. The twelve member nations of the European Communities ("EC") are engaged in a concerted effort to create a single internal market under the authority of the 1987 Single European Act. As part of this plan, they have taken steps to harmonize their value-added taxes, they have adopted directives on certain income tax issues, and the Commission of the European Communities has been considering the question of whether there is a need for greater harmonization of business taxation in the member states.[2] The committee wishes to examine whether unification of the EC's internal market warrants a tax policy response by the United States.

Given its duties to write legislation affecting U.S. taxation, among other issues, the committee is vitally concerned with all aspects of the interaction of tax policy and American economic well-being, including the interaction among tax policy, changes in foreign economic behavior, and the position of the United States relative to that of other countries.

Every government must strike a balance between collecting revenue in an evenhanded manner, making sure that everyone pays their fair share, and providing an environment conducive to economic growth. By comparing the tax systems of other countries with our own, the committee can glean a better idea of what works and what doesn't. To gain understanding of alternative tax systems, the committee held a hearing on July 21, 1992, and took testimony from three distinguished experts, Mr. John Isaac, the former deputy director of the Board of Inland Revenue of the United Kingdom, Mr. Yoshi Nakamura, the deputy director of the International Economic Affairs Department of the Japan Federation of Economic Organizations (Keidanren), and Dr. Albert J. Raedler, a professor at the International Tax Institute, University of Hamburg, and other witnesses. The committee gained substantial insight into the structure of the revenue systems of the United Kingdom, Japan, and Germany.

Many economists and other analysts believe that the cost of capital is an important determinant of the level of investment and, hence, of future growth. The testimony that the committee has heard is inconclusive as to how the cost of capital in the United States compares to that of other countries. The testimony also is inconclusive as to the role of tax policy in explaining potential differences in the cost of capital.

The committee wishes to benefit from whatever the Treasury Department may be able to say about this subject after careful study over the coming year. It is critical for the Congress to have as much information as possible on the relationship between tax policy and economic growth.

Explanation of Provision

Under the bill, the Secretary of the Treasury is to conduct a study of tax issues relating to the maintenance and enhancement of the competitiveness of the American economy in light of changing economic policies in Europe and the increasing globalization of the world economy.

Effective Date

The provision requires a Treasury report on the study by January 1, 1994. The report is to be submitted to the Senate Committee on Finance and the House Committee on Ways and Means.

SUBTITLE C. OTHER REVENUE PROVISIONS

1. Expansion of education savings bond provisions (sec. 3201 of the bill and sec. 135 of the Code)

Present Law

Code section 135 provides that interest income earned on a qualified U.S. Series EE savings bond issued after December 31, 1989, is excludible from gross income if the proceeds of the bond upon redemption do not exceed qualified higher education expenses paid by the taxpayer during the taxable year.[1] "Qualified higher education expenses" include tuition and required fees for the enrollment or attendance of the taxpayer, the taxpayer's spouse or a dependent of the taxpayer at an eligible educational institution.[2] A taxpayer cannot qualify for the interest exclusion by paying for the education expenses of another person (such as a grandchild or other relative) who is not a dependent of the taxpayer.

The exclusion provided by section 135 is phased out for certain higher-income taxpayers. A taxpayer's AGI for the year the bond is redeemed (not the year the bond was issued) determines whether or not the phaseout applies. For taxpayers filing a joint return, the phaseout range is for AGI between $60,000 and $90,000 (adjusted for inflation). For single taxpayers and heads of households, the phaseout range is for AGI between $40,000 and $55,000 (adjusted for inflation).

To prevent taxpayers from effectively avoiding the income phaseout limitation (through the issuance of bonds directly in the child's name), section 135(c)(1)(B) provides that the interest exclusion is available only with respect to U.S. Series EE savings bonds issued to taxpayers who are at least 24 years old.

The interest rate on Series EE savings bonds varies, depending on how long the bonds are held. The interest rate on such bonds held for more than five years is based on the market rate for Treasury outstanding obligations with five years to maturity. Bonds held for less than five years earn interest on a fixed, graduated scale (generally below current rates on comparable Treasury instruments). Interest earned on Series EE bonds is paid when the bonds are redeemed.

Reasons for Change

To assist students in meeting the costs of higher education, the committee believes it is appropriate to expand the present-law education savings bond provisions.

Explanation of Provision

The bill expands the definition of "qualified higher education expenses" under section 135 to include tuition and required fees paid by a taxpayer for the enrollment or attendance of *any* individual (not simply dependents) at an eligible educational institution.

The bill also repeals the present-law AGI phaseout limitation under section 135 (and the related rule requiring that bonds be issued to a person who is at least 24 years old). Thus, interest earned on a Series EE savings bond is not subject to tax regardless of the taxpayers's AGI during the year the bond is redeemed if, during that year, the taxpayer pays for qualified higher education expenses of any individual and such expenses exceed the proceeds (principal plus interest) received upon redemption.[3]

The bill also clarifies that the section 135 exclusion does not apply unless the taxpayer includes, on the return on which the exclusion is claimed, the name, address, and taxpayer identification number of the person for whom qualified education expenses were paid.

Effective Date

The provision applies to U.S. Series EE savings bonds issued after December 31, 1989, and redeemed after December 31, 1992.

2. Exclusion from gross income for amounts paid under a life insurance contract by reason of terminal illness (sec. 3202 of the bill and secs. 101, 816, and 7702 of the Code)

Present Law

Under present law, gross income does not include amounts received under a life insurance contract if the amounts are paid by reason of the death of the insured.

Reasons for Change

The committee believes that the devastation caused by the catastrophic health care costs of the terminally ill is a critical problem for individual consumers. The early payment of death benefits under a life insurance contract provides at least one source of funds for those individuals who face these enormous costs. However, the unclear tax treatment of such accelerated death benefits

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[1] See Joint Committee on Taxation, *Comparison of the Tax Systems of the United States, the United Kingdom, Germany, and Japan* (JCS-13-92), July 20, 1992.

[2] See, e.g., *Report of the Committee on Independent Experts on Company Taxation* (1992), also known as the "Ruding Committee Report," after the Chairman of the Committee, Onno Ruding.

[1] If the aggregate redemption amount (i.e., principal plus interest) of all Series EE bonds redeemed by a taxpayer during the taxable year exceeds the qualified education expenses incurred, then the excludable portion of interest income is based on the ratio that the education expenses bears to the aggregate redemption amount (sec. 135(b)).

[2] Eligible education institutions are defined in section 1201(a) and 481(a)(1)(C) and (D) of the Higher Education Act of 1965, as in effect on October 21, 1988, and in the Carl D. Perkins Vocational Education Act (subparagraph (C) or (D) of section 521(3)), as in effect on October 21, 1988. An eligible educational institution does not include proprietary institutions.

"Qualified higher education expenses" do not include expenses with respect to any course or other education involving sports, games, or hobbies other than as part of a degree program (sec. 135(c)(2)(B)).

[3] Present-law section 135(b) prorates the excludible interest when aggregate proceeds from bonds redeemed by a taxpayer during the taxable year exceed qualified education expenses paid by the taxpayer during that year. Consistent with this rule, the committee expects that the Treasury Department will prescribe procedures for allocating the income exclusion provided for by section 135 in cases where, with respect to a particular taxable year, two (or more) taxpayers redeem savings bonds and claim to have paid qualified education expenses for the same student, but the aggregate redemption proceeds received by the taxpayers exceed the student's qualified education expenses.

under present law may discourage some life insurance policyholders from utilizing this option. Therefore, the committee believes it is appropriate to provide that the exclusion of life insurance proceeds from gross income is extended to the payment of such proceeds in the event of terminal illness of the insured.

Description of Proposal

The provision extends the present-law exclusion for life insurance proceeds to amounts paid or advanced to an individual under a life insurance contract if the insured under the contract is terminally ill.

An insured is considered terminally ill for this purpose if the insured has been certified by a licensed physician as having an illness or physical condition that can reasonably be expected to result in death in 12 months or less.

The provision also clarifies that, for purposes of the provisions relating to the taxation of life insurance companies, a qualified terminal interest rider is treated as life insurance. A qualified terminal interest rider means any rider or addendum, or other provision of, a life insurance contract that provides for payments to an individual in the event of terminal illness.

The issuance of a qualified terminal illness rider with respect to any life insurance contract is not treated as a modification or material change under the contract for purposes of sections 7702 or 7702A of the Code. The committee intends no inference as to the effect of the issuance of a terminal illness rider under present law for purposes of section 7702 or 7702a.

Under the provision, applicants for, or recipients of, benefits under certain public assistance programs are not required to take into account the right to receive accelerated death benefits in determining eligibility for such benefits.

Effective Date

The provision generally is effective for taxable years beginning after December 31, 1989. The provision treating qualified terminal illness riders as life insurance for insurance company tax purposes and the provision providing that the issuance of such a rider is not a modification or material change in a life insurance contract are effective for taxable years beginning before, on, or after December 31, 1989. The provision relating to the effect of the availability of life insurance benefits in the event of terminal illness on eligibility for public assistance benefits is effective on January 1, 1990.

3. Offset losses against gains on the sale of a principal residence (sec. 8203 of the bill and sec. 1016 of the Code)

Present Law

No gain is recognized on the sale of a principal residence if a new residence at least equal in cost to the sales price of the old residence is purchased and used by the taxpayer as his or her principal residence within a specified period of time (sec. 1034). This replacement period generally begins two years before and ends two years after the date of sale of the old residence. The basis of the replacement residence is reduced by the amount of any gain not recognized on the sale of the old residence by reason of section 1034.

A loss on the sale of a personal residence is not deductible.

Reasons for Change

The committee believes that there should be more symmetric treatment of losses and gains on the sale of a principal residence.

Explanation of Provision

The bill provides that if the taxpayer suffers a loss upon the sale of a principal residence and the taxpayer purchases a new principal residence within the replacement period specified in Code sec. 1034, then the basis of the replacement residence is increased by the amount of any loss not recognized on the sale of the old residence.

Effective Date

The provision is effective with respect to losses on sales or exchanges of old residences after the date of enactment, for determining recognized gain on principal residences sold or exchanged after December 31, 1993.

4. Prohibition of State "source tax" on periodic pension distributions (sec. 8204 of the bill)

Present Law

Under present law, States are not prohibited under Federal law from imposing income tax ("source tax") on the pension income earned within the State but paid to an individual who is no longer a resident of the State.

Reasons for Change

The committee believes that, in the case of periodic distributions from qualified pension plans and IRAs, the burden on individuals to comply with income taxes imposed by States in which they no longer reside outweighs the interest of the States in collecting such income taxes. States generally should not be prohibited from taxing distributions from nonqualified deferred compensation arrangements to the extent that such distributions are attributable to income earned within the State.

Explanation of Provision

The bill prohibits a State from imposing income tax on certain periodic pension distributions made to any individual who is not a resident or domiciliary of the State. A distribution is exempt from State income taxation if it is a payment from a qualified plan that is part of series of substantially equal periodic payments (not less frequently than annually) made (1) for the life or life expectancy of the recipient and his or her beneficiary, or (2) over a specified period of 10 years or more.

For purposes of the bill, a qualified plan includes (1) a qualified employees' trust (sec. 401(a)), (2) a simplified employee pension (SEP) (sec. 408(k)), (3) a qualified annuity plan (sec. 403(a)), (4) a tax-deferred annuity contract (sec. 403(b)), (5) an individual retirement arrangement (IRA) (sec. 408), and (6) an eligible deferred compensation plan of a State and local government or tax-exempt organization (sec. 457).

States are not prohibited from taxing distributions from nonqualified deferred compensation arrangements to the extent such distributions are attributable to income earned within the State. In addition, the prohibition against State income taxation generally does not apply to nonperiodic distributions from a qualified plan. However, an individual who has attained age 59½ can make a one-time election to exempt distributions totaling no more than $25,000 (indexed) in a taxable year.

Effective Date

The provision applies to taxable years beginning after the date of enactment.

5. Employer tax credit for FICA paid on tip income (sec. 8205 of the bill and sec. 38 of the Code)

Present Law

Under present law, all employee tip income is treated as employer-provided wages for purposes of the Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA). For purposes of the minimum wage provisions of the Fair Labor Standards Act (FLSA), reported tips are treated as employer-provided wages to the extent they do not exceed one-half of such minimum wage.

Reasons for Change

The committee believes that it is appropriate to ease the payroll tax burden of employers in tipped industries.

Explanation of Provision

The bill provides a business tax credit (sec. 38) in an amount equal to the employer's FICA tax obligation (7.65 percent) attributable to reported tips in excess of those treated as wages for purposes of satisfying the minimum wage provisions of the FLSA. To prevent double dipping, no deduction is allowed for any amount taken into account in determining the credit. The bill prohibits carryback of unused FICA credits (sec. 39) to a taxable year ending before the date of enactment.

Effective Date

The provision is effective for tips received and wages paid after the date of enactment.

6. Tax exemption of veterans' benefits (sec. 8206 of the bill and sec. 134 of the Code)

Present Law

Section 134 of the Code (as added by the Tax Reform Act of 1986) provides that qualified military benefits are excludable from gross income. In general, a qualified military benefit is an allowance or in-kind benefit received by a member or former member of the uniformed services of the United States (or their spouses or dependents) and which was excludable from gross income on September 9, 1986, under any provision of law, regulation, or administrative practice. In general, qualified benefits do not include modifications to benefits occurring after September 9, 1986. Qualified in kind benefits may be modified without affecting excludability.

The Treasury Department has recently stated that the following veterans' benefits are excludable from income: income arising from VA home mortgage debt waivers and similar debt waiver programs; disability-related payments, including all cost-of-living adjustments that have been made since 1986; and all in-kind benefits provided by the VA as of September 9, 1986, regardless of any subsequent modifications to those benefits.[1]

Reasons for Change

The committee believes that legislation is necessary to address recent confusion regarding the Federal tax treatment of veterans' benefits.

Explanation of Provision

Veterans' benefits administered by the Secretary of Veterans' Affairs are excludable from gross income.

Effective Date

The provision is effective for years beginning after December 31, 1984.

7. Study of recovery period for the depreciation of semi-conductor manufacturing equipment (sec. 8207 of the bill)

Present Law

Equipment used in the manufacture of semi-conductors is treated as 5-year property under the accelerated cost recovery system

[1] Letter from Fred T. Goldberg, Jr., Assistant Secretary of the Treasury for Tax Policy, to Mr. Jesse Brown, Executive Director, Disabled American Veterans (July 2, 1992).

as modified by the Tax Reform Act of 1986. Consequently, the depreciation deductions for semi-conductor manufacturing equipment are determined by using a 5-year recovery period, the applicable convention, and the 200-percent declining balance method switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

The Department of Treasury is required to monitor and analyze the actual experience of taxpayers with respect to depreciable assets and to report the findings to Congress.

Reasons for Change

The committee understands that some studies have indicated that a shorter cost recovery period for semi-conductor manufacturing equipment may be appropriate. Therefore, the committee believes that the Department of Treasury should be required to study the decline in value over time of equipment used in the manufacture of semiconductors In order to determine whether the 5-year recovery period and class life of present law provides an accurate measure of the economic income of manufacturers of semi-conductors.

Explanation of Provision

The Department of Treasury is required to study the appropriate recovery period and class life under section 168 of the Code for semi-conductor manufacturing equipment. The results of the study are to be submitted to the House Committee on Ways and Means and the Senate Committee on Finance before April 1, 1993.

Effective Date

The provision is effective on the date of enactment.

8. Permit a common trust fund to convert to a regulated investment company and a regulated investment company to convert to a common trust fund without taxation (secs. 8206 and 8209 of the bill and secs. 584 and 852 of the Code)

Present Law

A common trust fund is a fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, guardian, or custodian of certain accounts and in conformity with rules and regulations of the Board of Governors of the Federal Reserve System or the Comptroller of the Currency pertaining to the collective investment of trust funds by national banks (sec. 584(a)).

A common trust fund is not subject to tax and is not treated as a corporation (sec. 584(b)). Each participant in a common trust fund includes in income his proportionate share of the common trust fund income, whether or not the income is distributed or distributable (sec. 584(c)).

No gain or loss is realized by the fund upon admission or withdrawal of a participant. Participants generally treat their admission to the fund as the purchase of such interest. Withdrawals from the fund generally are treated as the sale of such interest by the participant (sec. 584(e)).

A regulated investment company (RIC) also is treated as a conduit for Federal income tax purposes. Present law is unclear as to the tax consequences when a common trust fund transfers its assets, or converts its status, to a RIC. There is a tax when a RIC transfers its assets, or converts its status, to a common trust fund.

Reasons for Change

Banks are inhibited from converting common trust funds into RICs by the possibility of the conversion being taxable and by State laws that treat an unnecessary imposition of an income tax on trust fund participants as a breach of the banks' fiduciary obligations. The committee believes that a common trust fund should be permitted to transfer its assets on a tax-free basis to a RIC, subject to certain limitations. The committee likewise believes that a RIC should be permitted to transfer its assets on a tax-free basis to a common trust fund subject to certain limitations.

Explanation of Provision

Common Trust Fund to RIC

In general, the bill permits a common trust fund to transfer substantially all of its assets to one RIC without gain or loss being recognized by the fund or its participants. The fund must transfer its assets to the RIC solely in exchange for shares of the RIC, and the fund must then distribute the RIC shares to the Fund's participants in exchange for the participant's interests in the fund.

In determining whether a transfer is solely in exchange for shares of the RIC, the assumption of liabilities by the RIC is to be ignored. A special rule, however, requires gain to be recognized to the extent the assumed liabilities exceed the aggregate adjusted bases (in the hands of the common trust fund) of the assets transferred to the RIC.

The basis of any asset that is received by the RIC will generally be the basis of the asset in the hands of the fund prior to transfer (increased by the amount of gain recognized by reason of the rule regarding the assumption of liabilities). In addition, the basis of any RIC shares that are received by a fund participant will generally be the participant's basis in the interests exchanged (increased by the amount of gain recognized by reason of the rule regarding the assumption of liabilities).

The tax-free transfer is not available to a common trust fund with assets that are not diversified (under the requirements of section 368(a)(2)(F)(ii) without regard to the exclusion requirements of section 368(a)(2)(F)(iv) and without including Government securities as securities of an issuer for purposes of the 25 and 50 percent tests). The tax-free transfer also is not available to any common trust fund that had previously received assets from a RIC in a tax-free transfer that is described (below) in this new provision.

No inference is intended as to the tax consequences under present law when a common trust fund transfers its assets or converts its status, to a RIC.

RIC to Common Trust Fund

In general, the bill permits a RIC to transfer substantially all of its assets to one common trust fund without gain or loss being recognized by the RIC or its shareholders. The RIC must transfer its assets to the common trust fund solely in exchange for interests in the common trust fund, and the RIC must then distribute the interests to the RIC's shareholders in exchange for the shareholder's shares in the RIC.

In determining whether a transfer is solely in exchange for interests in the common trust fund, the assumption of liabilities by the common trust fund is to be ignored. A special rule, however, requires gain to be recognized to the extent the assumed liabilities exceed the aggregate adjusted basis (in the hands of the RIC) of the assets transferred to the common trust fund.

The basis of any asset that is received by the common trust fund will generally be the basis of the asset in the hands of the RIC prior to transfer (increased by the amount of gain recognized by reason of the rule regarding the assumption of liabilities). In addition, the basis of any interests in a common trust fund that are received by a RIC shareholder will be the shareholder's basis in the shares exchanged (but not increased by the amount of gain recognized by reason of the rule regarding the assumption of liabilities).

The tax-free transfer is not available to a RIC with assets that are not diversified (under the requirements of section 368(a)(2)(F)(ii) without regard to the exclusion requirements of section 368(a)(2)(F)(iv) and without including Government securities as securities of an issuer for purposes of the 25 and 50 percent tests). The tax-free transfer also is not available to any RIC that had previously received assets from a common trust fund in a tax-free transfer that is described (above) in this new provision.

No inference is intended as to the tax consequences under present law when a RIC transfers its assets, or converts its status, to a common trust fund.

Effective Date

The provision is effective for transfers after the date of enactment.

9. Exemption from truck excise tax for certain nonprofit educational organizations (sec. 8210 of the bill and secs. 4053 and 6416(b) of the Code)

Present Law

Present law imposes a 12-percent retail excise tax (sec. 4051) on the first sale of heavy highway trucks and truck trailers (including parts or accessories sold on or in connection with the truck or truck trailer). The tax does not apply to trucks weighing 33,000 pounds or less or to trailers weighing 26,000 pounds or less (gross vehicle weight). The tax is scheduled to expire after September 30, 1999. Revenues from the tax are transferred to the Highway Trust Fund.

Reason for Change

The committee concluded that, under certain limited circumstances, the truck excise tax should not apply to nonprofit educational organizations where the truck or truck trailer is assembled by students.

Explanation of Provision

The bill provides an exemption from the truck excise tax for trucks or truck trailers assembled by students and sold as a part of a program included in the regular curriculum of a nonprofit education organization, if the proceeds from the sale are used solely for the purpose of defraying costs incurred in such program.

A credit or refund (under sec. 6461(b) is allowed if such truck tax is actually paid by such an educational organization.

Effective Date

The provision is effective for sales after the date of enactment.

10. Treatment of cancellation of certain student loans (sec. 8211 of the bill and sec. 108(f) of the Code)

Present Law

In the case of an individual, gross income subject to Federal income tax does not include amounts discharged from the cancellation or discharge of certain student loans, provided that the discharge was pursuant to a provision of the loan under which the indebtedness would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers (sec. 108(f)).

Student loans eligible for the exclusion from gross income under section 108(f) in-

clude any loan to an individual to assist the individual in attending an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on, but only if the loan was made by (1) the United States (or an instrumentality or agency thereof), (2) a State (or any political subdivision thereof), (3) an educational organization which originally received the funds from which the loan was made from the United States or a State, or (4) certain tax-exempt public benefit corporations whose employees have been deemed to be public employees under State law (sec. 108(f)(2)).

Section 108(f) does not apply to student loans made by an educational organization from funds that were not originally provided to the organization by the United States or a State government.

Reasons for Change

The committee believes that it is appropriate to expand present-law section 108(f), so that certain student loan cancellation programs at private educational institutions receive Federal income tax treatment comparable to that of similar programs at public institutions. This provision will promote the establishment of programs that encourage students to serve in occupations and geographic areas with unmet needs.

Explanation of Provision

Section 108(f) is expanded so that an individual's gross income does not include discharge-of-indebtedness income from the cancellation of a loan made by an educational organization (which maintains a regular faculty and body of students at the place where educational activities are regularly carried on) to assist the individual in attending the educational organization, provided that the loan was made pursuant to a program of the education organization designed to encourage its students to serve in occupations or geographic areas with unmet needs, and provided that funds for the discharge are not directly (or indirectly) provided by the student's employer. In addition, an exclusion from gross income is provided for discharges of loans made by any organization exempt from tax under section 501(a) to refinance student loans originally made by a governmental body or educational organization meeting the requirements of section 108(f).

As under present-law, the section 108(f) exclusion will apply only if the discharge of indebtedness was pursuant to a provision of the loan under which all or part of the loan would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

Effective Date

The provision is effective for discharges of indebtedness after the date of enactment.

11. Mount Rushmore Commemorative Coin Act (sec. 8212 of the bill and sec. 8 of the Mount Rushmore Commemorative Coin Act, 31 U.S.C. 5112 note)

Present Law

Under the Mount Rushmore Commemorative Coin Act (P.L. 101-332), the Secretary of the Treasury is to issue Mount Rushmore commemorative coins (five dollar gold coins, one dollar silver coins, and half dollar clad coins) for sale to the public. All sales require a surcharge per coin ($35 for the five dollar gold coins, $7 for the one dollar coins, and $1 for the half dollar coins).

Of the total revenues received from the surcharges, one half is to be paid promptly to the Mount Rushmore National Memorial Society of Black Hills ("the Society") to assist the Society's efforts to improve, enlarge, and renovate the Mount Rushmore National Memorial. The other half of the revenues from the surcharges is to be returned to the Federal Treasury for purposes of reducing the national debt.

Reasons for Change

The committee decided to direct that the Society receive money from the surcharge revenues in a specified advance from the Treasury rather than receiving monies as the sales are made.

Explanation of Provision

The bill directs that the Society is to be paid during fiscal year 1993 an advance from the Treasury in the amount of $18,750,000. Any amount received from the surcharge revenues above the $18,750,000 is to be returned to the Federal Treasury for the purposes of reducing the national debt.

However, prior to enactment of this Act, any amount of surcharges that have been received by the Treasury and paid into the Treasury for purposes of reducing the national debt shall be paid out of the Treasury during fiscal year 1993 to the net amount extent necessary to comply with the directive to pay the society the $18,750,000 under this Act. Amounts paid pursuant to this procedure shall be out of funds not otherwise appropriated.

Effective Date

The provision is effective on the date of enactment.

12. Treatment of fringe benefits of airline affiliate employees (sec. 8213 of the bill and sec. 132 of the Code)

Present Law

Under present law, the gross income of an employee of an airline or a qualified affiliate of an airline does not include the value of air transportation provided as a non-additional-cost service under section 132.

In general, a qualified affiliate is a corporation at least 80 percent of which is owned by an airline and that is engaged in an airline related service (e.g., ticketing and reservations, baggage handling).

Reasons for Change

The committee believes that qualified affiliates should not be limited to organizations that operate in corporate form.

Expanation of Provision

The definition of qualified affiliate is amended to include any entity that is at least 80 percent owned (directly or otherwise) by one or more companies that operate an airline. As under present law, to be qualified by the affiliate must be predominantly engaged in airline-related services.

Effective Date

The provision is effective for years beginning after December 31, 1992.

13. Allow certain investment expenses to be deducted for AMT purposes (sec. 8214 of the bill and sec. 56(b) of the Code)

Present Law

Individuals are subject to an alternative minimum tax imposed at a 24-percent rate on the taxpayer's alternative minimum taxable income. In computing alternative minimum taxable income, no deduction is allowed for miscellaneous itemized deductions. Investment expenses deductible under section 212 are generally treated as a miscellaneous itemized deduction and thus are not deductible in computing the minimum tax. Under the regular tax, miscellaneous itemized deductions (including investment expenses) are deductible only to the extent they exceed two percent of the individual's adjusted gross income.

Reasons for Change

The committee believes that in order to more accurately measure the economic income of partners in partnerships for AMT purposes, section 212 expenses that flow from partnerships should be allowed to offset investment income from partnerships.

Explanation of Provision

Under the bill, a certain amount of the distributive share of section 212 expenses of a partner in a partnership is deductible by an individual for AMT purposes. The aggregate amount deductible for AMT purposes is limited to the lesser of (1) the aggregate of the individual's adjusted investment income from partnerships or (2) the excess of the aggregate of the taxpayer's distributive shares of section 212 expenses over two percent of the taxpayer's adjusted gross income. For purposes of the bill, "adjusted investment income" means investment income (as defined by sec. 163(d)(4)(B) so as not to be reduced by sec. 212 expenses) reduced by investment interest (as defined by section 163(d)(3) so as not to be reduced by the limitation applicable to investment interest).

For example, assume that for 1993, the only items of taxable income of an individual are from an interest in a partnership. For the year, the partnership reports $30,000 of investment income, $10,000 of section 212 expenses, and $25,000 of investment interest to the individual. Under the bill, the individual would be allowed to deduct $5,000 of section 212 expenses for AMT purposes ($30,000 investment income less $25,000 investment interest).

As a further example, assume that for 1993, the individual described in the example above also receives a salary of $270,000. Under the bill, the individual would be allowed to deduct $4,000 of section 212 expenses for AMT purposes ($10,000 less 2 percent of adjusted gross income of $300,000 ($6,000)).

Effective Date

The provision is effective for taxable years beginning after 1992.

14. Treatment of unpaid child support (sec. 8215 of the bill and secs. 103 and 166 of the Code)

Present Law

Individual taxpayers generally are allowed a deduction for a debt that becomes worthless, provided that the debt was created or acquired in connection with the taxpayer's trade or business. However, individuals may not claim a bad-debt deduction for a nonbusiness debt that becomes worthless (sec. 166(d)).

A taxpayer generally realizes income by the nongratuitous discharge of an indebtedness owned by the taxpayer (sec. 61(a)(12)).

The Internal Revenue Service (IRS) is required to withhold from a tax refund otherwise due an individual an amount equal to delinquent child support payments if it receives notice from a State child support agency that the individual owes past-due support (1) that has been assigned to the State as a condition of eligibility for Aid to Families with Dependent Children (AFDC), or (2) for certain non-AFDC families with minor children (sec. 6402(c)). Refunds so withheld generally are remitted to the State that has been assigned the right to collect the past-due support under the Social Security Act.

Reasons for Change

The committee believes it is appropriate to allow a bad-debt deduction to certain par-

ents that have not received past-due child support payments. The committee also believes it is appropriate to impute discharge of indebtedness income to a parent who fails to pay required child support payments, which should provide an additional incentive for delinquent parents to make such payments.

Explanation of Provision

The bill allows certain taxpayers who are owed past-due child support payments of at least $500 to claim a bad-debt deduction.[1] Under the provision, the past-due payments generally must be delinquent for at least one year. The deduction claimed may not exceed $5,000 per child per year, and is not available to a taxpayer whose adjusted gross income (AGI) exceeds $50,000.[2]

The deduction applies with respect to child support payments[3] owed with respect to a qualifying child[4] of the taxpayer, if such payments are required to be paid to the taxpayer under a support instrument that is (1) a decree of divorce or separate maintenance or a written instrument incident to such a decree, (2) a written separation agreement, or (3) a decree of a court or administrative agency requiring a parent to make payments for the support or maintenance of one or more children of such parent. Under the provision, the deduction is allowed only if the taxpayer has not assigned the collection rights to the support payments to a State AFDC agency under section 402(a)(26) of the Social Security Act (42 U.S.C. 602(a)(26)).

The deduction provided for by the bill is allowed in determining AGI (above-the-line), regardless of whether the taxpayer itemizes deductions or claims the standard deduction. In addition, the provision requires the inclusion of the amount of unpaid child support payments in the gross income of the delinquent parent by reason of discharge of indebtedness.[5]

Under the provision, if the child support is collected after the deduction is taken, the taxpayer claiming such a deduction is required to include the payment in gross income for the taxable year in which the payment is received (and the taxpayer making the subsequent payment is entitled to a deduction for the taxable year in which such payment is made).

The bill especially provides that it shall not be construed to affect the right of an individual or State to receive any child support payment, or the obligation of an individual to pay child support.

Effective Date

The provision is effective for taxable years beginning after December 31, 1992.

15. Treatment of certain residual-market insurance companies under the alternative minimum tax (sec. 8216 of the bill and sec. 56(d) of the Code)

Present Law

Many States have established not-for-profit associations to provide automotive or other types of property or casualty insurance to persons who otherwise could not obtain or afford such insurance. These associations, which are commonly referred to as residual-market insurance associations, generally are subject to Federal income tax on any income that is not derived from the exercise of an essential government function or that does not accrue to the State or a political subdivision thereof (sec. 115).

A residual-market insurance association that is subject to Federal income tax may be subject to the alternative minimum tax. Under the alternative minimum tax, the alternative tax net operating loss deduction may only offset 90 percent of alternative minimum taxable income (determined without regard to the alternative tax net operating loss deduction).

Reasons for Change

The committee believes that not-for-profit, residual-market insurance associations serve an important social policy objective by providing insurance to persons who otherwise could not obtain or afford such insurance. Consequently, the committee believes that these associations should be provided relief from the alternative minimum tax limitation on the use of net operating losses.

Explanation of Provision

Any insurance company that is created by a State or an instrumentality thereof and that is operated on a not-for-profit basis exclusively to provide coverage to persons for high-risk needs where coverage is not otherwise available or affordable may use its alternative tax net operating loss deduction to offset 100 percent (rather than 90 percent) of alternative minimum taxable income.

Effective Date

The provision applies to taxable years ending after the date of enactment of the Act.

[1] Under the bill, the $500 threshold applies to the total of past-due payments owed with respect to all qualifying children of the taxpayer. If this threshold is exceeded, the total amount, including the first $500 (but not exceeding $5,000 per child) is deductible.

[2] The $500, $5,000, and $50,000 amounts are adjusted for inflation after 1992.

[3] The term "child support payment" is defined as a payment for support of a qualifying child, if such payment is either (1) any periodic payment of a fixed amount, or (2) any payment of a medical or educational expense, insurance premium, or similar item.

[4] For purposes of the provision, the term "qualifying child" means a child of with respect to whom a deduction is allowable to the taxpayer under section 151 for the taxable year (generally applying to any son, stepson, daughter, or stepdaughter of the taxpayer over half of whose support for the year was received from the taxpayer and (1) whose gross income for the year is less than the personal exemption amount, or (2) is younger than 19 years old or is a student younger than 24 years old).

[5] On the taxpayer's return claiming the deduction provided for by the provision, the taxpayer is required to include the taxpayer identification number (TIN) of each child with respect to whom support payments are owed and the delinquent parent (unless the taxpayer certifies that the delinquent parent's TIN is not known). The provision also requires the taxpayer claiming the deduction to notify the delinquent parent of the amount of the deduction claimed and that the delinquent parent is required to include such amount in gross income for the taxable year beginning in the preceding calendar year. The IRS is required to provide this notice if the delinquent parent's address is not known to the taxpayer but is available to the IRS.

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. BENTSEN (for himself and Mr. PACKWOOD):

S. 3120. A bill to amend title XIX of the Social Security Act to make technical corrections and clarifications related to sections 4401 through 4801 of the Omnibus Budget Reconciliation Act of 1990, and to make conforming medicare amendments; to the Committee on Finance.

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 3121. A bill to grant Federal recognition to the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians, to clarify the status of members of the Bands, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. BENTSEN (for himself, Mr. JOHNSTON, and Mr. BREAUX):

S. 3122. A bill to establish a commission, with Federal, State, and private representation, for the purpose of promoting the environmental and economic interests of the Gulf of Mexico; to the Committee on Environment and Public Works.

By Mr. SEYMOUR:

S. 3123. A bill to amend the Internal Revenue Code of 1986 to modify the involuntary conversion rules for certain disaster-related conversions; to the Committee on Finance.

By Mr. AKAKA:

S. 3124. A bill to amend the Consolidated Farm and Rural Development Act and the Farm Credit Act of 1971 to establish a program to aid beginning farmers and ranchers, to improve the operation of the Farmers Home Administration, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MCCAIN (for himself and Mr. DECONCINI):

S. 3125. A bill to amend the Southern Arizona Water Rights Settlement Act of 1982; to the Select Committee on Indian Affairs.

By Mr. EXON (for himself and Mr. KERREY):

S. 3126. A bill to extend a time limitation with respect to the economic development plan of the Ponca Tribe of Nebraska; to the Select Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. JOHNSTON (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 323. Resolution to authorize testimony and production of documents by an employee of the Senate in Marian Mixon v. U.S. Department of the Treasury; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENTSEN (for himself and Mr. PACKWOOD):

S. 3120. A bill to amend title XIX of the Social Security Act to make technical corrections and clarifications related to sections 4401 through 4801 of the Omnibus Budget Reconciliation Act of 1990, and to make conforming medicare amendments; to the Committee on Finance.

MEDICAID TECHNICAL CORRECTIONS AND CLARIFICATION ACT OF 1992

• Mr. BENTSEN. Mr. President, today Senator PACKWOOD and I are introducing a package of amendments to title XIX of the Social Security Act to clarify and make technical corrections to the Medicaid provisions included in the Omnibus Budget Reconciliation Act of 1990. The bill also includes conforming amendments to the nursing home reform provisions in title XVIII of the

Social Security Act—Medicare. The Congressional Budget Office has informed us that the amendments will involve no additional cost to the Medicaid or Medicare programs.

I fully expect that all interested parties will view these amendments as improvements of current law, and hope that our colleagues will support them. Most of the amendments are strictly minor and technical corrections. Some, however—particularly those relating to the prescription drug rebate program—are intended to clarify ambiguities or correct problems that have surfaced as the law has been implemented. Accordingly, we are introducing the amendments well in advance of their consideration by the Finance Committee so that interested parties have ample time to review and comment on these provisions and, if necessary, identify any unintended consequences of the proposed modifications to current law.●

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 3121. A bill to grant Federal recognition to the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottowa Indians, to clarify the status of members of the Bands, and for other purposes; to the Select Committee on Indian Affairs.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS AND LITTLE RIVER BAND OF OTTOWA INDIANS ACT

Mr. RIEGLE. Mr. President, I am pleased to join Senator LEVIN as a cosponsor of legislation to provide Federal recognition for the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. These tribes have a strong case for seeking Federal recognition through Congress, and I support them.

The members of these tribes are descendants of those who signed the 1836 Treaty of Washington and the 1855 Treaty of Detroit. They have maintained tribal governments through the present and have had continuous dealings with the Federal Government.

The variety of recognition processes the Federal Government has created since the 1930's have not worked correctly with regard to these tribes. In 1935, these tribes applied for recognition under the Wheeler-Howard Act and met all requirements to be recognized, but were denied formal recognition because of budgetary shortfalls and problems with the bureaucracy. They maintained viable tribal governments through the intervening years and have attempted to obtain recognition through the current Federal approval process.

Both the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians have a long and rich history that extends well before the first Europeans entered the Great Lakes area. These tribes have a strong cultural identity that has survived many years of hostility from European settlers and the U.S. Government. I believe that we have an obligation to do what we can to mend our relationship with these tribes and I am hopeful that Congress will move forward with this 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. 3121

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 "Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians are descendants of, and political successors to, signatories of the 1836 Treaty of Washington and the 1855 Treaty of Detroit.

(2) The Grand Traverse Band of Ottawa and Chippewa Indians, the Sault Saint Marie Tribe of Chippewa Indians, and the Bay Mills Band of Chippewa Indians, whose members are also descendants of the signatories to the 1836 Treaty of Washington and the 1855 Treaty of Detroit, have been recognized by the Federal Government as distinct Indian tribes.

(3) The Little Traverse Bay Bands of Odawa Indians consist of at least 1,000 eligible members who continue to reside close to their ancestral homeland in what is now Emmett and Charlevoix Counties, Michigan.

(4) The Little River Band of Ottawa Indians consists of at least 500 eligible members who continue to reside close to their ancestral homeland in what is now Manistee and Mason Counties, Michigan.

(5) The Bands filed for reorganization of their existing tribal governments in 1935 under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"). Federal agents who visited the Bands, including Commissioner of Indian Affairs, John Collier, who authored the Act, attested to the continued social and political existence of the Bands and concluded that the Bands were eligible for reorganization. Due to a lack of Federal appropriations to implement the provisions of such Act, the Bands were denied the opportunity to reorganize.

(6) In spite of such denial, the Bands continued their political and social existence with viable tribal governments. The Bands, along with other Michigan Odawa/Ottawa groups, including the tribes described in paragraph (2), formed the Northern Michigan Ottawa Association in 1946. The Association subsequently pursued a successful land claim with the Indian Claims Commission.

(7) Between 1946 and 1975, the Bands carried out their governmental functions through the Northern Michigan Ottawa Association.

(8) In 1975, the Northern Michigan Ottawa Association petitioned under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act), to form a government on behalf of the Bands. Again in spite of the Bands' eligibility, the Bureau of Indian Affairs failed to act on their request.

(9) The United States Government, the government of the State of Michigan, and local governments have had continuous dealings with the recognized political leaders of the Bands from 1836 to the present.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "Bands" means the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians;

(2) the term "member" means those individuals eligible for enrollment in the Bands pursuant to section 5; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 4. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—Federal recognition is hereby extended to the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians. All laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians, including the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"), which are not inconsistent with any specific provisions of this Act shall be applicable to the Bands and their members.

(b) FEDERAL SERVICES AND BENEFITS.—The Bands and their members shall be eligible, on and after the date of the enactment of this Act, for all Federal services and benefits furnished to federally recognized tribes or their members without regard to the existence of reservations for the Bands.

SEC. 5. MEMBERSHIP.

Not later than 18 months after the date of the enactment of this Act, the Bands shall submit to the Secretary membership rolls consisting of all individuals eligible for membership in such Bands. The qualifications for inclusion on the membership rolls of the Bands shall be determined by the membership clauses in such Bands' respective governing documents, in consultation with the Secretary. Upon completion of the rolls, the Secretary shall immediately publish notice of such in the Federal Register. The Bands shall ensure that such rolls are maintained and kept current.

SEC. 6. CONSTITUTION AND GOVERNING BODY.

(a) CONSTITUTION.—

(1) ADOPTION.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall conduct, by secret ballot, elections for the purpose of adopting new constitutions for the Bands. The elections shall be held according to the procedures applicable to elections under section 16 of the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act").

(2) INTERIM GOVERNING DOCUMENTS.—Until such time as new constitutions are adopted under paragraph (1), the governing documents in effect on the date of the enactment of this Act shall be the interim governing documents for the Bands.

(b) OFFICIALS.—

(1) ELECTION.—Not later than 6 months after the Bands adopt constitutions and bylaws pursuant to subsection (a), the Secretary shall conduct elections by secret ballot for the purpose of electing officials for the Bands as provided in the Bands' respective constitutions. The elections shall be conducted according to the procedures described in subsection (a), except to the extent that such procedures conflict with the Bands' constitutions.

(2) INTERIM GOVERNMENTS.—Until such time as the Bands elect new officials pursuant to paragraph (1), the Bands' governing

bodies shall be those governing bodies in place on the date of the enactment of this Act, or any new governing bodies selected under the election procedures specified in the respective interim governing documents of the Bands.

By Mr. BENTSEN (for himself, Mr. JOHNSTON, and Mr. BREAUX):

S. 3122. A bill to establish a commission, with Federal, State, and private representation, for the purpose of promoting the environmental and economic interests of the Gulf of Mexico; to the Committee on Environment and Public Works.

GULF OF MEXICO COMMISSION ACT

• Mr. BENTSEN. Mr. President, I am introducing the Gulf of Mexico Commission Act of 1992, which will initiate a long-term effort to coordinate and manage one of the Nation's most economically vital and environmentally threatened resources—the Gulf of Mexico. I want to thank my distinguished colleagues from Louisiana, Senators BENNETT JOHNSTON and JOHN BREAUX, for joining me in introducing legislation that is intended to facilitate the goal of ensuring that the Gulf of Mexico receives the level of attention and support that it so richly deserves. The purpose of this act is to establish a Gulf of Mexico Commission that is comparable to existing Commissions for the Great Lakes and Chesapeake Bay.

Mr. President, the Gulf of Mexico is a national resource of major economic dimensions. It supplies more than half of our Nation's domestic fish and seafood. More than 90 percent of United States and Mexican oil production is derived from offshore drilling in the gulf. Payments to the U.S. Treasury from Outer Continental Shelf production leases have totaled $80 billion over the past 30 years, a sum exceeded only by Federal income tax revenues. Forty-five percent of our Nation's domestic import-export tonnage—$24 billion in shipments—passes through the gulf every year. Its recreation and resort industries contribute $10 billion yearly to our Nation's economy. Its shores are home to millions of Americans in five States. Its wetlands are habitat for three-quarters of North America's migratory waterfowl. Its depths are a breeding ground for numerous sport and commercial fish and shellfish.

Tragically, Mr. President, the Gulf of Mexico also is a resource in serious ecological jeopardy.

Three-fourths of the North American landmass drains its industrial, chemical, commercial, agricultural, automotive, and household wastes into the gulf. Discharge from marine vessels and oil spills sludge her waters. Debris from 33 nations accumulates on her shores. Oceanographers have determined that a large dead zone of oxygen depletion has developed in gulf waters off the coasts of Texas and Louisiana.

Concerns about human health have produced permanent or conditional closure of 3.4 million acres of shellfish-growing gulf beds. Further, erosion throughout the entire gulf is steadily devouring wetlands and barrier islands, thereby imperiling aquaculture, the gulf intracoastal waterway, and hurricane protection. In fact, I and several of my colleagues have been working very hard to address a severe erosion problem at Sargent Beach, TX, which poses an imminent threat to the gulf intracoastal waterway and its significant commercial traffic.

Mr. President, there is a serious imbalance between the significance of these issues and the attention devoted to them. It is clear that the substantial resources of the Gulf of Mexico are not receiving an appropriate level of support and attention.

Presently, the General Accounting Office is developing a comprehensive study of the level of Federal assistance provided to the Gulf of Mexico, in comparison to that provided to other estuaries like the Great Lakes, Chesapeake Bay and Gulf of Maine. That study will further compare the level of Federal assistance to the scope of the resource base found in each area. This study, though not yet complete, will provide important information that will facilitate the activities of the Commission. Preliminary findings made by the GAO and the Congressional Research Service support the contention that the gulf's resources do not receive an appropriate level of Federal support.

In this vein, Mr. President, I do not intend to minimize the significance of other navigable waterways, or to suggest that the level of support and attention directed at those waterways is inappropriate. Rather, I am asserting that the Gulf of Mexico does not receive the level of Federal, State, and local support that is commensurate with the significant impact of the gulf's resources on our Nation's environment and economy.

Fortunately, other Members of the House and Senate have also recognized the urgent need to address the current and long term problems faced by the gulf and have introduced relevant legislation. I applaud these efforts. In my view, the different bills are complementary and I look forward to working with my colleagues in both Houses to fashion legislation which combines the various ideas under a common and important theme—the preservation and development of the Gulf of Mexico.

Although the Gulf of Mexico Commission will have Federal representation, there is a distinct emphasis on State and local representation. I firmly believe that the various Gulf States should decide how best to preserve and develop the Gulf of Mexico, with input from the Federal Government.

Ultimately, I expect that the commission's findings and recommendations will form the basis for an interstate compact agreement that reflects a consensus among the five Gulf States as to a specific level of authority to be vested in the commission to act on their behalf and in the best interests of the gulf. Once such agreement is formalized, it may be submitted to Congress and the executive branch for approval as required by the Constitution. Then, the commission can officially represent the interests of the gulf and its surrounding States to the extent allowed in the interstate compact.

As set forth in this legislation, the Gulf of Mexico Commission would be a conduit through which all interested parties will work together to promote the environmentally sensitive preservation and development of the valuable resources found in the gulf region. The commission will take a balanced and comprehensive approach to reaching this goal that will effectively serve the gulf's long term best interests.

The commission will help guide the development, use, management, and conservation of the gulf in ways compatable with the gulf's industrial, commercial, agricultural, aquatic, residential, and recreational uses. To accomplish this objective, the commission will work closely with all governments, agencies, and organizations whose goals are to promote the preservation and development of the gulf's resources.

For example, the commission would strongly support programs such as the Environmental Protection Agency's Gulf of Mexico Program and those conducted by the Department of Commerce through the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service. Various other programs sponsored by Federal agencies such as the Departments of Energy, Interior, and Agriculture, as well as those sponsored by State and local governments, and private organizations, will be strongly supported. Ideally, the commission will be in a position to advocate increase funding for such programs and promote their various objectives.

The commission will strongly encourage the participation of the Mexican Government in the commission's activities and I hope that those Mexican states bordering the Gulf of Mexico will be especially active in supporting the commission's activities.

Mr. President, I would like to emphasize that the commission will not interfere with the myriad of positive activity already taking place with respect to the gulf, but will work diligently to promote and enhance these activities, while carefully examining the expediency of others. In the Great Lakes and Chesapeake Bay regions, their respective commissions have successfully worked with various Federal, State, and local agencies and organizations to promote the best interest of

those areas. I fully expect that a similar system of cooperative management can—and should—be implemented with respect to the Gulf of Mexico. With the support of Congress, the Gulf States, the private sector and the Government of Mexico, the Gulf Coast Commission can facilitate the development of such a system.

I urge all of my colleagues to join us in the effort to establish this Commission.•

Mr. BREAUX. Mr. President, I rise to join Senator BENTSEN as a cosponsor of the Gulf of Mexico Commission Act of 1992. This legislation is a recognition of the value of the Gulf of Mexico to our economy and our environment and it is a first step in undoing some of the damage that has been done to the gulf over the years.

As an environmental and commercial resource, the Gulf of Mexico is almost unparalleled in its significance to the United States as a whole. It is also a resource that has been ignored and overlooked for too long. The bill that we are introducing today is a visionary proposal and I am proud to be a part of the effort.

More than 50 percent of our Nation's domestic fish and seafood are pulled out of the gulf each year. Seventy-five percent of North America's migratory waterfowl depend on the gulf's wetlands as habitat.

More than 90 percent of the United States' and Mexico's oil production is derived from offshore drilling in the gulf.

Twenty-four billion dollars' worth of domestic import-export shipments go through gulf ports every year. This is equal to almost half of such annual tonnage.

The gulf's recreational and resort industries contribute $10 billion yearly to our Nation's economy and to the citizens of the five states that make up the gulf coast.

As a source of revenue to the Federal Government over the last 30 years the Gulf of Mexico has been second only to income tax revenue. Over $80 billion in payments to the Federal Treasury have come from Outer Continental Shelf oil production leases in the gulf.

Despite the incredible value of this resource to our economy, our way of life and the North American ecosystem, we have shown poor stewardship in protecting its value for current and future generations of Americans. The Mississippi River, which runs through Louisiana and empties into the gulf, carries with it vast amounts of agricultural, commercial, chemical, industrial, and municipal wastes from three-quarters of the land area of the lower 48 states. Biological "dead zones" have been discovered in the gulf's waters and the refuse of dozens of foreign nations have washed up on our shores. Millions of acres of shellfish beds have been closed for some period of time.

Man's activity in the gulf and in coastal areas has led to erosion of one of our most precious environmental resources—coastal wetlands. My State of Louisiana, which contains 40 percent of the Nation's coastal wetlands, is losing 40–60 square miles of coastal wetlands every year. Loss in Louisiana alone accounts for 80 percent of the coastal wetlands loss in the lower 48 states.

The legislation that we are introducing today is the first step in turning things around for the gulf. We need to begin to manage this resource on all levels for all of its potential uses, so that we can maintain its incredible value. My Cajun predecessors depended on the resources of the gulf for their way of life. I want those same resources to be available for my children and for their children. I don't want my generation's dependence on the gulf's resources to impair its value for them.

Our bill will establish a Gulf of Mexico Commission modeled on the successful commissions that have done so much to resuscitate the Great Lakes and the Chesapeake Bay. This commission will work to coordinate the activities of all of the Federal agencies involved in conserving, managing and using the gulf's resources and, most importantly, it will include representatives of State and local governments from the Gulf States.

In the case of the Great Lakes and the Chesapeake Bay, similar commissions drafted interstate agreements, known as compacts, that guided and continue to guide the rational use of these resources with the support of Federal recognition and sanction. It is our hope in introducing this legislation today that a similar process will be borne out for the management of the Gulf of Mexico.

Earlier in this Congress, I joined Senator BENTSEN and other Gulf States Senators in asking the General Accounting Office to measure the value of the Gulf of Mexico to our economy and way of life. At the same time, we asked GAO to take a look at the resources that are devoted to conserving the gulf's environmental resources and managing its economic potential. That report is not completed yet, but I am confident that it will show how badly needed this legislation really is.

Mr. President, I would again congratulate Senator BENTSEN for this important step forward. I urge my colleagues from all across this Nation, who will benefit from the gulf's resources, to join us in cosponsoring and supporting this legislation.

By Mr. DOLE (for Mr. SEYMOUR):

S. 3123. A bill to amend the Internal Revenue Code of 1986 to modify the involuntary conversion rules for certain disaster-related conversions; to the Committee on Finance.

MODIFICATION OF INVOLUNTARY CONVERSION RULES

• Mr. SEYMOUR. Mr. President, I am introducing today a bill that will provide some relief to the victims of Presidentially declared disasters. While this legislation will not lessen the heartache and suffering that these people have endured, these simple revisions to the tax code will hopefully assist disaster victims in rebuilding their lives more quickly.

As you may recall, searing brush fires cut a swath through 1,900 acres in California's East Bay communities last October 20. This whirlwind firestorm claimed 25 lives and destroyed over 3,000 homes, leaving most victims with nothing more than the clothes on their backs. And, if this was not enough, victims now face Federal tax rules that inhibit their ability to restore their devastated lives.

My bill, Mr. President, provides three very simple, but effective, revisions to the tax code in an effort to help victims who have lost homes and/or personal property in Presidentially declared disasters.

First, my bill extends the time to rebuild or purchase a principal residence from 2 to 4 years, allowing victims more time to reinvest their insurance proceeds without being unfairly penalized by the Internal Revenue Service. And because entire communities are normally destroyed in these disasters, the rebuilding effort is made much more difficult and time-consuming.

Second, my bill allows an aggregate reporting of all items lost in a disaster, as opposed to an item by item listing as required by current law. In many cases, victims have lost hundreds, if not thousands, of personal items. It is extremely unfair to force disaster victims to endure this very cumbersome, if not impossible, task.

Third, my legislation allows insurance proceeds from personal property and real property to be lumped together in one common fund. Under current law, proceeds from personal property losses must be used to replace personal property. Likewise, real property proceeds must be used to replace real property. Simply, this provision allows the victim to allocate insurance proceeds to replace real and personal property as the victim sees fit, without the fear of incurring a taxable gain.

The victims of the Oakland firestorm, as well as other disasters, have had their lives turned upside down. In these instances, priorities certainly change. It is, therefore, important that we give these victims the flexibility to make these changes.

While my legislation was prompted by the Oakland firestorm of last October, it is important to keep in mind that my bill will assist victims of each and every Presidentially declared disaster occurring on or after September 1, 1991. And, we can provide these relief with little cost. The Joint Tax Committee estimates the revenue loss of this legislation as negligible.

Mr. President, there is not one State in our Nation that has not been hit by

one disaster or another. And, most definitely, we can expect another disaster to disrupt our lives again. While in some cases we may predict the proximate location of an expected hurricane along the eastern seaboard and gulf coast, a tornado in the Midwest, or an earthquake in California, it is truly impossible to predict the death and destruction handed down by Mother Nature.

I urge my colleagues to support this important legislation.

I ask unanimous consent that the text of my bill be printed in the RECORD following my remarks.

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

S. 3123

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

SECTION 1. MODIFICATION OF INVOLUNTARY CONVERSION RULES FOR CERTAIN DISASTER-RELATED CONVERSIONS.

(a) IN GENERAL.—Section 1033 of the Internal Revenue Code of 1986 (relating to involuntary conversions) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) SPECIAL RULES FOR PRINCIPAL RESIDENCES DAMAGED BY PRESIDENTIALLY DECLARED DISASTERS.—

"(1) IN GENERAL.—If the taxpayer's principal residence or any of its contents is compulsorily or involuntarily converted as a result of a Presidentially declared disaster—

"(A) TREATMENT OF INSURANCE PROCEEDS.—

"(i) EXCLUSION FOR UNSCHEDULED PERSONAL PROPERTY.—No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

"(ii) OTHER PROCEEDS TREATED AS COMMON FUND.—In the case of any insurance proceeds (not described in clause (i)) for such residence or contents—

"(I) such proceeds shall be treated as received for the conversion of a single item of property, and

"(II) any property which is similar or related in service or use to the residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

"(B) EXTENSION OF REPLACEMENT PERIOD.—Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting '4 years' for '2 years'.

"(2) PRESIDENTIALLY DECLARED DISASTER.—For purposes of this subsection, the term 'Presidentially declared disaster' means any disaster which, with respect to the area in which the residence is located, resulted in a subsequent determination by the President that such area warrants assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act.

"(3) PRINCIPAL RESIDENCE.—For purposes of this subsection, the term 'principal residence' has the same meaning as when used in section 1034, except that no ownership requirement shall be imposed."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property compulsorily or involuntarily converted as a result of disasters for which the determination referred to in section 1033(h)(2) of the Internal Revenue Code of 1986 (as added by this section) is made on or after September 1, 1991, and to taxable years ending on or after such date.●

By Mr. AKAKA:

S. 3124. A bill to amend the Consolidated Farm and Rural Development Act and the Farm Credit Act of 1971 to establish a program to aid beginning farmers and ranchers, to improve the operation of the Farmers Home Administration, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FARMING OPPORTUNITY ACT

● Mr. AKAKA. Mr. President, today I am introducing the Farming Opportunity Act, a bill to target credit assistance to those who need it most—beginning farmers.

Anyone familiar with farming should be alarmed by the dramatic decline in the number of farmers and the advancing age of our farm population. Last month the Census Bureau announced that the average age of our farmers continues to grow older and that farm population has once again declined.

The average farmer is 52 years of age, compared to an average of 33 years for nonfarmers. Today, there are twice as many farmers over the age of 60 as there are below the age of 35. As our aging farm population retires, we must ask ourselves: Where will the next generation of farmers come from?

Clearly we are not doing enough to attract rural youth to farming. All too often, young people with farm backgrounds don't follow in their parents' footsteps. Often this occurs at their parents' urging. Farming simply has too many barriers to remain attractive to young people.

Gone are the days when, if you had land, labor, and a little cash, you could make a go at farming. Modern farms are capital intensive businesses. Ask struggling young farmers about the greatest challenge they face, and the near-universal response you will hear is "access to credit."

The Federal Government simply has not done enough to help beginning farmers establish themselves or remain in business. In part, this is because the Farmers Home Administration has forsaken its central mission of extending credit to beginning farmers until their operations can become viable. The legislation I introduce today is a companion measure to H.R. 2401, introduced by Representative PENNY, and is designed to redirect the lending priorities of the Farmers Home Administration.

Under this bill, a new FmHA loan program would be established to assist persons interested in pursuing farming, ranching and aquaculture as their primary occupation. It specifically targets the beginning farmer—individuals who have not previously operated a farm or have operated farms for less then 5 years.

To relieve assistance under the Farming Opportunity Act, an applicant must agree to participate in loan assessment, borrower training and financial management programs under the Department of Agriculture. An applicant must be able to demonstrate that after 10 years the farming operation will be viable without further FmHA loans. Finally, the measure creates a special downpayment loan program so that these farmers can achieve the dream of owning their own farm.

Nowhere would such a program have greater benefit that in Hawaii. Due to a number of recent developments, we have an abundance of idle farmland and a growing rural labor pool.

Last Friday, the big island's second largest sugar plantation, Mauna Kea Agribusiness, announced that it would cease farming sugarcane. Beginning in November, nearly 9,000 acres of caneland will be converted to other agricultural uses.

One-third of the land producing sugarcane 20 years ago is no longer being cultivated today. By the time that Mauna Kea's sugar operations have come to an end, Hawaii's cane acreage will have declined by 85,000 acres. If past experience is a guide, only 12 percent will be planted in other crops.

There is an ample supply of good farmland in Hawaii. In addition to the changes planned by Mauna Kea Sugar, there is evidence that additional farm acreage may be available soon. As a means of raising capital in order to reduce its debt, the big island's Hamakua Sugar Co. has announced plans to sell nearly 2,000 acres at Laupahoehoe. The land will be subdivided into small agricultural lots and offered for sale to current and former Hamakua employees, and to nearby residents.

In another development, the 9,600-acre Mauna Kea Ranch was recently subjected to a foreclosure sale. While the new landowner has not announced its intentions about the use of this property, ranching or agriculture appears to be the only conceivable land use. Further reductions in Hawaii's sugar acreage remain a possibility, as the Hawaiian sugar industry gets caught in a squeeze between static or declining sugar prices and higher production costs.

Rising unemployment, especially on the neighbor islands, means that there is a labor pool capable of becoming the next generation of Hawaii's farmers. On the big island, unemployment is 3.1 percent above the statewide average. Molokai is 4.3 percent above the State average, while Maui's unemployment is 1.3 percent above the State as a whole.

The neighbor island economy has been hard hit by a downturn is sugar and tourism. The Farming Opportunity Act can offer a shot in the arm for our lagging economy. Many sugar workers have spent their lives in agriculture, and I want to ensure that they can continue to find employment in farming.

Agriculture has always been the economic backbone of rural Hawaii. The

decline of sugar means that we must turn to other crops if we are to preserve the economic health of the neighbor islands. The best way to achieve this transition is to promote new ventures in diversified agriculture by targeting credit assistance to beginning farmers.

There is no magic answer to the problems that precipitated Mauna Kea's decline. But I am committed to finding solutions that will maintain a strong and healthy economy in rural Hawaii.

Fortunately, Hawaii has an abundance of good agricultural land as well as ambitious young people capable of farming successfully. What is lacking is a credit program specifically designed for the needs of beginning farmers. Through the Farming Opportunity Act, we can establish a new generation of farmers who will produce diversified crops that are in demand in mainland and overseas markets.

Mr President, I ask unanimous consent that a copy of the bill be printed in the RECORD at the conclusion of my statement.

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

S. 3124

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 "Farming Opportunity Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. LIMITATION ON AGGREGATE INDEBTEDNESS.

The first sentence of section 305 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1925) is amended by striking "and 310D" and inserting "310D, and 310E".

SEC. 3. FEDERAL-STATE BEGINNING FARMER PARTNERSHIP.

(a) COORDINATION OF ASSISTANCE FOR ELIGIBLE BEGINNING FARMERS AND RANCHERS.—Section 309 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929) is amended by adding at the end the following new subsection:

"(i)(1) Within 60 days after any State expresses to the Secretary, in writing, a desire to coordinate the provision of financial assistance to eligible beginning farmers and ranchers in the State, the Secretary and the State shall conclude a joint memorandum of understanding that shall govern how the Secretary and the State are to coordinate the assistance.

"(2) The memorandum of understanding shall provide that if a State beginning farmer program makes a commitment to provide an eligible beginning farmer or rancher (as defined in section 310E(e)) with financing to establish or maintain a viable farming or ranching operation, the Secretary shall, subject to applicable law, normal loan approval criteria, and the availability of funds, provide the farmer or rancher with—

"(A) a downpayment loan under section 310E;

"(B) a guarantee of the financing provided by the State program; or

"(C) such a loan and such a guarantee.

"(3) The Secretary may not charge any person any fee with respect to the provision of any guarantee under this subsection.

"(4) As used in paragraph (1), the term 'State beginning farmer program' means any program that is—

"(A) carried out by, or under contract with, a State; and

"(B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.".

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT; PURPOSE.—Within 18 months after the date of the enactment of this Act, the Secretary of Agriculture shall establish an advisory committee, to be known as the "Advisory Committee on Beginning Farmers and Ranchers", which shall provide advice to the Secretary on—

(A) the development of the program of coordinated assistance to eligible beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section);

(B) ways to maximize the number of new farming and ranching opportunities created through the program;

(C) ways to encourage States to participate in the program;

(D) the administration of the program; and

(E) other methods of creating new farming or ranching opportunities.

(2) MEMBERSHIP.—The Secretary shall appoint the members of the Advisory Committee which shall include representatives from the following:

(A) The Farmers Home Administration.

(B) State beginning farmer programs (as defined in section 309(i)(3) of the Consolidated Farm and Rural Development Act).

(C) Commercial lenders.

(D) Private nonprofit organizations with active beginning farmer or rancher programs.

(E) The Cooperative Extension Service.

(F) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers.

(G) Other specialists in lending or technical assistance for beginning farmers and ranchers.

SEC. 4. BEGINNING FARMER AND RANCHER PROGRAM.

(a) OPERATING LOANS; GUARANTEES OF OPERATING LOANS.—Subtitle B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1941 et seq.) is amended by adding at the end the following new section:

"SEC. 316. ASSISTANCE TO BEGINNING FARMERS AND RANCHERS.

"(a) IN GENERAL.—

"(1) ASSISTANCE.—The Secretary shall provide assistance in accordance with this section to enable individuals to conduct viable farming or ranching operations.

"(2) INDIVIDUAL DEFINED.—As used in this section, the term 'individual' means—

"(A) a natural person who has not operated a farm or ranch or has operated a farm or ranch for not more than 5 years; or

"(B) an entity (other than a corporation)—

"(i) all of whose owners or members are related by blood or marriage; and

"(ii) each of whose owners and members has not operated a farm or ranch or has operated a farm or ranch for not more than 5 years.

"(b) SUBMISSION OF PLAN OF FARM OPERATION.—An individual may seek assistance under this section for a proposed or ongoing farming or ranching operation by submitting to the county committee of the county in which the operation is (or is to be) located, not later than 60 days before the assistance is to be first provided, a plan that—

"(1) describes, for each of the first 5 years for which assistance under this section is sought for the operation—

"(A) how the operation is to be conducted;

"(B) the types and quantities of commodities to be produced by the operation;

"(C) the production methods and practices to be employed by the operation;

"(D) the conservation measures to be taken in the operation;

"(E) the equipment needed to conduct the operation (including any expected replacements for the equipment) and, with respect to each item of needed equipment, whether the individual owns, leases, or otherwise has access to the item, or proposes to purchase, lease, or otherwise gain access to the item;

"(F) the expected income and expenses of the operation;

"(G) the expected credit needs of the operation, including the types and amounts of assistance to be sought under this section; and

"(H) the site or sites at which the operation is (or is to be) located; and

"(2) projects the financial status of the operation after assistance under this section has been provided for such period, not to exceed 10 years, as is necessary for the operation to become financially viable without further assistance from the Secretary.

"(c) DETERMINATIONS BY THE COUNTY COMMITTEE; APPROVAL OF PLAN.—The county committee shall approve a plan submitted by an individual in accordance with subsection (b) if the county committee determines that—

"(1) the individual has not operated a farm or ranch, or has operated a farm or ranch for not more than 5 years;

"(2) during the 5-year period ending with the submission of the plan, the individual has had sufficient education and experience to indicate that the individual is able to conduct a successful farming or ranching operation, as the case may be;

"(3) the individual owns, leases, or has a commitment to have leased to the individual the site or sites of the operation;

"(4) there is, or will be, available to the individual equipment sufficient to conduct the operation in accordance with the plan;

"(5) the individual agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require; and

"(6) the individual meets the requirements of paragraphs (1) and (3) of section 311(a).

"(d) DETERMINATION BY THE SECRETARY; APPROVAL OF APPLICATION FOR ASSISTANCE.—The Secretary shall approve an application for assistance under this section for an operation described in a plan approved by a county committee under subsection (c) if the Secretary determines that—

"(1) the operation (taking into account the types of agricultural commodities produced, and the average size of similar operations, in the area in which the operation is (or is to be) located) would generate income sufficient to cover the expenses of the operation, debt service, and adequate family living expenses of the individual, to the extent that other income would not cover the living expenses, if the operation received assistance under this section as provided for in the plan; and

"(2) not later than 10 years after first receiving assistance under this section, the operation will be financially viable without further assistance from the Secretary.

"(e) PROVISION OF ASSISTANCE.—

"(1) DETERMINATION OF COMMITMENT PERIOD.—

"(A) INITIAL DETERMINATION.—On approval of an application under subsection (d), the Secretary shall, subject to subparagraph (C), determine the period during which assistance under this section is to be provided for the operation described in the application (referred to in this subsection as the 'commitment period').

"(B) AUTHORITY TO EXTEND PERIOD; NO AUTHORITY TO REDUCE PERIOD.—At any time, the Secretary may, subject to subparagraph (C) and subsections (f) and (g), extend the duration of the commitment period. The Secretary may not reduce the duration of the commitment period.

"(C) LIMITATION.—The duration of any commitment period (including any extensions thereof) shall not exceed 10 years.

"(2) OPERATING LOANS; LOAN GUARANTEES.—

"(A) IN GENERAL.—To the extent that an applicant whose application is approved under subsection (d) is unable to obtain sufficient credit from commercial or cooperative lenders to finance the operation described in the application at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is (or is to be) located, for loans for similar purposes and periods of time) the Secretary shall, subject to the availability of funds for the loans and to subsections (f) and (g), make a commitment to the applicant—

"(i) for each of the 1st, 2nd, 3rd, and 4th years of the commitment period—

"(I) to make a loan under this subtitle to the applicant at the interest rate charged to low income, limited resource borrowers under this subtitle, in the amount specified in the plan contained in the application; or

"(II) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application)—

"(aa) a guarantee under section 309(h) for the repayment of 100 percent of the loan principal and interest; and

"(bb) if the Secretary determines that, despite the provision of the guarantee referred to in item (aa), the applicant will not qualify for such a loan, an interest subsidy payment sufficient to ensure that the effective rate of interest payable by the applicant on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans under this subtitle of comparable size and maturity;

"(ii) for each of the 5th, 6th, 7th, and 8th years of the commitment period—

"(I) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest; and

"(II) if the Secretary determines that, despite the provision of the guarantee referred to in subclause (I), the applicant will not qualify for such a loan, then—

"(aa) to offer the lender an interest subsidy payment in the amount necessary to ensure that the applicant qualifies for such a loan but not more than the amount necessary to ensure that the effective rate of interest on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans under this subtitle of comparable size and maturity; or

"(bb) if funds are not available for the interest subsidy payment described in item (aa), to provide to the applicant a loan under this subtitle that is comparable to one for which a person not receiving assistance under this section (but otherwise in the same situation as the applicant) would be eligible; and

"(iii) for each of the 9th and 10th years of the commitment period, to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of not more than 90 percent of the loan principal and interest.

"(B) SPECIAL RULE.—In the case of an application approved under subsection (d) with respect to which the commitment period is less than 10 years, the Secretary shall make the commitments described in subparagraph (A) for such portions of the commitment period as the Secretary considers appropriate.

"(3) LOANS OR GUARANTEES FOR NEW OR IMPROVED EQUIPMENT.—The Secretary shall make a commitment to any applicant whose application is approved under subsection (d) to provide the applicant with loans under this title or loan guarantees under section 309(h) to finance the acquisition, improvement, or repair of equipment needed in the operation described in the application if the plan contained in the application provides for the commitment, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purposes at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is (or is to be) located, for loans for similar purposes and periods of time) without a credit guarantee from the Farmers Home Administration.

"(4) PRIORITY IN PURCHASE OF INVENTORY EQUIPMENT; LOANS OR GUARANTEES FOR SUCH PURCHASES IN CERTAIN CASES.—During the commitment period, the Secretary shall—

"(A) accord the applicant whose application is approved under subsection (d) priority in the purchase of equipment in the inventory of the Farmers Home Administration necessary for the success of the operation described in the application; and

"(B) provide the applicant with loans under this title or loan guarantees under section 309(h) to finance the purchases if the plan contained in the application provides for the assistance, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for the purpose at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is (or is to be) located, for loans for similar purposes and periods of time) without a credit guarantee from the Farmers Home Administration.

"(5) OTHER KINDS OF ASSISTANCE.—During the commitment period, the Farmers Home Administration, the Agricultural Extension Service, the Soil Conservation Service, and the other entities of the Department of Agriculture shall provide the applicant with such other assistance and information as may be needed in developing and implementing the operation described in the application.

"(6) NO LOAN GUARANTEE FEES.—The Secretary may not charge a fee to any lender in connection with any loan guarantee provided in accordance with this subsection.

"(f) ANNUAL PLAN REVISIONS REQUIRED AS CONDITION OF CONTINUED ASSISTANCE.—The Secretary shall not provide assistance under this section for an operation for any particular year after the first year for which the assistance is provided, unless—

"(1) not later than 60 days before the assistance is to be first provided for the particular year, the plan describing the operation has been revised, based on the experience of the year preceding the particular year, to provide the information required by subsection (b) for the 5-year period beginning with the particular year (or, if shorter, the period beginning with the particular year and ending with the year in which the plan projects the operation as becoming financially viable); and

"(2) the county committee has approved the revised plan.

"(g) EFFECTS OF AVOIDABLE FAILURE TO ACHIEVE GOALS.—

"(1) TERMINATION OF COMMITMENTS.—The Secretary shall revoke any commitment for assistance made to an applicant under this section if the operation of the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure is due to circumstances beyond the control of the applicant and has not materially reduced the likelihood of the operation becoming financially viable.

"(2) SUSPENSION OF ELIGIBILITY FOR ASSISTANCE.—During the 3-year period that begins with the date the commitments made to an applicant are revoked under paragraph (1), the applicant shall not be eligible for assistance under this section.".

(b) DOWN PAYMENT LOAN PROGRAM.—Subtitle A of such Act (7 U.S.C. 1922 et seq.) is amended by adding at the end the following new section:

"SEC. 310E. DOWN PAYMENT LOAN PROGRAM.

"(a) IN GENERAL.—Notwithstanding any other section of this subtitle, the Secretary shall establish within the farm ownership loan program under this subtitle a program under which loans are made under this section to eligible beginning farmers and ranchers for down payments on farm ownership loans.

"(b) LOAN TERMS.—

"(1) PRINCIPAL.—Each loan made under this section shall be of an amount equal to 30 percent of the price of the farm or ranch to be acquired, unless the borrower requests a lesser amount.

"(2) INTEREST RATE.—The interest rate on any loan made under this section shall not exceed the lesser of—

"(A) 25 percent of the current average market yield on outstanding marketable obligations of the United States with maturities of 10 years; or

"(B) 3 percent.

"(3) DURATION.—Each loan under this section shall be made for a period of 10 years or less, at the option of the borrower.

"(4) REPAYMENT.—Each borrower of a loan under this section shall repay the loan to the Secretary in equal annual installments.

"(5) NATURE OF RETAINED SECURITY INTEREST.—The Secretary shall retain an interest in each farm or ranch acquired with a loan made under this section, which shall—

"(A) be secured by the farm or ranch;

"(B) be junior only to such interests in the farm or ranch as may be conveyed at the time of acquisition to the person from whom the borrower obtained a loan used to acquire the farm or ranch; and

"(C) require the borrower to obtain the permission of the Secretary before the borrower may grant an additional security interest in the farm or ranch.

"(c) LIMITATIONS.—

"(1) BORROWERS REQUIRED TO MAKE MINIMUM DOWN PAYMENT.—The Secretary shall not make a loan under this section to any borrower with respect to a farm or ranch if the contribution of the borrower to the down payment on the farm or ranch will be less than 10 percent of the price of the farm or ranch.

"(2) MAXIMUM PRICE OF PROPERTY TO BE ACQUIRED.—The Secretary shall not make a loan under this section with respect to a farm or ranch the price of which exceeds $250,000.

"(3) PROHIBITED TYPES OF FINANCING.—The Secretary shall not make a loan under this section with respect to a farm or ranch if the farm or ranch is to be acquired with financing that contains any of the following conditions:

"(A) The financing is to be amortized over a period of less than 30 years.

"(B) A balloon payment will be due on the financing during the 10-year period beginning on the date the loan is to be made by the Secretary.

"(d) ADMINISTRATION.—The Secretary shall, to the maximum extent practicable—

"(1) facilitate the transfer of farms and ranches from retiring farmers and ranchers to persons eligible for insured loans under this subtitle;

"(2) make efforts to widely publicize the availability of loans under this section among—

"(A) potentially eligible recipients of the loans;

"(B) retiring farmers and ranchers; and

"(C) applicants for farm ownership loans under this subtitle;

"(3) encourage retiring farmers and ranchers to assist in the sale of their farms and ranches to qualified beginning farmers and ranchers by providing seller financing; and

"(4) coordinate the loan program established by this section with State programs that provide farm ownership or operating loans for beginning farmers.

"(e) ELIGIBLE BEGINNING FARMER OR RANCHER DEFINED.—As used in this section, the term 'eligible beginning farmer or rancher' means an individual—

"(1) who is eligible for assistance under this title;

"(2) who has operated a farm or ranch for not less than 5 nor more than 10 years;

"(3)(A) in the case of an owner or operator of a farm or ranch, who, individually or with the immediate family of the owner or operator—

"(i) materially and substantially participates in the farm or ranch; and

"(ii) provides substantial day-to-day labor and management of the farm or ranch consistent with the practices in the State and county in which the farm or ranch is located; and

"(B) in the case of an individual seeking to own or operate a farm or ranch, who, individually or with the immediate family of the individual, will—

"(i) materially and substantially participate in the farm or ranch; and

"(ii) provide a majority of the day-to-day labor and management of the farm or ranch;

"(4) who agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require;

"(5) who does not own land or who, directly or through interests in family farm corporations, owns land the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches, as the case may be, in the county in which the individual is to obtain land is located, as reported in the most recent census of agriculture taken under section 142 of title 13, United States Code;

"(6) who demonstrates that the available resources of the individual and the spouse (if any) of the individual are not sufficient to enable the individual to continue farming or ranching on a viable scale; and

"(7) in the case of an individual whose application for assistance under section 318 has been approved by the Secretary, the individual meets the requirements of section 310F(b)(1).".

(c) AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.—Subtitle A of such Act (7 U.S.C. 1922 et seq.) is amended by adding after the section added by subsection (b) the following new section:

"SEC. 310F. AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.

"(a) ASSISTANCE PROHIBITED FOR A LIMITED PERIOD.—Except as otherwise provided in this section, if the Secretary approves the application of an individual for assistance under section 318, the Secretary may not make a loan under this subtitle to the individual or provide a guarantee under section 309(h) with respect to any farm real estate loan made to the individual.

"(b) AVAILABILITY OF DOWN PAYMENT LOANS.—After the applicable period, the Secretary may make an insured loan under this subtitle, or a down payment loan under section 310E, to an individual referred to in subsection (a) if—

"(1) throughout the applicable period, the individual conducted an operation for which assistance is provided under section 318 in accordance with the plan contained in the application for the assistance;

"(2) the plan provides for such a loan; and

"(3) the individual is otherwise eligible for the loan.

"(c) AVAILABILITY OF LOAN GUARANTEES.—After the applicable period, the Secretary may guarantee under section 309(h) the repayment of a commercial or cooperative loan made to an individual referred to in subsection (a) if—

"(1) throughout the applicable period, the individual conducted the operation for which assistance is provided under section 318 in accordance with the plan contained in the application for the assistance;

"(2) the plan provides for such a loan guarantee; and

"(3) the individual is otherwise eligible for the loan guarantee.

"(d) APPLICABLE PERIOD DEFINED.—As used in this section, the term 'applicable period' means—

"(1) in the case of an individual who, at the time the application referred to in this section was approved, had not operated a farm for more than 3 years, the first 5 years for which the individual is provided assistance under section 318; or

"(2) in any other case, the first 3 years for which the individual is provided assistance under section 318.".

(d) TARGETING OF FUNDS.—

(1) FARM OPERATING LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b) of such Act (7 U.S.C. 1994(b)) is amended by adding at the end the following new paragraph:

"(5) In expending the following percentages of the funds available for insured operating loans under subtitle B for any fiscal year beginning after the date of the enactment of this paragraph, the Secretary shall, to the maximum extent practicable, give priority to making such loans under section 318:

"(A) Not less than 20 percent, for the first 6 months of the 1st such fiscal year.

"(B) Not less than 30 percent, for the first 6 months 2nd and 3rd such fiscal years.

"(C) Not less than 40 percent, for the first 6 months 4th and 5th such fiscal years.

"(D) Not less than 50 percent, for the first 6 months of each of the succeeding fiscal years.".

(2) FARM OWNERSHIP LOANS.—

(A) PERCENTAGE OF INSURED FARM OWNERSHIP LOAN FUNDS RESERVED FOR BEGINNING FARMERS OR RANCHERS.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding at the end the following new subparagraph:

"(D)(i) To the extent not inconsistent with an exercise of authority under section 355, not less than the applicable percentage of the amounts available for insured farm ownership loans for any fiscal year shall be for such loans to beginning farmers or ranchers.

"(ii) For purposes of clause (i), the term 'applicable percentage' means—

"(I) 50 percent, for the first 6 months of each of the fiscal years 1994 and 1995; and

"(II) 80 percent for the first 6 months of each succeeding fiscal year, thereafter.".

(B) FUNDS RESERVED FOR DOWNPAYMENT LOAN PROGRAM.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraph added by subparagraph (A) the following new subparagraph:

"(E)(i) To the extent not inconsistent with an exercise of authority under section 355, not less than the applicable percentage of the amounts reserved for beginning farmers or ranchers under subparagraph (D) for any fiscal year shall be for downpayment loans under section 310E.

"(ii) For purposes of clause (i), the term 'applicable percentage' means—

"(I) 50 percent, for the first 6 months of each of the fiscal years 1994 and 1995; and

"(II) 80 percent for the first 6 months of each succeeding fiscal year, thereafter.".

(C) CERTAIN UNOBLIGATED DOWNPAYMENT LOAN PROGRAM FUNDS AVAILABLE FOR ANY TYPE OF INSURED FARM OWNERSHIP LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraph added by subparagraph (B) the following new subparagraph:

"(F) To the extent not inconsistent with an exercise of authority under section 355, any funds reserved for downpayment loans under section 310E for a fiscal year by reason

of subparagraph (E) that are not obligated by the end of the 2nd quarter of the fiscal year shall be available throughout the remainder of the fiscal year for any type of insured farm ownership loans, with priority to be given to beginning farmers and ranchers.".

(3) PORTIONS OF FARM OWNERSHIP LOAN GUARANTEE FUNDS TARGETED TO BEGINNING FARMERS OR RANCHERS.—Section 346(b)(2) of such Act (7 U.S.C. 1994(b)(2)) is amended by adding at the end the following new subparagraph:

"(F) Not less than 25 percent of the amounts appropriated for guarantees of farm ownership loans for the first 6 months of each of the fiscal years 1994, 1995, 1996, and 1997 shall be for guarantees of farm ownership loans to beginning farmers or ranchers.".

(4) INTEREST RATE ASSISTANCE PROGRAM.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraphs added by paragraph (1) of this subsection the following:

"(G) Not less than 40 percent of the amounts available for the interest rate reduction program under section 351 shall be reserved for the first 6 months of each fiscal year for assistance to beginning farmers or ranchers.".

(e) DEADLINE FOR ISSUANCE OF REGULATIONS.—Not later than October 1, 1993, the Secretary of Agriculture shall issue such interim final or final regulations as may be necessary to implement the amendments made by this section.

SEC. 5. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.

Subtitle B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1941 et seq.) (as amended by section 4(a) of this Act) is further amended by adding at the end the following new section:

"SEC. 319. GRADUATION OF BORROWERS ASSISTED UNDER THIS SUBTITLE TO PRIVATE COMMERCIAL CREDIT.

"(a) GRADUATION PLAN.—The Secretary shall establish a plan, in coordination with activities under sections 359, 360, 361, and 362, to encourage each borrower with an outstanding loan under this subtitle or with respect to whom there is an outstanding guarantee under this subtitle to graduate to private commercial or other sources of credit.

"(b) LIMITATION ON PERIOD FOR WHICH BORROWERS ARE ELIGIBLE FOR ASSISTANCE UNDER THIS SUBTITLE.—Notwithstanding any other provision of this subtitle:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the Secretary may not—

"(A) make a loan to a borrower under this subtitle for any year after the 10th year for which such a loan is made to the borrower; or

"(B) guarantee for any year a loan made to the borrower for a purpose specified in this subtitle, after the 15th year for which loans under this subtitle are made to, or such a guarantee is provided with respect to, the borrower.

"(2) TRANSITION RULE.—If, as of the date of the enactment of this section, the Secretary has made loans to a borrower under this subtitle for 10 or more years, or has provided guarantees for 10 or more years with respect to 1 or more loans made to the borrower for a purpose specified in this subtitle, the Secretary may not make a loan to the borrower under this subtitle, or provide such a guarantee with respect to a loan made to the borrower for a purpose specified in this subtitle, after the 5th year occurring after such date of enactment for which a loan is made under this subtitle to, or such a guarantee is provided with respect to, the borrower.".

SEC. 6. TIME PERIOD WITHIN WHICH COUNTY COMMITTEES ARE REQUIRED TO MEET TO CONSIDER APPLICATIONS FOR FARM OWNERSHIP AND OPERATING LOANS AND GUARANTEES AND BEGINNING FARMER PLANS.

Section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982) is amended—

(1) in subsection (c), by striking "The committee" and inserting "Subject to subsection (e), the committee"; and

(2) by adding at the end the following new subsection:

"(e) The county committee shall meet to consider approval of an application received by the committee for a loan under this title, a guarantee under section 309(h), or a plan of farm operation under section 318, within—

"(1) 5 days after receipt if at the time of the receipt there is at least 1 other such application or plan pending; or

"(2) 15 days after receipt if at the time of the receipt there are no other such applications or plans pending.".

SEC. 7. PERIOD FOR CERTIFICATION OF ELIGIBILITY FOR LOANS.

Section 333(2)(A)(iii) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983(2)(A)(iii)) is amended by striking "2 years" and inserting "5 years".

SEC. 8. PROCESSING OF APPLICATIONS FOR FARM OPERATING LOANS.

Section 333A(a)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a(a)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by inserting "(other than under subtitle B)" after "under this title"; and

(3) by adding at the end the following new subparagraph:

"(B)(i) Within 10 calendar days after the Secretary receives an application for an operating loan or loan guarantee under subtitle B, the Secretary shall notify the applicant of any information required before a decision may be made on the application. On receipt of such an application, the Secretary shall request from other parties such information as may be needed in connection with the application.

"(ii) Within calendar 15 days after the date an agency of the Department of Agriculture receives a request for information made pursuant to clause (i), the agency shall provide the Farmers Home Administration with the requested information.

"(iii) If, within 20 calendar days after the date a request is made pursuant to clause (i) with respect to an application, the Farmers Home Administration has not received the information requested, the Farmers Home Administration county office shall notify the applicant, in writing, as to the outstanding information.

"(iv) A county committee shall notify the district office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt, and the reasons the application is pending.

"(v) A district office that receives a notice provided under clause (iv) with respect to an application shall immediately take steps to ensure that final action is taken on the application within 15 days after the date of the receipt of the notice.

"(vi) The district office shall report to the State office of the Farmers Home Administration each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt by the county committee, and the reasons the application is pending.

"(vii) Each month, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on a State-by-State basis, as to each application for an operating loan or loan guarantee under subtitle B on which final action had not been taken within 60 days after receipt by the county committee, and the reasons final action had not been taken.".

SEC. 9. SIMPLIFIED APPLICATION FOR GUARANTEED LOANS OF $50,000 OR LESS.

Section 333A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a) is amended by adding at the end the following new subsection:

"(f)(1) The Secretary shall provide to lenders a short, simplified application form for guarantees, made under this title, of loans the principal of which is $50,000 or less.

"(2) In developing such an application, the Secretary shall consult with commercial and cooperative lenders. The Secretary shall ensure that—

"(A) the form can be completed either manually or electronically;

"(B) the form minimizes the documentation required to accompany the form;

"(C) the cost of preparation of the form is minimal; and

"(D) the form can be prepared and processed in an expeditious manner.".

SEC. 10. GRADUATION OF SEASONED DIRECT LOAN BORROWERS TO THE LOAN GUARANTEE PROGRAM.

Section 333A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a) (as amended by section 109 of this Act) is further amended by adding at the end the following new subsection:

"(g)(1) The Secretary shall, for each seasoned direct loan borrower, annually review the loans of each borrower. If, based on the review, the Secretary determines that a borrower would be able to obtain a loan, guaranteed by the Secretary, from commercial or cooperative lenders at reasonable rates and terms for loans for similar purposes and periods of time, the Secretary shall require the borrower to apply for and accept the commercial or cooperative loan, as a condition of obtaining assistance under this title.

"(2) Not later than 180 days after the date of enactment of this subsection, and annually thereafter, the Secretary may direct all county offices to make available to approved lenders a listing of all seasoned direct loan borrowers, as provided in regulations issued by the Secretary.

"(3) On request and on application for a guaranteed loan to an approved lender by a seasoned direct loan borrower, the Farmers Home Administration shall provide the approved lender with all current and past documentation relating to the approval and the continued compliance with the terms of the direct loan currently held by a seasoned direct loan borrower.

"(4) To the extent necessary for the borrower to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender, the Secretary shall provide interest rate reductions as provided for under section 351.

"(5) For purposes of this subsection:

"(A) The term 'approved lender' means a lender approved prior to the date of enactment of this subsection by the Secretary under the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations (as in effect on January 1, 1991).

"(B) The term 'seasoned direct loan borrower' means a borrower receiving a direct

loan under this title who has maintained a satisfactory borrowing relationship with the Farmers Home Administration for at least 24 consecutive months.".

SEC. 11. DEBT SERVICE MARGIN REQUIREMENTS.

Section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989) is amended—

(1) by striking "SEC. 340. The" and inserting the following:

"SEC. 339. RULES AND REGULATIONS.

"(a) IN GENERAL.—The"; and

(2) by adding at the end the following new subsections:

"(b) ADEQUATE INCOME.—Notwithstanding subsection (a), in providing farmer program loan guarantees under this title, the Secretary shall consider the income of the borrower adequate if the income is equal to or greater than the income necessary—

"(1) to make principal and income payments on all debt obligations of the borrower, in a timely manner;

"(2) to cover the necessary family living expenses; and

"(3) to pay all other obligations and expenses of the borrower not financed through debt obligations referred to in paragraph (1), including expenses of replacing capital items (determined after taking into account depreciation of the items).

"(c) CERTIFIED LENDERS PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a program under which the Secretary shall guarantee loans (other than loans with respect to which a guarantee is provided under section 318) for any purpose specified in subtitle B that are made by lending institutions certified by the Secretary.

"(2) CERTIFICATION REQUIREMENTS.—The Secretary shall certify any lending institution that meets such criteria as the Secretary may prescribe by regulation, including the ability of the institution to properly make, service, and liquidate the loans of the institution.

"(3) CONDITION OF CERTIFICATION.—As a condition of such certification, the Secretary shall require the institution to undertake to service the loans guaranteed by the Secretary under this subsection using generally accepted banking standards concerning loan servicing employed by prudent commercial or cooperative lenders. The Secretary shall, at least annually, monitor the performance of each certified lender to ensure that the conditions of the certification are being met.

"(4) EFFECT OF CERTIFICATION.—Notwithstanding any other provision of law, the Secretary shall—

"(A) guarantee 80 percent of a loan made by a certified lending institution as described in paragraph (1), without requiring the county committee to certify that the borrower meets the eligibility requirements or such other criteria as may be applicable to loans guaranteed by the Secretary under other provisions of this title;

"(B) permit a certified lending institution to make all decisions, with respect to loans guaranteed by the Secretary under this subsection, relating to creditworthiness and loan closing; and

"(C)(i) permit certified lending institutions to attach a guarantee on behalf of the Secretary if the Secretary fails to approve or reject the loan application within 14 calendar days of the date the lending institution presented the application to the Secretary; and

"(ii) if the Secretary rejects the loan application within 14 calendar days of the date the lending institution presented the application to the Secretary, state, in writing, the reasons the application was rejected.".

SEC. 12. TARGETING OF LOANS TO MEMBERS OF GROUPS WHOSE MEMBERS HAVE BEEN SUBJECTED TO GENDER PREJUDICE.

Section 355(e)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)(1)) is amended by striking "or ethnic" and inserting ", ethnic, or gender".

SEC. 13. RECORDKEEPING OF LOAN SUCCESS RATES BY GENDER.

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 et seq.) is amended by adding at the end the following new section:

"SEC. 369. RECORDKEEPING OF LOAN SUCCESS RATES BY GENDER.

"The Secretary shall classify, by gender, records of applicants for loans and guarantees under this title, and the default and delinquency rates for the loans and guarantees.".

SEC. 14. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on the date of the enactment of this Act.•

By Mr. MCCAIN (for himself and Mr. DECONCINI):

S. 3125. A bill to amend the Southern Arizona Water Rights Settlement Act of 1982; to the Select Committee on Indian Affairs.

SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT AMENDMENTS ACT

• Mr. MCCAIN. Mr. President, I am pleased to join with my colleague, the senior Senator from Arizona, Senator DECONCINI, in introducing today a series of amendments to the Southern Arizona Water Rights Settlement Act of 1982 [SAWRSA]. All members of Arizona's delegation in the House, Representatives ED PASTOR, JIM KOLBE, JAY RHODES, BOB STUMP, AND JON KYL, are introducing identical legislation.

This legislation is extremely important to the State of Arizona and to the citizens of the Tucson metropolitan area and of the Tohono O'odham Indian Nation in southern Arizona. It is important because it is about water, the fundamental element to any vision of life in the Sonoran desert. No city, no farm, no mine, no Indian reservation can survive today or in the future without water.

Seventeen years ago, the United States filed a lawsuit against the city of Tucson and other water users in the Tucson metropolitan area on behalf of the Tohono O'odham Nation and 2 of its 11 political subdivisions: the San Xavier and Schuk Toak districts.

That litigation, *U.S. v. Tucson*, raised fundamental questions about the sources and allocation of the area's water supplies. The prospect of years of litigation on these questions threatened the economic health and development of the Indian and non-Indian economies of southern Arizona.

After years of negotiations, Congress enacted the Southern Arizona Water Rights Settlement Act [SAWRSA] in 1982. SAWRSA was intended to provide a fair and equitable settlement of the Tohono O'odham Nation's water rights claims and to ensure conservation and wise management of water resources.

However, 10 years after SAWRSA was signed into law, the act has not been fully implemented, and U.S. versus Tucson has not been dismissed.

The legislation we introduce today would amend SAWRSA in an effort to deal with the ambiguities and issues that were unanticipated in 1982 and that have frustrated full implementation of the 1982 settlement and prevented dismissal of U.S. versus Tucson.

SAWRSA must be amended if the United States is to fulfill its trust obligations and commitments to the Tohono O'Odham Nation, and if it is to meet its parallel trust obligations to individual members of the Nation who own allotments of trust land within the San Xavier District.

SAWRSA must also be amended if we are to ensure that the more than one half million people in the Tucson metropolitan area can achieve the certainty about the sources and extent of their water supplies that is essential to managing those supplies effectively into the future.

To understand SAWRSA, why it has not been fully implemented, and why the litigation it was designed to end has not yet been dismissed, a brief review of the history of SAWRSA is necessary.

BACKGROUND: SAWARSA

The city of Tucson has long been the largest city in the United States entirely dependent on pumped groundwater for its municipal and industrial water supply. That water supply comes from several well fields located in the Santa Cruz and Avra/Altar Valley basins in eastern Pima County.

These two basins also supply water used by a number of copper mines, located adjacent to the San Xavier Reservation, whose combined production in 1980 was one-fourth of the total produced in the United States in that year. Other major water users are the Cortaro-Marana Irrigation District and the Farmers Investment Co.

By 1980 the consumptive use of groundwater pumped from the two water basins was exceeding renewable supplies by a ratio of more than four to one. This imbalance had resulted in long-term declines in local groundwater levels which raised concerns about increased pumping costs, reduction in well capacity, diminished water quality, and increased risk of land surface subsidence.

Recognizing the significance of the groundwater overdraft problem, water users in southern Arizona sought to implement conservation measures on a voluntary basis. Agricultural users worked to improve irrigation efficiency, mines realized considerable conservation through a variety of methods, and municipal customers of the city of Tucson, through voluntary conservation programs, reduced their average daily per capita demand from 205 gallons in 1974 to 140 gallons in 1979.

Further relief for the overdrawn groundwater basins is expected with the completion of the Central Arizona Project [CAP]. Authorized by Congress in 1968, the CAP is a massive system of 337 miles of canals and 14 pumping stations that will delver water from the Colorado River to supplement the existing water supplies of municipal, industrial, Indian, and agricultural users in central and southern Arizona. CAP is scheduled to begin water deliveries in the Tucson area by the end of 1992.

When the Interior Department's Bureau of Reclamation began construction of the CAP in 1972, ground water use in Arizona was largely unregulated. In the late 1970's, mindful of the groundwater overdraft problem, Interior Secretary Andrus insisted that Arizona place limitations on ground water use as a condition for continued funding for the Central Arizona Project. Interior also required that water users who contract for CAP water must reduce their groundwater pumping by one acre-foot for each acre-foot of Colorado River water they use.

Subsequently, the Arizona legislature enacted a landmark Groundwater Management Act. This act established the Arizona Department of Water Resources to enforce a new groundwater code, which identified four geographic units as Active Management Areas [AMA] to administer various uses and limitations on groundwater.

The Tucson Active Management Area [TAMA] corresponds to the geographic boundaries of the Upper Santa Cruz Valley Basin and the Avra/Altar Valley Basin. The goal of the TAMA is to achieve safe yield, a balance between ground water recharge and withdrawals, by January 1, 2025.

With a groundwater management regime established and construction of the Central Arizona Project under way, achievement of a settlement of the Federal and Indian claims to water in the Tucson, AMA became the principal goal of Tucson and other major water interests in the area.

BACKGROUND: SAN XAVIER INDIAN COMMUNITY

The San Xavier Indian Community, known in the O'odham language as Wa:k, has been at its present location on the Santa Cruz River just south of Tucson since pre-Columbian times. Among the Tohono O'odham, the San Xavier community was one of the few communities fortunate enough to have a perennial river water supply which allowed them to stay permanently in one location.

The San Xavier community has always depended upon the perennial surface water supply of the Santa Cruz River for its survival and for the maintenance of irrigated agriculture. It was the only village in southern Arizona using an irrigation system at the time of first contact with the Spaniards in the 1690's.

On July 1, 1874, the San Xavier Reservation was established by executive order signed by President Ulysses S. Grant. The Schuk Toak District was originally established by executive order signed by Woodrow Wilson on January 14, 1916 and later re-established by executive order on February 1, 1917, as a part of the Sells Tohono O'odham, then known as Papago, Reservation.

The San Xavier Reservation, which is coterminous with the San Xavier District, and the Schuk-Toak District of the Sells Reservation, are located in eastern Pima County, adjacent to the Tucson metropolitan area. The San Xavier Reservation includes approximately 72,000 acres located east of the 2.8 million-acre Sells Reservation, and lies primarily within the Upper Santa Cruz Basin. The Schuk Toak District, the easternmost district within the Sells Reservation, is located in the Avra/Altar Valley Basin.

In 1887 Congress passed the General Allotment Act, which provided for Indian reservation lands to be divided among individual Indians and held in trust by the United States for 25 years, then deeded to the individual Indians.

In 1890 the United States issued allotments totalling 46,622 acres to individuals and heads of families at San Xavier. Family heads received 160 acres, 20 acres of farmlands, 50 to 80 acres of timber and the balance in "mesa" land, useful primarily for grazing. These allotted lands remain in trust and today comprise roughly 59 percent of the area of the San Xavier Reservation. Of the estimated 1,600 Indians enrolled at San Xavier, about 1,300 hold allotments or fractions of allotments.

Beginning in the 1890's, non-Indian farmers in the Upper Santa Cruz Basin began diverting for their own use the surface and ground water upon which the San Xavier community depended. As the surface flows in the Santa Cruz River disappeared, and the groundwater table sank, irrigated farming at San Xavier declined from an historic maximum of between 2,000 and 3,000 acres to zero in 1987.

LITIGATION

In 1975 the United States sued the city of Tucson and other non-Indian water users, seeking to prevent the further depletion of the surface and ground water supply at the San Xavier Reservation, seeking to recover damages for the past appropriation of the surface and groundwater supply, and asking the Federal court to adjudicate the Indians' reserved water rights as against all other water users.

Shortly after the United States filed its action, the Tohono O'odham Nation and several individual San Xavier allottees brought a separate action of their own in Federal court, making essentially the same claims that the Federal trustee had made on their behalf. The two separate actions were subsequently consolidated and captioned U.S. versus Tucson.

Between 1975 and 1982 the parties in U.S. versus Tucson engaged in negotiations aimed at bringing about a settlement of the litigation. These negotiations led to enactment of the Southern Arizona Water Rights Settlement Act [SAWRSA] in October, 1982.

SAWARSA

SAWRSA provides for the Tohono O'odham Nation to receive 66,000 acre-feet of water annually. Of this amount, the United States is to deliver 27,000 acre-feet of Colorado River water to San Xavier and 10,800 acre-feet to Schuk Toak through the works of the Central Arizona Project.

SAWRSA requires the United States to rehabilitate the existing cooperative farm which, when water is available for irrigation, is operated by allottees at San Xavier solely for their benefit, and to construct irrigation works for a new, tribal farm to take the CAP water.

The settlement requires the city of Tucson to provide the United States with 28,200 acre-feet of reclaimed water, which the Secretary is required to exchange for an equivalent amount of water suitable for agriculture. Twenty-three thousand acre-feet of this water is allocated to San Xavier, and 5,200 acre-feet is allocated to Schuk Toak. The Secretary is not required to deliver this water until U.S. versus Tucson is dismissed.

If the United States is not able to deliver any of the 66,000 acre-feet in any year after October 1992, it must pay the tribe the value of the undelivered quantity of water. This requirement, too, is conditioned upon dismissal of U.S. versus Tucson.

SAWRSA establishes a $15,000,000 trust fund for the Tohono O'odham Nation, the interest from which the Nation can use to develop its land and water resources.

The act also set up a $10,500,000 cooperative fund into which the State of Arizona contributed $2,750,000, the city of Tucson $1,500,000, Anamax, Cyprus-Pima, ASARCO, Duval Corp., and Farmers Investment Co. contributed a combined $1,000,000, and the United States contributed $5,250,000 for the purpose of providing the Secretary with funds to pay the ongoing costs of implementing the settlement and fulfilling his responsibilities under the act.

In return for the water, farm improvements, and trust fund, SAWRSA requires the Nation to agree to stipulate to the dismissal of U.S. versus Tucson and to file in court "the allottee class representatives' petition" to dismiss the case. The Nation is required to waive and release all claims of water rights or injuries to water rights, and to waive and release all future claims of water rights.

SAWRSA further requires the Nation to agree to limit pumping groundwater

to 10,000 acre feet per year from San Xavier and to the the 1981 pumping level from Schuk Toak. It requires the Nation to agree to comply with a water management plan established by the Secretary of the Interior.

The Nation's use of its settlement water, including the right to sell or lease it, is limited to within the Tucson Active Management Area [TAMA].

SAWRSA'S FLAW

With the benefit of hindsight, it is now clear that SAWRSA did not adequately recognize and address potential problems inherent in the division of land ownership at San Xavier between the Nation and its allottees. This fact is reflected by the limited references in the statute and its legislative history with respect to allottees and to the waiver of allottee claims.

The only references in SAWRSA to allottees are in one section. Section 307(a)(1)(B) requires that an "allottee class representatives' petition" to dismiss U.S. versus Tucson be filed with the court. Section 307(e) states that the settlement provided in the act "shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights of all individual members of the Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District". Section 307(e) further states that "Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title."

Neither the report by the House Committee on Interior and Insular Affairs (H. Rept. 97-422), nor the report on the committee of conference (H. Rept. 97-855), on SAWRSA, contains any explanation or reference to these provisions. It is apparent that the settlement parties assumed, absent objections by the allottees who had joined in filing U.S. versus Tucson, that the allottees at San Xavier would receive a fair share of water and benefits and thus supported the settlement.

Subsequent to enactment of SAWRSA, the city of Tucson, State, and local interests timely performed all of their obligations under the settlement and the tribe agreed to dismiss U.S. versus Tucson. However, a dispute developed between allottees and the San Xavier District Council with the Tohono O'odham Nation. Central to the dispute are disagreements over the Nation's new farm and over the ownership of the settlement water. In 1990, after years of unsuccessful efforts to resolve these issues, the San Xavier District Council, the San Xavier Allottee's Association, and the San Xavier Farm Board joined in filing with the court their objections to the dismissal of U.S. versus Tucson.

The allottees contend that SAWRSA required their consent as a condition for dismissal of U.S. versus Tucson, that they have not consented and will not consent without guarantees that they will receive a fair share of the settlement's benefits. The allottees assert that the General Allotment Act of 1887 and decisions by the Federal 9th Circuit Court of Appeals in U.S. versus Walton establish a constitutionally protected allottee property interest in the Nation's reserved water rights, and with that interest a separate allottee right to seek damages against third parties.

After the allottees filed their objections, the court stayed action on the case to permit further negotiations between the Nation and the San Xavier District and the allottees. After these efforts were unsuccessful, the Secretary of the Interior, seeking to fulfill SAWRSA's mandate to pursue dismissal of U.S. versus Tucson and to implement the settlement to avoid penalties for not delivering water by October 1992, began new negotiations in the fall of 1991 in search of an agreement on amendments that would satisfy the respective concerns of the Nation, the San Xavier District, and the San Xavier Allottees' Association.

After more than 6 months of intensive negotiations under Interior's auspices, the Nation, the city of Tucson, and local interests agreed to a series of proposals to amend the 1982 act to their satisfaction. However, the Allottees Association and the San Xavier District object to these proposals, essentially because they view the amendments as not recognizing their asserted rights to the Nation's water and do not otherwise adequately protect their interests. In the negotiations, the allottees' assertion of ownership of a share of the Nation's water, as opposed to a right to use such water, was a principal obstacle to efforts to reach an overall agreement.

The city of Tucson, the Tohono O'odham Nation, the Arizona Department of Water Resources, and the Southern Arizona Water Resources Association [SAWARA], a broad-based community organization concerned about water issues in southern Arizona, asked me and other Members of the Arizona congressional delegation to introduce their proposals to amend SAWRSA and thereby give the Congress a basis upon which to try and fashion a final settlement acceptable to all parties. I am pleased today to honor that request.

SAWRSA AMENDMENTS

Mr. President, the package of amendments that we introduce today would generally preserve and continue the terms of the settlement made in 1982, with the following modifications:

All settlement requirements previously tied to dismissal of U.S. versus Tucson, such as the delivery of water, completion of delivery systems, and payment of damages, would become effective obligations without regard to dismissal.

The Secretary would be required to rehabilitate and extend the allottees' existing farm by a date certain, or pay specified penalties. The amount of the settlement water which allottees could use on their farm would be determined when the Secretary decides, within 6 months of enactment of the amendments, how large the extended farm would be.

The Cooperative Fund would be revived and continued, and the Nation's trust fund would be preserved.

The legislation would unambiguously extinguish the water rights of the Nation and the allottees, other than the rights established in SAWRSA. Both the Nation and the allottees would be given recourse to the Claims Court as their only means of redressing any uncompensated claim or grievance, with claims only against the United States. Tribal Court or any other forum of competent jurisdiction would remain available to resolve disputes between the Nation and the allottees.

SAWRSA now limits the Nation to pumping no more than 10,000 acre-feet of groundwater per year from the San Xavier District, with no provisions for underground storage and recovery. The amendments would allow limited in lieu storage of any groundwater not pumped in a given year. Withdrawals of stored groundwater in San Xavier could not exceed 10,000 acre-feet in any year or 50,000 acre-feet over any 10-year period. The amendments would also allow direct underground storage and recovery of surface water, in a manner similar to that provided for under current State law. Comparable provisions are made for pumping groundwater from the Eastern Schuk Toak District.

SAWRSA now requires that all of the Nation's water be used within the boundaries of the Tucson Active Management Area [AMA]. The amendments would allow the Nation to use up to 16,000 acre-feet of water per year within the territorial jurisdiction of the Nation outside the AMA. The amendments would also allow the Nation to make short-term (up to 15 years) leases of its water outside the AMA, after giving a right of first refusal to users within the AMA.

If the amendments are enacted, the city of Tucson would enter into a short-term lease of the Nation's CAP water. This leased water would be in place of, rather than in addition to, water which the city would otherwise order within its own CAP allocation. The price of the water, yet to be negotiated, would be somewhat below the per-acre-foot price that the city would otherwise pay under its subcontract. This provision would allow the Nation to realize a financial return on its CAP allocation and would allow the city to realize a savings in the purchase of CAP water, without increasing the costs to any other party.

The amendments would not determine the outcome of the existing dis-

pute between the Nation and the allottees, but would leave it to be resolved by other means. The allottees could seek damages in the Claims Court and that court would determine whether the allottees hold reserved water rights separate from the water rights of the Nation. If amendments to SAWRSA are enacted, the allottees' claims could be pursued in the Claims Court while both the Nation and the allottees were receiving the benefits of the settlement.

HEARING

Because Congress did not recognize or address the problems that have held up implementation of the SAWRSA for 10 years, it is surely time we do so.

Therefore, Mr. President, I very much appreciate the willingness of Chairman INOUYE of the Select Committee on Indian Affairs to schedule a joint hearing on this legislation on August 6 with the House Committee on Interior and Insular Affairs.

This hearing will give the committees an opportunity to hear testimony from the administration, the Tohono O'odham Nation, the State of Arizona, the city of Tucson and other area non-Indian water users, and the San Xavier District Council, the San Xavier Allottees Association, and the San Xavier Cooperative Association on the proposed SAWRSA amendments.

I am hopeful that the hearing will produce the kind of information and insight that will assist the committees in developing amendments to SAWRSA that will enjoy the support of all parties.

I will be particularly interested in hearing constructive criticisms and positive suggestions and recommendations for dealing with those issues that have stymied previous efforts to reach an agreement acceptable to all parties.

After 10 years, it is time that the people of the Tohono O'odham Nation receive the benefits they were promised in 1982. It is time that the city of Tucson, and all the other entities that have complied with the provisions of the 1982 Act, realize the benefits that the settlement was to provide them.

That the entire Arizona congressional delegation has joined in introducing the proposed SAWRSA amendments reflects a longstanding, bipartisan approach to settling water rights disputes in our State. These issues are fundamentally important to Arizona's future, and should be resolved with a minimum of political partisanship.

All of us share a common interest in the fair allocation and wise management of water resources in Arizona. Similarly, we share an interest in a fair, final, and workable settlement. I look forward to working with all parties to achieve such a settlement.

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. 3125

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 "Southern Arizona Water Rights Settlement Amendments Act of 1992".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Southern Arizona Water Rights Settlement Act of 1982 was enacted October 12, 1982, to settle the water rights claims of the Papago Tribe (now Tohono O'Odham Nation) with respect to the San Xavier Reservation and the Eastern Schuk Toak District and to resolve pending lawsuits concerning these claims by final dismissal;

(2) after the Southern Arizona Water Rights Settlement Act of 1982 was enacted, the Nation and the United States timely entered into the October 11, 1983, agreement to fulfill most of the conditions stated in sections 306(a), 306(b), 307(a)(1)(C) and 307(a)(1)(D) of the Southern Arizona Water Rights Settlement Act of 1982; the United States and city of Tucson timely entered into the Reclaimed Water Agreement to fulfill the conditions stated in section 307(a)(1)(A) of the Southern Arizona Water Rights Settlement Act of 1982; the State of Arizona, city of Tucson, the United States and others timely entered into the Cooperative Fund Agreement and timely contributed the required funds to the Cooperative Fund to fulfill the conditions stated in sections 307(a)(1)(B), 313(b)(1), 313(b)(2), and 313(b)(3)(A) of the Southern Arizona Water Rights Settlement Act of 1982; the Trust Fund authorized by section 309 of the Southern Arizona Water Rights Settlement Act of 1982 has been established and fully funded; however, the lawsuits have not, as yet, been finally dismissed; and

(3) circumstances have arisen since the enactment of the Southern Arizona Water Rights Settlement Act of 1982 on October 12, 1982, which require enactment to clarify the original provisions of the Southern Arizona Water Rights Settlement Act of 1982, to extend or adjust the deadlines for performance of certain obligations thereunder, to preserve, protect, and enhance the water resources and other related benefits granted to the Nation, and to accomplish other purposes.

SEC. 3. AMENDMENT TO SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT.

The Southern Arizona Water Rights Settlement Act of 1982 (Public Law 97-293) is amended to read as follows:

"CONGRESSIONAL FINDINGS

"SEC. 301. The Congress finds that—

"(1) water rights claims of the Tohono O'Odham Nation with respect to the San Xavier Reservation and the Eastern Schuk Toak District are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

"(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

"(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Tohono O'Odham Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

"(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Nation, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Tohono O'Odham Indians respecting certain portions of the Tohono O'Odham Reservation;

"(5) the settlement contained in this title will—

"(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

"(B) ensure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Nation.

"DEFINITIONS

"SEC. 302. For purposes of this title:

"(1) The term 'acre-foot' means the amount of water necessary to cover one acre of land to a depth of one foot.

"(2) The term 'Central Arizona Project' or 'CAP' means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521 et seq.).

"(3) The term 'Nation' means the Tohono O'Odham Nation (formerly the Papago Tribe) organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

"(4) The term 'Secretary' means the Secretary of the Interior.

"(5) The term 'subjugate' means to prepare land for the growing of crops through irrigation.

"(6) The term 'Tucson Active Management Area' or 'TAMA' means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980 (laws 1980, fourth special session, chapter 1).

"(7) The term 'December 11, 1980, agreement' means the Central Arizona Project water delivery contract between the United States and the Nation.

"(8) The term 'value' means the value attributed to the water based on the Nation's anticipated or actual use of the water, or its fair market value, whichever is greater.

"(9) The term 'October 11, 1983, agreement' means the contract between the United States and the Nation to provide water and to settle claims to water under the Southern Arizona Water Rights Settlement Act of 1982.

"(10) The term 'allottees' means all of those individuals who hold—

"(A) a beneficial property interest held in trust by the United States in an Indian allotment located on the San Xavier Reservation; or

"(B) fee simple title in such lands which were formerly held in trust.

"(11) The term 'exempt well' means a water well having a pump with a maximum capacity of not more than 35 gallons per minute the water from which is used for the supply, service, and activities of households and private residences, landscaping, livestock watering, and irrigation of not more than 2 acres of land for the production of—

"(A) plants and crops for sale or human consumption; or

"(B) feed for livestock or poultry.

"(12) The term "nonexempt well' means a water well other than an 'exempt well'.

"(13) The term 'Eastern Schuk Toak district' means the portion of the Schuk Toak district of the Nation which lies within the Tucson active management area.

"(14) For purposes of section 306(e) only, the term 'shortage year' means a calendar year for which the Secretary has declared a 'shortage' on the Colorado River pursuant to the December 11, 1980, agreement and applicable Federal law.

"(15) The term 'nonshortage year' means a calendar year other than a 'shortage year'.

"(16) The term 'water management plan' means a plan which is adopted pursuant to section 303(a)(3).

"(17) The term 'delivery system' means—

"(A) the 'CAP link pipeline'; and

"(B) the pipelines, canals, aqueducts, conduits, and other facilities for water delivery, including pumping plants, which are external to the boundaries of the farm on which the water is to be distributed.

"(18) The term 'CAP link pipeline' means the pipeline from the San Xavier Turnout No. 2 of the Tucson Aqueduct of the Central Arizona Project to and including the flow control structure at the southwest corner of field 155.

"(19) The term 'distribution system' means the irrigation systems, canals, laterals, farm ditches, and irrigation works which are internal to the farm boundaries and which are needed to distribute water within the farm.

"(20) The term 'farm' means those lands designated to be served by a distribution system.

"(21) The term 'cooperative farm' means that farm, on lands in which allottees hold an interest, to be served by the 'existing distribution system' and the 'extension of the existing distribution system', as those terms are used in paragraphs (2)(A) and (2)(B) of section 303(a).

"(22) The term 'CAWCD' means the Central Arizona Water Conservation District.

"(23) The term 'lawsuits' means civil action no. 75-39 TUC (which is a consolidation of civil action no. 75-51 and civil action no. 75-39) in United States District Court for the District of Arizona entitled United States of America, et al. against City of Tucson, et al.

"(24) The term 'reclaimed water agreement' means the contract between the United States and the city of Tucson to provide for delivery of reclaimed water to the Secretary dated October 11, 1983.

"(25) The term 'cooperative fund agreement' means the contract among the United States, the State of Arizona, and others to provide for contributions to the cooperative fund and for other purposes dated October 11, 1983.

"(26) The term 'short-term lease' means a nonrenewable lease of water with a term no longer than 15 years.

"(27) The term 'claims of water rights' means—

"(A) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson active management area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of enactment of the Southern Arizona Water Rights Settlement Amendments Act of 1992, which the Nation has against the United States, the State of Arizona, and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

"(B) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson active management area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of enactment of the Southern Arizona Water Rights Settlement Amendments Act of 1992, which the Nation has against the United States, the State of Arizona, and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, under the laws of the United States or the State of Arizona.

"WATER DELIVERIES TO NATION FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH NATION

"SEC. 303. (a) If the Nation has agreed to the conditions set forth in sections 306(a) and 306(b), the Secretary shall—

"(1) not later than 60 days after the Nation gives the Secretary notice of the quantity and point or points of delivery at a turnout on the Central Arizona Project Aqueduct, or, if the delivery is to a distribution system described in paragraph (2), after the deadline for completion of that distribution system—

"(A) annually deliver from the main project works of the Central Arizona Project 27,000 acre-feet of water suitable for agricultural use in accordance with the provisions of section 304(a) to the San Xavier Reservation or other points of delivery at turnouts on the Central Arizona Project Aqueduct designated by the Nation; and

"(B) annually deliver from the main project works of the Central Arizona Project 10,800 acre-feet of water suitable for agricultural use in accordance with the provisions of section 304(a) to the eastern Schuk Toak district or other points of delivery at turnouts on the Central Arizona Project Aqueduct designated by the Nation;

"(2) perform the following:

"(A) Not later than 54 months after the Secretary makes the determination described in subparagraph (E), complete the CAP link pipeline and improvement of the existing distribution system for the cooperative farm.

"(B) Not later than 72 months after the Secretary makes the determination described in subparagraph (E), complete the extension of the existing distribution system for the cooperative farm.

"(C) Not later than 60 months after the date of the enactment of the Southern Arizona Water Rights Settlement Amendments Act of 1992, complete the design and construction of a distribution system and delivery system in the eastern Schuk Toak district, as necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (1)(B).

"(D) Not later than 48 months after the Secretary approves final designs submitted by the Nation, complete the construction within the San Xavier Reservation of a distribution system and delivery system as necessary for the efficient distribution for agricultural purposes of the portion of the water referred to in subparagraph (1)(A) that is not used in the distribution systems referred to in subparagraphs (A) and (B).

"(E) Not later than 180 days after the date of enactment of the Southern Arizona Water Rights Settlement Amendments Act of 1992, determine the size of the cooperative farm, after giving the Nation and allottees opportunity to comment.

"(3) Establish a water management plan for the San Xavier Reservation and the eastern Schuk Toak district. The water management plan shall be developed and implemented under a contract entered into pursuant to section 309. The water management plan shall include a requirement for measurement of ground water withdrawals; reasonable recordkeeping; measures designed to provide for efficient use in each use authorized under section 306(c)(1) and to prevent waste; and provisions for direct and in lieu storage as specified in section 306(f):

"(A) The contract shall provide that in any case where the Secretary determines that the Nation's performance under the contract is in material noncompliance with the provisions of sections 302(18), 303(a)(3), 306(a), 306(e), or 306(f), the Secretary may, after providing notice and a hearing on the record to the Nation pursuant to regulations adopted under the Indian Self Determination Act (25 U.S.C. 450f et seq.), and after determining that the Nation has not taken corrective action as prescribed by him, rescind such contract and assume or resume control of the development and implementation of the water management plan, or invoke any other available remedy.

"(B) The Nation, by its water code, may manage, regulate, and control the water resources granted herein, including without limitation, establish permit requirements, regulations, conditions, and limitations on the recovery and use of water: *Provided, However*, That such water code may not permit recovery of water in excess of the limitations stated in the water management plan.

"(4) Any of the deadlines provided in paragraph (2)(A) through (D) may be extended by the Secretary upon a finding that the deadline cannot be met by reason of—

"(A) a material breach by the contractor of a relevant contract;

"(B) inability of the contractor, under a relevant contract, to perform by reason of force majeure as defined in that contract; or

"(C) unavoidable delays in compliance with applicable environmental laws:

Provided, However, That the finding shall include the length of the delay and shall state a new deadline for completion which shall not exceed the length of the delay so caused. In the event that any of the deadlines established in paragraphs (2)(A) through (2)(D), as extended, are not met, damages, measured by the value of the quantity of water to be delivered to the completed facilities, shall be payable as provided in section 304(c).

"(5) There are authorized to be appropriated up to $3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering costs indices applicable to the type of construction involved for those features of the irrigation systems described in paragraphs (2)(A), (2)(B), (2)(C), and (2)(D) which are not authorized to be constructed under any other provision of law.

"(6) The Secretary of the Treasury, with the consent of the Secretary, is authorized to pay to the Nation a sum of money equivalent to the remaining cost to the United States of fulfilling its obligations under paragraph (2)(D) of section 303(a). The Nation is authorized to use the principal amount, and all investment income thereon as follows:

"(A) Subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of the facilities within the San Xavier Reservation which are not the obligation of the United

States under this Act, or under any other provision of law.

"(B) To acquire land within the TAMA which may be lawfully used for agricultural purposes and to fund thereon each of the activities stated in subparagraph (A). Any lands acquired by the Nation under this subparagraph may be taken into trust by the Secretary, for the benefit of the Nation, and be deemed a Federal Indian reservation for all purposes.

"(C) For any other tribal governmental purpose.

"(b) The implementation of this Act is a time sensitive matter for the United States. The United States has committed to timely deliver to the Nation, its members and the allottees the benefits required to be delivered hereunder by specified deadlines. Significant environmental investigation and study relative to the implementation of this Act has been performed, culminating in the environmental impact statement—San Xavier Development Project, Southern Arizona Water Rights Settlement Act, Statement No. INT DES 80-50 (Bureau of Reclamation, United States Department of the Interior, filed October 26, 1988). Additional environmental study would be of diminished utility and the benefit of potential additional study is outweighed by the overriding necessity to deliver water, or its equivalent benefits, to the Nation. Thereafter, notwithstanding any other provision of law to the contrary, the environmental impact statement is deemed to constitute compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) for all actions taken under this Act, and such actions shall not constitute major Federal action under the National Environmental Policy Act.

"(c)(1) In order to encourage the Nation to develop sources of water on the Sells Tohono O'odham Reservation, the Secretary shall, if so requested by the Nation, carry out a study to determine the availability and suitability of water resources within the Sells Tohono O'odham Reservation but outside the Tucson Active Management area and that part of the Upper Santa Cruz Basin not within that area.

"(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

"(A) the availability of energy and the energy requirements which result from the enactment of the provisions of the Southern Arizona Water Rights Settlement Amendments Act of 1992; and

"(B) the feasibility of constructing a solar powerplant or other alternative energy producing facility to meet such requirements.

"(d) The Nation shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Eastern Schuk Toak District subject to the limitations of sections 306(a), 306(e), and 309(f).

"(e) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Nation under the December 11, 1980, agreement, nor be construed as a waiver, release, or extinguishment of any claim of the Nation where such claim arises hereunder.

"(f) Nothing contained in sections 303(d) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water.

"DELIVERIES UNDER EXISTING CONTRACT, ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

"SEC. 304. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Eastern Schuk Toak District or at points of delivery on the Central Arizona Project Aqueduct as provided in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, and the October 11, 1983, agreement, except as otherwise provided under this section.

"(b) Where the Secretary, pursuant to the terms and conditions of the agreements referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1)(A) and section 303(a)(1)(B), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof—

"(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

"(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

"(3) water from any of the following sources or any combination thereof within the TAMA and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona—

"(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

"(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the TAMA pursuant to applicable laws of the State of Arizona.

"(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (1)(B) of section 303(a), he shall pay damages in an amount equal to the value of such quantities of water as are not acquired and delivered.

"(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any 1 of the 5 years preceding the date of acquisition. Nothing in this section shall—

"(1) authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community; or

"(2) limit the Nation's rights to acquire lands in accordance with section 303(a)(6).

"(e)(1) To meet the obligations referred to in paragraphs (1)(A) and (1)(B) of section 303(a), the Secretary shall, as part of the main project works of the Central Arizona Project—

"(A) design, construct, and, without cost to the Nation, operate, maintain, and replace such facilities as are appropriate, including any aqueduct and appurtenant pumping facilities, powerplants, electric power transmission facilities, and facilities for storage, reregulation, and other measures which may be necessary for such purposes; and

"(B)(i) if the water is to be used in a distribution system referred to in section 303(a)(2), deliver the water at a point or points agreed to by the Secretary and the Nation at the boundary of the farm on which the water is to be distributed; or

"(ii) if the water is to be used, other than as stated in clause (i), deliver the water at a turnout or turnouts on the Central Arizona Project aqueduct designated by the Nation.

"(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A), (B), (C), and (D) of paragraph (2) of section 303(a). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72-240; 25 U.S.C. 386(a)).

"(f) To facilitate the delivery of water to the San Xavier and the Eastern Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized—

"(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

"(2) to use facilities constructed in whole or in part with Federal funds.

"RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

"SEC. 305. (a)(1) Having acquired reclaimed water in accordance with the reclaimed water agreement, the Secretary shall annually deliver 23,000 acre feet of water suitable for agricultural use to the San Xavier Reservation or other points of delivery and annually deliver 5,200 acre feet of water suitable for agricultural use to the Eastern Schuk Toak District or other points of delivery.

"(2) If any of the water referred to in paragraph (1) is to be used in an on-reservation distribution system, the water shall be delivered to the distribution system upon completion of the system in which the water is to be used.

"(3) If any of the water referred to in paragraph (1) is to be used other than as stated in subparagraph (2), the water shall be delivered 60 days after the Nation and the Secretary agree upon the delivery point or points for such water.

"(4) Not later than 365 days after the enactment of the amendments, the Secretary shall notify the Nation of the long-term source of the water referred to in paragraph (1).

"(b)(1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suitable for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities, including facilities for storage, reregulation, or other measures, as are appropriate. The costs of design, construction, operation,

maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Nation.

"(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Eastern Schuk Toak District.

"(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

"(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof—

"(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

"(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

"(3) water from any of the following sources or any combination thereof within the TAMA in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

"(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

"(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the TAMA pursuant to State law.

"(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to the value of such quantities of water as are not acquired and delivered.

"(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any 1 of the 5 years preceding the date of acquisition. Nothing in this section shall—

"(1) authorize the Secretary to acquire or disturb the water rights of any Indian tribe, bank, group, or community; or

"(2) limit the Nation's rights to acquire lands in accordance with section 303(a)(6).

"*LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES; DISPOSITION OF WATER*

"SEC. 306. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Nation, in addition to the October 11, 1983, agreement, agrees to—

"(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than 10,000 acre feet per year;

"(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District to not more than 3,200 acre feet per year; and

"(3) comply with the water management plan under section 303(a)(3).

Notwithstanding any provision of this title, the Nation shall have the right to drill exempt wells and withdraw ground water therefrom in the San Xavier Reservation and the Eastern Schuk Toak District. Ground water withdrawn from such exempt wells shall not be subject to the pumping limitations prescribed in sections 306(a), 306(e), or 306(f).

"(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (2)(A) through (2)(D) of section 303(a) only if the Papago Tribe agrees to—

"(1) subjugate, at no cost to the United States, the land for which those distribution system are to be planned, designed, and constructed by the Secretary; and

"(2) assume responsibility, through the tribe or its members or an entity designated by the tribe as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and relacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

"(c)(1) The Nation shall have the right to devote all water supplies under this title whether delivered by the Secretary or pumped by the Nation, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the territorial jurisdiction of the Nation so long as such use is within the TAMA and that part of the Upper Santa Cruz Basin not within such area: *Provided*, That—

"(A) the Nation may use up to 16,000 acre-feet of Central Arizona Project water annually within the territorial jurisdiction of the Nation outside the TAMA and that part of the Upper Santa Cruz Basin not within such area;

"(B) the San Lucy Farm is deemed, for purposes of section 306(c)(1) to be within the territorial jurisdiction of the Nation; and

"(C) Central Arizona Project water under short-term lease from the Nation may be used during the term of the lease outside the TAMA and that part of the Upper Santa Cruz Basin not within such area, but in no event outside Pima, Pinal, or Maricopa Counties, State of Arizona.

"(2) The Nation may sell, exchange, lease, or temporarily dispose of water, but the Nation may not permanently alienate any water right. In the event the Nation sells, exchanges, leases, or temporarily disposes of water, such sale, exchange, lease, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Nation's legislative council and approved and executed by the Secretary as agent and trustee for the Nation. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The proceeds from any sale, exchange, lease, or disposition of water by the Nation shall be used for social or economic programs or for tribal administrative purposes which benefit the Nation. Section 306(c)(1) applies to water sold, exchanged, leased or disposed of by the Nation.

"(A) The Secretary shall amend the December 11, 1980, agreement to—

"(i) extend the term of such contract to December 31, 2099, and to provide for its subsequent renewal upon the same terms and conditions as the December 11, 1980, agreement, as amended, and

"(ii) authorize the Nation to lease or to enter into an option or options to lease, under the provisions of section 306(c)(2), the water to which the Nation is entitled under the December 11, 1980, agreement, as amended, for terms not exceeding 100 years and to renew such leases.

"(B) Notwithstanding any other provision of law, the amendments to the December 11, 1980, agreement set forth in section 3069(c)(2)(A) are hereby authorized, approved, and confirmed.

"(C) Any Water lease entered into by the Nation shall specifically provide that the lessee shall not be obligated to pay water service capital charges or any other charges or payment for such CAP water to the United States or to the CAWCD.

"(D) For the purpose of determining allocation and repayment of costs of the Central Arizona Project as provided in article 9.3 of contract numbered 14-07-W-243 between the United States of America and CAWCD dated December 15, 1972, and any amendment or revision thereof, the costs associated with the delivery of Central Arizona Project water to the lessee or lessees under the leases or options to lease herein authorized shall be nonreimbursable, and such costs shall be excluded from CAWCD's repayment obligation.

"(E) The Nation is authorized to lease or enter into an option or options to lease, under the provisions of section 306(c)(2), the water to which the Nation is entitled under section 305 for terms not exceeding 100 years and to renew such leases.

"(F) The use or nonuse of water by any lessee from the Nation shall have no effect upon the Nation's rights in water as established by this title and any other applicable law.

"(3) Prior to any short-term lease of water outside the territorial jurisdiction of the Nation and outside the TAMA, the Nation shall offer for 60 days a right of first refusal with respect to any such lease to water users within the TAMA. Notice of an offer of right of first refusal shall be given by publication in a daily newspaper of general circulation in the city of Tucson and delivery to the city of Tucson, the Arizona Department of Water Resources, and the Tucson Active Management Area Water Augmentation Authority.

"(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off any reservation to which reserved water rights attach.

"(e)(1) Notwithstanding the agreement entered into pursuant to section 306(a), if, in any shortage year the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under section 304 or paragraphs (1)(A) and (2)(A) of section 303(a), the Nation may in that year pump an additional quantity of ground water from the San Xavier Reservation equivalent to the number of acre-feet of water delivered by the Secretary to the San Xavier Reservation in the most recent nonshortage year less the amount of acre feet of water delivered in the shortage year; and the Nation may in that year pump an additional quantity of ground water from the eastern Schuk Toak District equivalent to the number of acre feet of water delivered by the Secretary tgo the eastern Schuk Toak District in the most recent non-shortage year less the amount of acre feet of water delivered in the shortage year. Nothing in this section shall affect the Secretary's obligations under section 304(c).

"(2) If water delivered pursuant to section 305 is CAP water with a priority higher than non-Indian irrigation, subsection (e)(1) shall apply with regard to failure of the Secretary to deliver such water.

"(f)(1) The water management plan shall include provisions, consistent with this section, for the establishment and maintenance of a separate underground storage project for the San Xavier Reservation (San Xavier Storage Project) and a separate underground storage project for the Eastern Schuk Toak District (Schuk Toak Storage Project) for the following purposes:

"(A) To permit the in lieu storage and recovery of ground water.

"(B) To permit the underground storage of water delivered by the Secretary and the subsequent recovery of an equivalent quantity of water.

"(C) To maintain records of the amounts of water stored underground and recovered each year.

"(2) Each underground storage project shall have 2 subaccounts: a direct storage subaccount and an in lieu storage subaccount.

"(A) There shall be credited to the San Xavier direct storage subaccount each year the amount of water, delivered by the Secretary, that is actually stored underground within the San Xavier Reservation. There shall be credited to the Schuk Toak direct storage subaccount each year the amount of water, delivered by the Secretary, that is actually stored underground within the Eastern Schuk Toak District.

"(B) There shall be credited to the San Xavier in lieu storage subaccount as of the end of each calendar year the number of acre-feet of ground water by which the number 10,000 exceeds the number of acre-feet of ground water withdrawn that year by nonexempt wells within the San Xavier Reservation. There shall be credited to the Schuk Toak in lieu storage subaccount as of the end of each calendar year, the number of acre-feet of ground water by which the number 3,200 exceeds the number of acre feet of ground water withdrawn that year by nonexempt wells within the Eastern Schuk Toak District.

"(C) Upon instruction of the Nation, by resolution of its legislative council, the San Xavier in lieu storage subaccount shall be initially credited with up to 50,000 acre-feet of water and the Schuk Toak in lieu storage subaccount shall be initially credited with up to 16,000 acre-feet of water.

"(3) In addition to the quantity of ground water pumped within the limitations of the agreement entered into pursuant to section 306(a), the Nation may—

"(A) annually recover, within the San Xavier Reservation, all or part of the cumulative acre-feet of ground water credited to the San Xavier in lieu storage subaccount: *Provided however*, That—

"(i) the quantity of ground water recovered shall not exceed 10,000 acre feet in any year; and

"(ii) the quantity of ground water recovered shall not exceed 50,000 acre-feet in any 10-year period; and

"(B) annually recover, within the Eastern Schuk Toak District, all or part of the cumulative acre-feet of ground water credited to the Schuk Toak in lieu storage subaccount: *Provided however*, That—

"(i) the quantity of ground water recovered shall not exceed 32,000 acre-feet in any year; and

"(ii) the quantity of ground water recovered shall not exceed 16,000 acre feet in any 10-year period.

"(4) The Nation may recover all or part of the cumulative acre feet of water credited to the direct storage subaccounts.

"(5) The Nation, by its water code, may manage, regulate and control the recovery of water pursuant to the underground storage project provisions of the water management plan: *Provided, however*, That the water code may not permit recovery of water in excess of the limitations stated in the water management plan.

"(6) The Nation shall register each year as a debit to the in lieu storage subaccount of each underground storage project the amount of water recovered from in lieu storage and shall register each year as a debit to the direct storage subaccount of each project, the amount of water recovered from direct storage. If an initial credit or credits are established pursuant to paragraph (2)(C), an additional 10 percent of the water recovered from each in lieu storage subaccount each year shall be registered as a debit to that subaccount until the total amount so debited equals the initial credit.

"(7) Direct storage subaccount credits may be assigned, sold, exchanged, or transferred in whole or in part by the Nation for withdrawal and use within the TAMA, outside the territorial jurisdiction of the Nation.

"(8) In lieu storage subaccount credits may be assigned, sold, exchanged, or transferred in whole or in part by the Nation for withdrawals and use within the TAMA, outside the territorial jurisdiction of the Nation only if the laws of Arizona specifically permit the transfer of the in lieu storage subaccount credits created hereunder.

"(9) The water management plan shall include provisions—

"(A) requiring the use of a water measuring device on each nonexempt well measure withdrawals from that well;

"(B) establishing a system for the reporting of withdrawals from nonexempt wells;

"(C) for enforcement and implementation of the underground storage project provisions of the plan; and

"(D) for the annual exchange of water storage and water recovery information, including the status of water storage subaccounts, with the Arizona Department of Water Resources, the city of Tucson, and the Tucson Active Management Area Water Augmentation Authority.

"OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER; DISMISSAL AND WAIVER OF CLAIMS OF NATION

"SEC. 307. (a)(1) The waiver and release of claims of water rights contained in section 3.1 of the October 11, 1983, agreement shall take effect upon the date of enactment of the Southern Arizona Water Rights Settlement Amendments Act of 1992, notwithstanding the provisions of section 307(d).

"(2) The requirements of subparagraphs (A), (B), (C), and (D) of section 307(a)(1) having been substantially met, the Secretary shall, if the Nation has agreed to the conditions set forth in section 306(a), be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305.

"(b) The Secretary is authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the reclaimed water agreement it is possible to deliver the quantities of water required in section 305(a).

"(c) Nothing in this section shall be construed as a waiver or release by the Nation of any claim where such claim arises under this title.

"(d) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of the Nation, all allottees and all individual members of the Nation in the San Xavier Reservation and in the Eastern Schuk Toak District. Any entitlement to water of any allottee or any individual member of the Nation shall be satisfied out of the water resources provided to the Nation in this title.

"(e) There are extinguished all the claims of the Tohono O'Odham Nation, its individual members, and the allottees for—

"(1) damages for deprivation of water rights;

"(2) claims of water rights; and

"(3) those claims that were asserted in the lawsuits.

"(f) Consent is given to the Nation and to individual members of the Nation and allottees to maintain actions, individually or as a class, against the United States in the United States Claims Court pursuant to section 1491 of title 28, United States Code, to recover damages, if any, for the extinguishment of claims under subsection (e): *Provided, however*, That the exclusive remedy shall be money damages and that nothing in this subsection shall be deemed to create any claims against the United States.

"(g) The Attorney General of the United States of America is authorized and directed to forthwith petition the District Court for the District of Arizona to dismiss the lawsuits on the ground that the lawsuits have been legislatively settled, and on any additional grounds the Attorney General deems appropriate.

"ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

"SEC. 308. (a) Pursuant to appropriations, the Secretary of the Treasury has paid to the authorized governing body of the Nation the sum of $15,000,000 to be held in trust for the benefit of such Nation and invested in interest bearing deposits and securities including deposits and securities of the United States.

"(b) The authorized governing body of the Nation, as trustee for such Nation, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Nation for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Tohono O'Odham Reservation which are not the obligation of the United States under this or any other Act of Congress.

"APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

"SEC. 309. The functions of the Secretary under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

"EXTENSION OF STATUTE OF LIMITATIONS AND EXCLUSIVE REMEDY

"SEC. 310. (a) Except as otherwise provided in section 307, notwithstanding section 2415 of title 28, United States Code, any action relating to water rights of the Tohono O'odham Nation or any member of such Nation brought by the United States for, or on behalf of, such Nation or member of such Nation, or by such Nation on its own behalf, shall not be barred if the complaint is filed prior to January 1, 1985.

"(b) Exclusive jurisdiction for any claims by the Tohono O'odham Nation, its individual members or the allottees against the United States, its agents or employees, arising out of the enactment or implementation of this title, is vested in the claims court and the exclusive remedy is money damages: *Provided however*, That this section does not create any claims against the United States, its agents or employees.

"ARID LAND RENEWABLE RESOURCE ASSISTANCE

"SEC. 311. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Nation in providing such assistance. Such entity shall make available to the Nation—

"(1) price guarantees, loan guarantees, or purchase agreements;

"(2) loans; and

"(3) joint venture projects,

at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Nation.

"COOPERATIVE FUND

"SEC. 312. (a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

"(1) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;

"(2) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

"(3) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

"(b)(1) The Cooperative Fund shall consist of—

"(A) amounts appropriated to the Fund under paragraph (2) of this subsection; and

"(B) $5,250,000 to be contributed as follows:

"(i) $2,750,000 which has been contributed by the State of Arizona;

"(ii) $1,500,000 which has been contributed by the city of Tucson; and

"(iii) $1,000,000 which has been contributed jointly by the Anamax Mining Company, the Cyprus PIMA Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

"(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

"(2) There are hereby authorized to be appropriated to the Cooperative Fund—

"(A) $5,250,000;

"(B) such sums (up to $16,000,000) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

"(C) such additional sums as may be provided by Act of Congress.

"(c) Only interest accruing to the Cooperative Fund may be expended. Interest accruing to the fund shall, without further appropriation, be available for expenditure.

"(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

"(e)(1) Notwithstanding the provisions of section 312(e), if no funds contributed to the Cooperative Fund pursuant to section 312(b)(1)(B) (or accrued interest thereon) have been returned to any of the contributors, the Cooperative Fund shall not be terminated: *Provided however*, That if the final judgment in the lawsuits does not dismiss all claims against the defendants named therein the Cooperative Fund shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of the remaining accrued interest) to the respective contributors.

"(2)(A) If the share contributed to the Cooperative Fund by the United States under section 312(b)(3) has been deposited in the General Fund of the Treasury pursuant to section 312(e), there is hereby authorized to be appropriated to the Cooperative Fund the amount so deposited in the General Fund of the Treasury, adjusted to include an amount representing the additional interest which would have been earned by the Cooperative Fund if that portion had not been deposited in the General Fund of the Treasury.

"(B) If the final judgment in the lawsuits does not dismiss all claims against the defendants named therein, the share of the Cooperative Fund contributed by the United States shall be deposited in the General Fund of the Treasury.

"(f) Payments for damages arising under sections 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section. In the event interest accruing to the Cooperative Fund is insufficient in any given year to pay such damages, the Nation may seek an award of damages in excess of payments actually made by the Secretary in the United States Claims Court under section 1505 of title 28, United States Code: *Provided*, That any funds appropriated by Congress to pay damages after a suit has been instituted by the Nation shall be an offset against the award.

"AMENDMENTS TO 1980 AND 1983 AGREEMENTS AND FORCE MAJEURE

"SEC. 313. (a) The Secretary is authorized and directed to amend the December 11, 1980 agreement and the October 11, 1983 agreement to conform such agreements to the provisions of this title.

"(b) In the event of the Secretary being rendered unable, wholly or in part, by force majeure to carry out his obligations under the October 11, 1983, agreement or to make payments of the amount due thereunder, the obligations thereunder of the Secretary so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch. The term 'force majeure' as used in this section shall mean acts of God, strikes, lock-outs, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, flood washouts, arrests and restraint from rulers and people, interruptions by government not due to defaults of the parties, civil disturbances, explosions, breakage or accident to machinery or transmission facilities. Nothing contained in this subsection shall be construed as requiring the Secretary or the Nation to settle a strike against its will.

"SHORT TITLE

"This title may be cited as the 'Southern Arizona Water Rights Settlement Act'.".●

By Mr. EXON (for himself and Mr. KERREY):

S. 3126. A bill to extend a time limitation with respect to the economic development plan of the Ponca Tribe of Nebraska; to the Select Committee on Indian Affairs.

PONCA RESTORATION ECONOMIC DEVELOPMENT PLAN

● Mr. EXON. Mr. President, I rise today to introduce legislation to make a technical amendment to the Ponca Restoration Act, Public Law No. 101-484, 104 stat. 1167 (1990) (codified at 25 U.S.C. sec. 983 et seq.). The amendment simply extends the period of time the tribe has to submit an economic development plan by 1 year.

It was my pleasure, along with Senator Kerrey, to introduce the original Ponca restoration bill in 1989. Section 10 of that act directs the Secretary of the Interior to establish an economic development plan with the tribe. Section 10(a)(3) directs that the Secretary submit the economic development plan to Congress within 2 years of enactment—by October 31, 1992.

The amendment would extend the 2-year deadline for submission by a year, and is necessary because the Ponca Act was signed into law on October 31, 1990, in the very early stages of fiscal year 1991. No appropriations were provided to fund the Ponca's economic development plan that year and the tribe had to wait a full year—until fiscal year 1992—for the appropriation of its planning funds. By extending the submission deadline by 1 year, the tribe and the Secretary will be allowed a full 2 years to develop and submit the plan, in keeping with the original intent of the Congress.

I applaud the Poncas for their efforts to date. The restoration of a tribe is often exhausting and painstaking work.

I feel this amendment would certainly provide the necessary assistance to the Poncas so that full restoration is possible. I urge my colleagues to support this bill.

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

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

S. 3126

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

SECTION 1. EXTENSION OF DEADLINE WITH RESPECT TO PONCA ECONOMIC DEVELOPMENT PLAN.

Section 10(a)(3) of the Ponca Restoration Act (25 U.S.C. 983h(a)(3)) is amended by striking "2" and inserting "3".●

ADDITIONAL COSPONSORS

S. 68

At the request of Mr. THURMOND, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 68, a bill to amend title 10, United States Code, to authorize the appointment of chiropractors as commissioned officers in the Armed Forces to provide chiropractic care, and to amend title 37, United States Code, to provide special pay for chiropractic officers in the Armed Forces.

S. 1312

At the request of Mr. ROCKEFELLER, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 1312, a bill to suspend temporarily the duty on octadecyl isocyanate.

S. 2134

At the request of Mr. NUNN, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Utah [Mr. GARN], and the Senator from Idaho [Mr. SYMMS] were added as cosponsors of S. 2134, a bill to provide for the minting of commemorative coins to support the 1996 Atlanta Centennial Olympic Games and the programs of the United States Olympic Committee.

S. 2181

At the request of Mr. BUMPERS, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 2181, a bill to improve the capacity of rural communities to respond to homelessness, to establish effective program delivery models for prevention and remediation of homelessness in rural areas, to collect data on the extent and characteristics of homelessness in rural areas, and for other purposes.

S. 2316

At the request of Mr. BENTSEN, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 2316, a bill to amend title XVIII of the Social Security Act to make technical corrections relating to the Omnibus Budget Reconciliation Act of 1990.

S. 2387

At the request of Mr. LEAHY, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 2387, a bill to make appropriations to begin a phase-in toward full funding of the special supplemental food program for women, infants, and children (WIC) and of Head Start programs, to expand the Job Corps Program, and for other purposes.

S. 2394

At the request of Mr. HARKIN, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of S. 2394, a bill to amend title XVIII of the Social Security Act and title III of the Public Health Service Act to protect and improve the availability and quality of health care in rural areas.

S. 2553

At the request of Mr. INOUYE, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 2553, a bill to amend the Civil Liberties Act of 1988 to increase the authorization for the Trust Fund under the Act, and for other purposes.

S. 2643

At the request of Mr. BENTSEN, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 2643, a bill to amend title XVIII of the Social Security Act to limit modification of the methodology for determining the amount of time that may be billed for anesthesia services under such title, and for other purposes.

S. 2763

At the request of Mr. ROTH, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 2763, a bill to establish the Mike Mansfield Fellowship Program for intensive training in the Japanese language, government, politics, and economy.

S. 2887

At the request of Mr. MCCONNELL, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 2887, a bill to amend title IV of the Social Security Act to provide that the Secretary of Health and Human Services shall enter into an agreement with the Attorney General of the United States to assist in the location of missing children.

S. 2895

At the request of Mr. ADAMS, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2895, a bill to provide a program for rural development for communities and businesses in the Pacific Northwest and northern California, to provide retraining assistance for workers in the Pacific Northwest and northern California who have been dislocated from the timber harvesting, log hauling and transportation, saw mill, and wood products industries, to provide cost share and forest management assistance to private landowners in the Pacific Northwest and northern California in order to ensure the long-term supply of Pacific yew for medicinal purposes, to preserve Federal watersheds and late-successional and old-growth forests in the Pacific Northwest and northern California, to provide oversight of national forest ecosystem management throughout the United States, to provide for research on national forest ecosystem management, and for other purposes.

S. 2986

At the request of Mr. KENNEDY, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2986, a bill to place certain conditions on the operation of Federal Advisory Committees for national park system units.

S. 3009

At the request of Mr. DOMENICI, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 3009, a bill to amend title 10, United States Code, to provide for the payment of an annuity or indemnity compensation to the spouse or former spouse of a member of the Armed Forces whose eligibility for retired or retainer pay is terminated on the basis of misconduct involving abuse of a dependent, and for other purposes.

S. 3065

At the request of Mr. HARKIN, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 3065, a bill to revise and extend the Rehabilitation Act of 1973, and for other purposes.

SENATE CONCURRENT RESOLUTION 132

At the request of Mrs. KASSEBAUM, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of Senate Concurrent Resolution 132, a concurrent resolution expressing the sense of the Congress regarding the desperate humanitarian crisis in Somalia and urging the deployment of United Nations security guards to assure that humanitarian relief gets to those most in need.

SENATE RESOLUTION 325

At the request of Mr. D'AMATO, the names of the Senator from Illinois [Mr. DIXON], and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of Senate Resolution 325, a resolution expressing the sense of the Senate that the Government of the Yemen Arab Republic should lift its restrictions on Yemeni-Jews and allow them unlimited and complete emigration and travel.

SENATE RESOLUTION 328—AUTHORIZING TESTIMONY AND PRODUCTION OF DOCUMENTS

Mr. JOHNSTON (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 328

Whereas, in the case of Marian Mixon v. U.S. Department of the Treasury, MSPB Docket No. AT-1221-92-0714-W-1, pending before the United States Merit Systems Protection Board, counsel for the Internal Revenue Service has requested the testimony of Anna Mayfield, an employee of the Senate on the staff of Senator Thad Cochran;

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

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That Anna Mayfield is authorized to testify and produce documents in Marian Mixon v. U.S. Department of the Treasury, except concerning matters for which a privilege should be asserted.

AMENDMENTS SUBMITTED

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, FISCAL YEAR 1993

BUMPERS AMENDMENT NO. 2832

Mr. BUMPERS proposed an amendment to the bill (H.R. 5373) making appropriations for energy and water development for the fiscal year ending September 30, 1993, and for other purposes; as follows:

On page 55, strike line 7, and insert in lieu thereof the following: "$1,460,784,000, to remain available until expended: *Provided*, That of this amount, from funds appropriated for the superconducting super collider, $516,000,000 shall be applied to deficit reduction.".

HATFIELD (AND OTHERS) AMENDMENT NO. 2833

Mr. HATFIELD (for himself, Mr. MITCHELL, Mr. EXON, Mr. LEVIN, Mr. METZENBAUM, Mr. KENNEDY, Mr. WELLSTONE, Mr. CRANSTON, proposed an amendment to the bill H.R. 5373, supra, as follows:

On page 82, strike out line 19 and all that follows through page 83, line 5, and insert in lieu thereof the following:

SEC. 507. (a) Hereafter, funds made available by this Act or any other Act for fiscal year 1993 or for any other fiscal year may be available for conducting a test of a nuclear explosive device only if the conduct of that test is permitted in accordance with the provisions of this section.

(b) No test of a nuclear weapon may be conducted before July 1, 1993.

(c) On and after July 1, 1993, a test of a nuclear weapon may be conducted—

(1) only if—

(A) The President has submitted the annual report required under subsection (d);

(B) 90 days have elapsed after the submittal of that report in accordance with that subsection; and

(C) Congress has not agreed to a joint resolution described in subsection (d)(3) within that 90-day period; and

(2) only if the test is conducted during the period covered by the report.

(d)(1) Not later than March 1 of each year beginning after 1992, the President shall submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives, in classified and unclassified forms, a report containing the following matters:

(A) A schedule for resumption of the Nuclear Testing Talks with Russia.

(B) A plan for achieving a multilateral comprehensive ban on the testing of nuclear weapons on or before September 30, 1996.

(C) An assessment of the number and type of nuclear warheads that will remain in the United States stockpile of active nuclear weapons on September 30, 1996.

(D) For each fiscal year after fiscal year 1992, an assessment of the number and type of nuclear warheads that will remain in the United States stockpile of nuclear weapons and that—

(i) will not be in the United States stockpile of active nuclear weapons;

(ii) will remain under the control of the Department of Defense; and

(iii) will not be transferred to the Department of Energy for dismantlement.

(E) A description of the safety features of each warhead that is covered by an assessment referred to in subparagraph (C) or (D).

(F) A plan for installing one or more modern safety features in each warhead identified in the assessment referred to in subparagraph (C) that does not have any such feature and, as determined after an analysis of the costs and benefits of installing such feature or features in the warhead, should have one or more of such features.

(G) An assessment of the number and type of nuclear weapon tests, not to exceed 5 tests in any period covered by an annual report under this paragraph and a total of 15 tests in the 4-fiscal year period beginning with fiscal year 1993, that are necessary in order to ensure the safety of each nuclear warhead in which one or more modern safety features are installed pursuant to the plan referred to in subparagraph (F).

(H) A schedule, in accordance with subparagraph (G), for conducting at the Nevada test site, each of the tests enumerated in the assessment pursuant to subparagraph (G).

(2) The first annual report shall cover the period beginning on the date on which a resumption of testing of nuclear weapons is permitted under subsection (c) and ending on September 30, 1994. Each annual report thereafter shall cover the fiscal year following the fiscal year in which the report is submitted.

(3) For the purposes of paragraph (1), "joint resolution" means only a joint resolution introduced after the date on which the Committees referred to in that paragraph receive the report required by that paragraph the matter after the resolving clause of which is as follows: "The Congress disapproves the report of the President on nuclear weapons testing, dated."

(The blank space being appropriately filled in).

(4) No report is required under this subsection after 1996.

(e)(1) Except as provided in paragraphs (2) and (3), during a period covered by an annual report submitted pursuant to subsection (d), nuclear weapons may be tested only as follows:

(A) Only those nuclear warheads in which a modern safety feature has been installed pursuant to the plan referred to in subsection (d)(1)(F) may be tested.

(B) Only the number and types of tests specified in the report pursuant to subsection (d)(1)(G) may be conducted.

(2)(A) One test of the reliability of a nuclear weapon other than one referred to in paragraph (1)(A) may be conducted during any period covered by an annual report, but only if—

(i) within the first 60 days after the beginning of that period, the President certifies to Congress that it is vital to the national security interests of the United States to test the reliability of such a nuclear weapon; and

(ii) within the 60-day period beginning on the date that Congress receives the certification, Congress does not agree to a joint resolution described in subparagraph (B).

(B) For the purposes of subparagraph (A), "joint resolution" means only a joint resolution introduced after the date on which the Congress receives the certification referred to in that subparagraph the matter after the resolving clause of which is as follows: "The Congress disapproves the testing of a nuclear weapon covered by the certification of the President dated ." (The blank space being appropriately filled in).

(3) The President may authorize the United Kingdom to conduct in the United States, within a period covered by an annual report, one test of a nuclear weapon if the President determines that it is in the national interests of the United States to do so. Such a test shall be considered as one of the tests within the maximum number of tests that the United States is permitted to conduct during that period under paragraph (1)(B).

(f) No underground test of nuclear weapons may be conducted by the United States after September 30, 1996.

(g) In the computation of the 90-day period referred to in subsection (c)(1) and the 60-day period referred to in subsection (e)(2)(A)(ii), the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded.

(h) In this section, the term "modern safety feature" means any of the following features:

(1) An insensitive high explosive (IHE).

(2) Fire resistant pits (FRP).

(3) An enhanced detonation safety (ENDS) system.

BURDICK AMENDMENT NO. 2834

Mr. JOHNSTON (for Mr. BURDICK) proposed an amendment to the bill H.R. 5373, supra, as follows:

On page 52, after line 15, add the following:

"SEC. . Utilizing processes required under the National Environmental Policy Act, the Secretary of the Interior is directed to conduct a formal analysis, by no later than March 31, 1994, of alternatives for the design, construction, and operation of the Sykeston Canal as a functional replacement for Lonetree Reservoir, pursuant to section 8(a)(1) of Public Law 89-108, as amended by the Garrison Diversion Reformulation Act of 1986, Public Law 99-294. The resulting Definitive Plan Report/Environmental Impact Statement shall be utilized by the Secretary for the development of a Record of Decision which is to contain the Secretary's recommendation for proceeding with the final design and construction of the Sykeston Canal, consistent with the provisions of the Garrison Diversion Reformulation Act, the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, and the Boundary Waters Treaty of 1909. For purposes of this section, the Secretary shall take into account the results of studies conducted by the Secretary of the Army with respect to the stabilization of Devils Lake, North Dakota."

BUMPERS AMENDMENT NOS. 2835 AND 2836

Mr. BUMPERS proposed two amendments to the bill H.R. 5373, supra, as follows:

AMENDMENT NO. 2835

At the appropriate place in the amendment, insert the following: "Except in the acquisition of components necessary for the Solenoidal Detector Collaboration (SDC) or the Gammas, Electrons, and Muons Detector Collaboration (GEM), no Federal funds appropriated to the Department of Energy for

fiscal year 1993 or thereafter may be used, directly or indirectly, to purchase components for the superconducting super collider that are manufactured outside the United States, except pursuant to a contract that was open to competitive bidding.".

AMENDMENT NO. 2836

At the appropriate place in the amendment, insert the following: "None of the funds made available by this Act shall be obligated for the superconducting super collider after June 1, 1993, unless the President has certified to the Congress that commitments for contributions from international sources meet or exceed a total of $650,000,000 for fiscal years 1993, 1994, and 1995. No components for the superconducting super collider purchased with United States tax dollars and manufactured outside the United States shall be counted as a contribution from international sources for the purpose of meeting the $650 million foreign contribution requirement."

FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION OF 1992

HEFLIN AMENDMENT NO. 2837

Mr. JOHNSTON (for Mr. HEFLIN) proposed an amendment to the bill (S. 1569) to implement the recommendations of the Federal Courts Study Committee, and for other purposes, as follows:

On page 20, line 25, beginning with "unless" strike out all through line 2 on page 21 and insert in lieu thereof "if the council certifies that sufficient judicial resources exist to establish such a panel, taking into account such factors as".

On page 21, line 9, strike out "Administrative Office of the United States Courts" and insert in lieu thereof "Judicial Conference of the United States".

On page 26, line 21, insert "convicted of a crime" before "confined".

On page 27, line 12, insert "(1)" before "The Attorney".

On page 27, line 16, insert "convicted of a crime" before "confined".

On page 27, insert between lines 19 and 20 the following:

"(2)(A) The Attorney General or court shall consider the following standards in determining whether or not administrative remedies are plain, speedy and effective:

"(i) advisory role of employees and inmates or representatives of prisoner rights in formulating a plan of administrative remedies;

"(ii) maximum time limits for written responses to grievances;

"(iii) safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and

"(iv) independent review of the disposition of grievances by an outside entity.

"(B) If the Attorney General or court finds that the administrative remedies are not in substantial compliance with the standards under subparagraph (A), the State shall prove either to the Attorney General or court that alternate procedures developed by the State accomplish the same objectives of providing a plain, speedy and effective administrative remedy.

On page 27, line 21, insert "or court" after "General".

On page 27, line 23, insert "or court" after "General".

On page 28, strike out lines 8 through 13 and insert in lieu thereof:

Section 157(c)(1) of title 28, United States Code, is amended by adding at the end thereof the following: "A party shall be deemed to consent to the findings of fact and conclusions of law submitted by a bankruptcy judge unless the party files a timely objection. If a timely objection is not filed, the proposed findings of fact and conclusions of law submitted by the bankruptcy judge shall become final and the bankruptcy judge shall enter an appropriate order thereon.".

On page 35, line 23, strike out "Claims Court" and insert in lieu thereof "Court of Federal Claims".

On page 38, line 20, strike out "Claims Court" and insert in lieu thereof "Court of Federal Claims".

On page 42, beginning with line 7, strike out all through line 16 on page 43 and insert in lieu thereof the following:

SEC. 303. VICTIMS' RIGHTS FUNDING.

Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(1) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.";

(2) by striking out subsection (d) and inserting in lieu thereof the following:

"(d) The Fund shall be available as follows:

"(1) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(2) Of the next $100,000,000 deposited in the Fund in a particular fiscal year—

"(A) 49.5 percent shall be available for grants under section 1403; and

"(B) 45 percent shall be available for grants under section 1404(a).

"(3) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(4) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(5) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

"(A) 47.5 percent shall be available for grants under section 1403.

"(B) 47.5 percent shall be available for grants under section 1404(a).

"(C) 5 percent shall be available for grants under section 1404(c).".

On page 53, line 14, strike out "Claims Court" and insert in lieu thereof "Court of Federal Claims".

On page 59, line 4, strike out "Claims Court" and insert in lieu thereof "Court of Federal Claims".

On page 70, strike out lines 8 through 12 and insert in lieu thereof the following:

TITLE XI—COURT OF FEDERAL CLAIMS

SEC. 1101. SHORT TITLE.

This title may be cited as the "Court of Federal Claims Technical and Procedural Improvements Act of 1992".

SEC. 1102. COURT DESIGNATION.

(a) IN GENERAL.—Chapters 7, 51, 91, and 165 of title 28, United States Code, is amended by—

(1) striking "United States Claims Court" each place it appears and inserting "United States Court of Federal Claims"; and

(2) striking "Claims Court" each place it appears and inserting "Court of Federal Claims".

(b) OTHER PROVISIONS OF LAW.—Reference in any other Federal law or any document relating to—

(1) the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims"; and

(2) the "Claims Court" shall be deemed to refer to the "Court of Federal Claims".

SEC. 1103. SOCIAL SECURITY AMENDMENTS.

Section 178 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(m) For the purpose of construing section 3121(i)(5) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(i)(5)) and section 209(h) of the Social Security Act (42 U.S.C. 409(h)), the annuity of a Court of Federal Claims judge on senior status after age 65 shall be deemed to be an amount paid under section 371(b) of this title for performing services under the provisions of section 294 of this title.".

SEC. 1104. ELIGIBILITY FOR INSURANCE AND ANNUITIES PROGRAMS.

Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 179. Insurance and annuities programs

"For the purpose of construing the provisions of title 5, a judge of the United States Court of Federal Claims shall be deemed to be a 'judge of the United States' as designated in section 2104(a) of title 5.".

SEC. 1105. MILITARY RETIREMENT PAY FOR RETIRED JUDGES.

(a) IN GENERAL.—Chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 180. Military retirement pay for retired judges

"Section 371(e) of this title shall be applicable to judges of the United States Court of Federal Claims, and for the purpose of construing section 371(e) of this title, a judge of the United States Court of Federal Claims shall be deemed to be a judge of the United States as defined by section 451 of this title.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 7 of title 28, United States Code, is amended by adding at the end thereof the following:

"179. Insurance and annuities programs.
"180. Military retirement pay for retired judges.".

SEC. 1106. RECALL OF COURT OF FEDERAL CLAIMS JUDGES ON SENIOR STATUS.

(a) IN GENERAL.—Section 375 of title 28, United States Code, is amended—

(1) in the first sentence of subsection (a)(1) by striking ", a judge of the Claims Court," and ", judge of the Claims Court,";

(2) by amending paragraph (2) of subsection (a) to read as follows:

"(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.";

(3) by amending paragraph (3) of subsection (a) to read as follows:

"(3) For purposes of this section, the term 'bankruptcy judge' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1994."; and

(4) in subsection (f) by—

(A) striking ", a judge of the Claims Court,"; and

(B) striking ", a commissioner of the Court of Claims,".

(b) RECALL OF RETIRED JUDGES.—Section 797 of title 28, United States Code, is amended—

(1) in subsection (a) by inserting "section 178 of this title or under" after "under"; and

(2) in the second sentence of subsection (d) by striking "civil service".

SEC. 1107. LAW CLERKS AND SECRETARIES.

The first sentence of section 794 of title 28, United States Code, is amended by inserting after "may approve" the following: "for district judges".

SEC. 1108. SITES FOR HOLDING COURT.

(a) IN GENERAL.—Section 798(a) of title 28, United States Code, is amended to read as follows:

"(a) The United States Court of Federal Claims is authorized to utilize facilities and hold court in Washington, District of Columbia, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the District of Columbia.".

(b) FOREIGN COUNTRY.—

(1) REDESIGNATION.—Subsection (b) of section 798 of title 28, United States Code, is redesignated as subsection (c).

(2) HEARING IN A FOREIGN COUNTRY.—Section 798 of title 28, United States Code, is amended by inserting after subsection (a) the following:

"(b) Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency and justice will be served, the chief judge may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to the provisions of section 1292(d)(2) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.".

(c) APPEAL JURISDICTION.—Section 1292(d)(2) of title 28, United Sates Code, is amended by inserting after "When" the following: "the chief judge of the United States Court of Federal Claims issues an order under the provisions of section 798(b) of this title, or when".

SEC. 1109. JURISDICTION.

Section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) If the certification of a claim pursuant to this Act is technically defective, a court or agency board of contract appeals may permit the certification to be corrected at any time prior to a final decision by the court or agency board of contract appeals unless the failure properly to certify in the first instance was fraudulent, in bad faith, or with reckless or grossly negligent disregard of the requirements of the relevant statutes or regulations.

"(B) If the contracting officer did not challenge the validity of the certification and the court or agency board of contract appeals permits the defective certification to be corrected under this section, interest shall accrue on the claim under section 611 of this Act from the date the claim was first submitted to the contracting officer.

"(C) This paragraph shall be effective with respect to cases filed with any court or agency board of contract appeals under section 607, 608, or 609 of this Act on or after the date of the enactment of this paragraph.".

SEC. 1110. AWARDABLE COSTS.

Section 1919 of title 28, United States Code, is amended by—

(1) striking "district court or" and inserting "district court,"; and

(2) inserting after "Trade" the following: ", or the Court of Federal Claims".

SEC. 1111. PROCEEDINGS GENERALLY.

Section 2503 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d) For the purpose of construing sections 1821, 1915, 1920 and 1927 of this title, the United States Court of Federal Claims shall be deemed to be a court of the United States.".

SEC. 1112. SUBPOENAS AND INCIDENTAL POWERS.

(a) IN GENERAL.—Section 2521 of title 28, United States Code, is amended by—

(1) amending the section heading to read as follows:

"§2521. Subpoenas and incidental powers";

(2) inserting "(a)" before "Subpoenas requiring"; and

(3) adding at the end thereof the following new subsections:

"(b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—

"(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) misbehavior of any of its officers in their official transactions; or

"(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

"(c) The United States Court of Federal Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 165 of title 28, United States Code, is amended by amending the item relating to section 2521 to read as follows:

"2521. Subpoenas and incidental powers.".

SEC. 1113. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE XII—EFFECTIVE DATE

SEC. 1201. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act shall be effective on and after January 1, 1993.

(b) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding any provision of this Act, all sums expended pursuant to this Act shall be subject to the availability of appropriations.

NOTICES OF HEARINGS

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Select Committee on Indian Affairs will be holding a hearing on Tuesday, August 4, 1992, beginning at 9:30 a.m., in 485 Russell Senate Office Building on S. 2617, the Indian Dams Safety Act of 1992.

Those wishing additional information should contact the Select Committee on Indian Affairs at 224-2251.

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LEAHY. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry Subcommittee on Agricultural Credit will hold a hearing on S. 3119, the USDA National Appeals Division Act of 1992. The hearing will be held on Monday, August 10, 1992, at 9:30 a.m. in SR-332. Senator KENT CONRAD will preside.

For further information please contact Suzy Dittrich at 224-5207.

ADDITIONAL STATEMENTS

MAKING SYRIA ACCOUNTABLE

• Mr. DECONCINI. Mr. President, I was greatly disturbed by the contents of a July 28, 1992, op ed the New York Times. The author, David Twersky, chronicled the friendly relations that exist between the United States and Syria. The serious issues raised in the article are concerns which I have shared for many years.

I was also deeply troubled at the contemporaneous release of the latest Amnesty International on Syria entitled "Syria: Indefinite Political Imprisonment." Both point to the continuing repressive policies pursued under the Assad regime and the need for increased vigilance and pressure on the part of the world community. We must continue to lead the steady drumbeat for Syria to respect human rights and allow the most basic of civil liberties for its people.

As a result of the release of the American hostages in Lebanon last year, President Bush chose to portray Syria as a nation that is now entering the international community as a willing, peaceful, and law-abiding member. I wonder how the President comes by with such wishful thinking. While he may choose to see the Syrian Government any way he pleases, the reality of the situation is clear—the government of President Hafez al-Assad remains as uncooperative and terror-based as ever.

Syria's continued occupation of Lebanon, support for terrorist groups, and drug trafficking are but a few of the atrocities that members of the current administration choose to overlook as they, in Twersky's terms, "cozy up to Syria."

When I was in Damascus in 1989, I presented President Assad with a list of the names of political and religious prisoners—mostly Jewish—which I asked to be freed from the oppression that they are forced to endure at the hands of the Syrian Government. These people, along with other minorities in

Syria, are forced to abide by laws in a society with few personal freedoms. They must live in poor conditions, unable to leave Syria, even for travel, or to speak freely. As I expected, I have never received a response to my letter. Yet the terror continues.

This spring, I wrote to Secretary of State James Baker and discussed published reports of drug trafficking in the Bekaa Valley actively supported by Syria's military through its de facto occupation of Lebanon. The State Department estimates that 49 metric tons of opium have come from the valley. A story in the New Republic stated that, "Between 20 percent and 35 percent of heroin imported into the United States comes from Syrian-occupied Lebanon." And yet we maintain a dialog with Syria.

Mr. President, what more must Assad and the Syrian Government do before this administration realizes that any form of cooperation that the Syrians choose to offer eventually is turned to a Syrian advantage in consolidating gains made elsewhere. I sincerely hope—for the sake of a real peace in the Middle East—that the Bush administration wakes up before it is too late.

I ask that a copy of the July 29, 1992, opinion piece from the New York Times, entitled "The Risks of Cozying Up to Syria," be printed in the RECORD at this point.

The article follows:

THE RISKS OF COZYING UP TO SYRIA

(By David Twersky)

When will Congress focus a spotlight on the Administration's crazy tilt toward Syria? Senate hearings into the seamy underside of U.S.-Syrian ties, set for this week, have been postponed because of concern that Damascus might cut off the emigration of Syrian Jews.

This delay, which came after Jewish groups urged Senator John Kerry to hold off until more Jews leave Syria, means Syrian Jews are being held hostage, to guarantee Congressional silence about the U.S.-Syrian relationship. This reflects the hollowness of Syrian moderation.

Concern about Jews remaining in Syria is understandable. But if we are to avoid disaster, the Congressional inquiry into accusations of Syrian involvement in terrorism and drug trafficking and into Syria's arms buildup should go forward. The Bush Administration is making the same mistake it made with Iraq in the late 1980's. In both cases, the Administration decided that a brutal dictatorship was crucial to peace efforts. The U.S. looked the other way as Saddam Hussein harbored terrorists and built a huge arsenal—as President Hafez al-Assad of Syria is doing now.

Washington's see-no-evil approach is aimed at securing and sustaining Syrian support for U.S. policies in the Mideast. This support contributed to the anti-Iraq front, the peace process and to Syria's decision to allow a controlled exodus of its Jewish population. This has been accomplished without the U.S. removing Syria from the State Department list of terrorism-sponsoring states. (Taking Iraq off the list in the early 80's was the biggest error in U.S. policy toward Baghdad.)

But nothing has come free. Evidence of U.S. complicity or disinterest in Syria's drug trafficking, terrorism and expansionism is mounting. State Department officials have described Syrian missile acquisitions as "defensive" and equivocated about the narcotics problem. When the Justice Department indicted two Libyans for the Pan Am 103 bombing, Mr. Bush appeared overanxious to let the Syria off the hook, declaring that it had received "a bum rap." Congressional investigators say the Drug Enforcement Administration has not cooperated with inquiries into Syria's ties to narcotics trafficking.

With the postponement of hearings, the Senate investigators will have to wait to explore the following reports and accusations, among others:

High-level Syrians involved in narco-terrorism visited Washington last fall, and two Syrian generals were given a tour of D.E.A. facilities last year. The secret visitors were said to have included Yussef Haider, a man with links to drugs and terrorism, and Mohammed Machlauf, his business partner and Mr. Assad's brother-in-law.

A Senate staffer said the F.B.I. told her someone named Haider was here last year at the time in question—just as the Administration was seeking to negotiate the release of hostages in Syrian-occupied territory in Lebanon and to persuade Damascus to attend the peace talks.

There is evidence of Syrian involvement in Lebanese heroin trafficking and terrorism, and questions about Syria's possible links to the Pan Am 103 bombing are unresolved. Senate investigators are looking at documents, including letters of transit purportedly sold to drug dealers by Syria's Defense Minister.

Pentagon and Congressional experts complain that the State Department has refused to confront Syria on its purchases of ballistic missiles. Syria has spent most of the $2 billion in grants it received from the Saudis on weapons, including Scud-C missiles from North Korea and M-9 missile equipment from China.

It is bad for America, and for the Syrian Jews the U.S. helped set free, to let these and other questions go unasked.●

AFTER THE FIRE: AN NABJ JOURNAL SPECIAL REPORT

● Mr. SIMON. Mr. President, one of the more significant publications to give insights into the Los Angeles riots following the acquittal of Rodney King is the NABJ Journal, the official publication of the National Association of Black Journalists.

To the credit of the publication, they not only printed reactions from black journalists, but also an article by Mrs. Kapson Yim Lee, the editor of the Korea Times, published in Los Angeles.

The other two articles are by Sylvester Monroe, an African-American who reports for Time magazine from Los Angeles, who tells his immediate reaction to the unbelievable verdict in the Rodney King situation: and comments by Bryan Jenkins, a reporter for KCOP-TV, the only African-American who covered the entire Rodney King trial.

Everyone will not agree with every detail by these reporters, but they give insights into what is happening in our society and, I believe, important insights.

We look with wonderment and sadness as Bosnia is caught in the midst of ethnic turmoil, as is too much of Eastern Europe and parts of Africa, but we need to reach out to one another with greater understanding in our own country also.

As one who was involved in the civil rights struggle a few decades ago, it was exciting to see this Nation move ahead, and we did move ahead. Some have forgotten that.

But it is also true that in the last 12 years, in large part because of insensitive national leadership, not only have we failed to achieve greater progress, I believe that history will record that we have slipped in moving toward greater understanding of one another.

I learned of the Rodney King verdict when my wife and I encountered Senator FRANK LAUTENBERG on the street, and he told us that he had just heard that the officers were acquitted. He said it with a sense of great regret, that such an injustice could occur. I immediately responded, "There will be riots." And my wife said, "I almost feel like rioting myself."

We were three whites bemoaning what had happened. While all three of us have been in the fight for greater justice, we have not experienced what many black Americans have experienced, and we could only imagine, at that point, what their reaction might be. The NABJ Journal account by these three journalists is well worth reading.

I ask that the three articles that I have referred to be placed into the RECORD at this point.

The articles follow:

MEDIA IGNORED KOREAN SIDE OF STORY

(By Kapson Yim Lee)

I was born in Seoul, Korea. I came to the United States 20 years ago, and have lived in Los Angeles ever since. My husband used to own a market in central Los Angeles. I have a son in college, whose heroes are African American leaders such as Malcolm X and Spike Lee.

I have felt a tremendous empathy for the plight of Korean merchants as I edited stories for my newspaper, The Korea Times, concerning conflicts between the two minority groups—Koreans and blacks.

On the morning after the Rodney King verdicts, I saw a building burning just two blocks from our newspaper office. Along with other reporters and editors, I went outside and helplessly watched the black smoke billowing over the roofs.

Then I saw a young black male motorist—my son's age—slowing down alongside the curb. Shaking his fist, he yelled at us, "We gonna kill you, kill all of you!"

Like a frightened chicken, I hurried back to my office. Yes, I was scared, scared to death.

I had never been so scared since the outbreak of the Korean War.

I believe the anger of the black motorist and his hostility toward me—toward all Koreans—is a creation of the mainstream media.

Before Korean Americans and African Americans had a chance to get to know each other—to learn each other's culture and his-

tory—the media had pitted the two minorities against each other.

They did this by denying Korean merchants their humanity.

They repeatedly gave simplistic, sensational and unbalanced coverage.

Two examples come to my mind: news stories consistently equated the Soon Ja Du case with the Rodney King verdicts. While the African American side of the story was given, the Korean side was not covered.

Latasha Harlins was a 15-year-old African American girl who was shot and killed by Korean American merchant Soon Ja Du, owner of the Empire Liquor Store.

Almost every article that dealt with Korean-black tension stated that Soon Ja Du shot and killed a 15-year-old black girl in a dispute over a $1.79 orange juice and that Judge Joyce A. Karlin gave her a five-year probation.

What those articles left out was the fact that for many months before the incident, gang members terrorized the Du family with shoplifting, vandalism and brutal physical force.

Mrs. Du grabbed the gun after she was punched four times by Latasha Harlins and knocked to the ground twice.

Judge Karlin sentenced Mrs. Du to a five-year probation and community service because she took into account the total picture and believed that Mrs. Du acted in self-defense.

One may agree or disagree with the judge's ruling. But it is outrageous that all the stories have consistently left out the other important facts that drove the Korean woman to do what she did.

The Du case is also not a race-related one. It is one of the countless homicides that took place in Los Angeles, where more than 50 different languages are spoken.

Court records show that there was no evidence of racism. Even the Harlins family said that the shooting was not racially motivated.

Yet, news stories or the TV coverage I have watched, singled out Mrs. Du as a Korean. They don't do that with other races.

ABC-TV's Nightline of May 1 clearly typified how casually the powerful networks inflame the crisis when countless Koreans and blacks are victimized by looting and burning.

I still cannot believe how Ted Koppel—with his prominence and stature—violated the basic principle of journalism of balanced coverage. In discussing black-Korean tension, he invited only African American leaders and encouraged them to criticize Korean American merchants without any Korean present.

If I were a young black man reading the Los Angeles Times and watching television programs such as Ted Koppel's I'd feel enraged, too.

Send a loud message to the mainstream media, especially the Los Angeles Times and television stations in Los Angeles, to become responsible citizens of the multicultural community.

These powerful institutions must have reporters and editors who are linguistically and culturally competent to cover race relations.

Just because Korean immigrants do not speak English well should not mean that their views should be left out.

The media must become responsible citizens of this nation by drawing a sensible policy in training their staff members and to stop compounding racial tensions.

I WANTED TO SMACK SOMEBODY WHITE

(By Sylvester Monroe)

My first reaction to the not-guilty verdicts ending the trial of four Los Angles police officers charged with the videotaped beating of Rodney King was overwhelming sadness. It was followed immediately by a sick feeling in the pit of my stomach, as if something inside me was dying. But huddled around the television in the Time bureau with a dozen or so of my colleagues and friends—all but one of them white—the sickness quickly turned to anger.

I am not a violent man, and I have never intentionally hurt anyone, but every time I heard the words, "Not guilty!" repeated in that unbelieved legal litany, a part of me wanted to turn around and smack somebody white. It wasn't that I was surprised by the verdicts. Stunned maybe, but not surprised. Like many other African Americans I have expected the worst, while hoping against hope that I would be wrong. Like so many others, I wanted to believe that this time the system would work for us. But each time the bailiff read he words "Not guilty!" what echoed back inside my head "——k Niggers!" And once again, I knew that the system had failed black people.

I also knew that once again I would have to take to the streets and try to make sense of something quite senseless. I would have to set aside my own feelings to report on the feelings of others. And as I contemplated it, my anger, which had been sickness and sadness, was transformed yet again into frustration.

The frustration began to build as my white colleagues began approaching me to say how 'ashamed' they felt over the verdicts. What I had wanted to say to them was "You should be!" But just as I had controlled the urge to strike them physically, I also knew that I could not assualt them verbally either.

My frustration increased as I headed to South Central L.A. and saw angry people flooding the streets, marching and carrying signs that read. "It's a white man's world," and "No justice, no peace." It increased as I watched their anger build to rage and the first bricks and bottles being thrown at passing white motorists. It grew even larger, when I saw a young black man shouting at a line of mostly white police officers pushing him and several other people back from a burning building.

IN COURT, I HELD BACK RAGE

(By Bryan Jenkins)

The day of the verdict, I was set up to do a "live cut-in," interrupting our station's programming for a special report on the jury's decision regarding the four police officers charged in the Rodney King beating.

The Simi Valley courthouse was a beehive of activity. Hoards of television, radio and print journalists were settling into their spots some in front of TV court monitors upstairs in the media room, others downstairs in front of the Simi Valley courthouse with a crowd of about 100 onlookers.

Imagine the silencing effect of dropping a cover over a bird in a cage. That's the kind of hush that dropped over the entire courthouse when the judge walked into that Simi Valley courtroom at 3:15, the afternoon of April 29.

"Timothy Wind, not guilty . . . Theadore Briseno, not guilty . . . Stacy Koon, not guilty . . . Laurence Powell, not guilty . . ."

My ears heard but my mind kept saying "It's just a bad dream, wake up!" The finality of the verdicts began to register when I saw the officers hugging their attorneys on the court monitor. I froze. I was like every drop of blood drained from my body. Every nerve ending went dead. What seemed like an eternity were only seconds that passed before a voice in my earpiece yelled out, "We're coming to you in 30 seconds." In my 34 years on this Earth, one of the hardest things I have ever had to do came at that moment. To have to fight tears at the height of personal rage and deliver an objective analysis of what had occurred.

During the seven-week trial, my father kept telling me the officers were going to go free, no matter how damaging the evidence seemed to be. I thought to myself, I can understand that his perspective was shaped by the overt racism he grew up with as a child of the Jim Crow era.

To be honest, my own experience growing up in Los Angeles was pockmarked with runins with Los Angeles Police Department officers. I never committed a crime, but I can recall several occasions where I was stopped, forced to lie on the ground—shotgun to the back of my head—for driving the wrong kind of car, being in the wrong neighborhood, or supposedly matching the description of some suspect.

Yet, I kept telling my father (and tried to convince myself) that "This is 1992!" In an age where even white folks complained about police abuse, here was an incident captured on videotape, so ugly, so vicious, that it shocked the entire nation. Drawing outrage from President Bush himself. How could these four officers defend what appeared to be so blatantly cruel and unjust?

That in mind, I told my father, "The evidence is overwhelming and the jury can't ignore it. You'll see."

What I saw during the seven-week trial: Rodney King's criminal background flaunted before the jury while the officers' records were largely kept secret. Two of the officers had been subjects of prior complaints of abuse. Laurence Powell, who wielded his baton most prominently on the video-tape, had been incriminated that night by a police dispatcher. Transcripts revealed the dispatcher had chastised Powell about previous episodes of abuse. The jury was not allowed to hear that.

I listened as each officer who took the stand tried to defend the others, remembering vividly the details that would help their brothers and conveniently forgetting the specifics that could hurt them. At points, the videotape would seem to prove that some of the officers were lying.

Officer Theodore Briseno, one of the four charged who testified that the other three were out of control, was characterized by the others as an opportunist trying to save his own neck. His rookie partner, who supported his testimony, was described by other officers as too green to have an opinion.

I watched the LAPD commander, who helped write the department's use-of-force policy, testify that the beating was totally unjustified. And I listened as three so-called experts, of lesser rank within the department, told the jury that every blow was by the book.

The two California highway patrol officers at the scene told the jury of their shock at seeing what they called an unprovoked attack on King. Nurses who treated Rodney King after the beating testified on how officers joked about King playing hardball and losing.

Prosecutors hammered away at alleged racism on the part of Officer Powell, point out his reference to a call involving a black

family as quote "something out of 'Gorillas in the Mist'." (To this day, Powell has refused to explain to me what he meant by that remark, except to say that it was not racist.)

I sat in disbelief as defense attorneys argued that we were all deceived by the videotape of the beating, that in fact Rodney King was in control of the situation. That a frame-by-frame analysis of the videotape would show the officers were actually responding to acts of aggression on the part of King. Yes, so-called use-of-force experts would say, King was even aggressive at points when he was seen backing away with his hands over his face and when he was lying face down on the ground.

Given all that had been said during the trial, I was still convinced that any 12 people, black or white, would let their own eyes be the final decider of truth.

My father said the truth was that 10 whites, one Latino and one Filipino were not going to send four white minions of the law to jail for beating up a black ex-con, even if they'd seen it happen right in front of them. As much as I wanted to believe that the times and the society that made him feel that way had changed, it hurt me to my heart to discover I was wrong and he was right.•

BLUE CROSS/BLUE SHIELD: A WISCONSIN SUCCESS STORY

• Mr. KOHL. Mr. President, as a member of the Government Affairs Permanent Subcommittee on Investigations, I fully support Chairman NUNN's examination of fraud and inefficiency within the Blue Cross/Blue Shield system. The recent failure of West Virginia's Blue Cross/Blue Shield plan merits our most concerted investigation. We must prevent further mishaps.

In order to ensure the health of these insurance companies, however, we must do more than highlight what has gone wrong. I think we should also look at what has been done right. There are several Blue Cross/Blue Shield companies with exemplary records. If we want to improve the system, we should try to emulate the successful participants.

Blue Cross/Blue Shield of Wisconsin is noteworthy. In an independent study by the Weiss Research Co., Wisconsin was given a high rating relative to other Blue Cross/Blue Shield plans.

Wisconsin's plan does not display the warning signs of a weak company. Its investment portfolio is sound and conservative. Its subsidiaries are financially successful and fully accountable to the appropriate oversight agencies. Its board of directors is comprised almost entirely of outsiders, with the exception of one member.

Along with possessing these essential ingredients of a strong insurance company, Blue Cross/Blue Shield United of Wisconsin goes even farther; it is an outstanding corporate citizen. It has made a commitment to provide jobs in Milwaukee's central city and to confront disproportionate unemployment in the minority community. A recent Milwaukee Journal article noted that the company has the second largest percentage of minority employees among large Milwaukee employers.

Wisconsin State law contributes to the solid record of our Blue Cross/Blue Shield plan. In the early 1970's, the State legislature extended insurance statutes to the Plan. Many States treat Blue Cross/Blue Shield plans differently from private insurance companies. Also, unlike some other States, Wisconsin law gives its commission of insurance regulatory power over the plan's subsidiaries. Wisconsin has a strong track record of effective, efficient insurance regulation.

Mr. President, I believe the Permanent Subcommittee on Investigations will help to close the book on Blue Cross/Blue Shield failures. In the future, I hope we will see more success stories like Wisconsin's.•

THE CASE OF THE MISSING BLACK JUDGES

• Mr. SIMON. Mr. President, the distinguished senior judge of the U.S. Court of Appeals for the Third Circuit, the former chief judge of that circuit, recently spoke to the National Bar Association in St. Louis, and part of his remarks appeared on the op-ed page of the New York Times.

His article focuses on the lack of African-American judicial nominees. I would add that President Bush has not nominated a single Asian-American for any Federal judgeship. He is the first President in 30 years not to do so.

Judge Higginbotham has a reputation of both candor and sensitivity, and his statement shows, once again, that we're not doing what we should as a free people to demonstrate that the diversity of our people is reflected in our institutions.

I ask to insert his excellent statement into the RECORD at this point.

The article follows:

[From the New York Times, July 29, 1992]

THE CASE OF THE MISSING BLACK JUDGES

(By A. Leon Higginbotham)

PHILADELPHIA.—Suppose someone wanted to steal back past achievements, rein in present gains and cut off future expectations among African-Americans about participation in the judicial process. That person would have found it difficult to devise a better plan than nominating Clarence Thomas to the Supreme Court while decreasing the number of African-American judges on the Federal bench.

The confirmation of Clarence Thomas forced the nation to pay attention to many issues, from the Senate's role in confirming Supreme Court Justices to sexual harassment of women in the workforce. But the Thomas confirmation proceedings diverted our attention from one vital issue: Thanks to Presidents Ronald Reagan and George Bush, African-American judges on the United States Courts of Appeals have been turned into an endangered species and are now on the edge of extinction.

For more than 99 percent of Federal litigants, the 13 Courts of Appeals are effectively the courts of last resort. Last term, the Supreme Court heard slightly more than 100 cases. In the same period, the Courts of Appeals decided 41,000 cases; in addition, they had 32,000 cases pending on their dockets at the end of the year.

For 145 years, the Federal courts in the continental United States—the Supreme Court, Courts of Appeals and District Courts—were entirely made up of white males. The first woman, Florence Allen, was appointed by Franklin D. Roosevelt, in 1934, and the first African-American, William H. Hastie, in 1949, by Harry S Truman.

During his eight years in office, Dwight D. Eisenhower, however, did not appoint a single African-American to any Federal court in the continental U.S. As for the Courts of Appeals, John F. Kennedy appointed one African-American, Thurgood Marshall, and Lyndon B. Johnson appointed two, Spottswood W. Robinson 3d and Wade H. McCree Jr. Neither Richard Nixon nor Gerald R. Ford appointed any African-Americans to the Courts of Appeals.

Presidents Nixon and Ford did appoint a total of nine African-Americans to the District Courts. President Reagan appointed six, and President Bush has appointed nine. By contrast, Jimmy Carter appointed 28 to these same courts. He appointed more African-Americans in four years than Presidents Nixon, Ford, Reagan and Bush combined appointed in the course of nearly 20 years.

President Carter also took significant steps in his appointments to the Courts of Appeals. When he became President in 1977, there were only two African-American judges on the Courts of Appeals. In four years in office, he appointed nine, including the first African-American woman, Amalya L. Kearse. Their presence made the Federal judiciary far stronger than it otherwise would have been.

Moreover, to the extent that the appointment of judges is a barometer of a President's feelings about placing historically excluded groups in positions of power, Jimmy Carter showed that he had complete confidence in African-Americans.

President Reagan apparently felt otherwise and President Bush apparently does, too. On taking office, they both asserted that they wanted a far more "conservative" Federal court system. In that, they have succeeded admirably. But in the process they have turned the Courts of Appeals into what Judge Stephen Reinhardt of the Court of Appeals for the Ninth Circuit has called "a symbol of white power."

In eight years of office, out of a total of 83 appellate appointments, Ronald Reagan found only one African-American whom he deemed worthy of appointment, Lawrence W. Pierce. President Bush's record is just as abysmal. Of his 32 appointments to the Courts of Appeals, he also has been able to locate only one African-American he considered qualified to serve: Justice Clarence Thomas.

Since Justice Thomas moved from the Court of Appeals to the Supreme Court, no African-Americans appointed by President Bush remain on the Courts of Appeals. As Judge Reinhardt has said: "In President Bush's view, Clarence Thomas is apparently all there is out there. Clarence Thomas is black America to our President."

By 1993, six of the 10 African-Americans sitting on the Courts of Appeals will be eligible for retirement. As the African-American judges appointed by President Carter have retired, Presidents Reagan and Bush have replaced them largely with white judges in

their 30's and early 40's. Why is it important for the Federal bench to be pluralistic? Pluralism, more often than not, creates a milieu in which the judiciary, the litigants—indeed, our *democratic system—benefit from the experience* of those whose backgrounds reflect the breadth of the American experience.

I do not want to be misunderstood. Pluralism does not mean that only a judge of the same race as a litigant will be able to adjudicate the case fairly. Rather, by creating a pluralistic court, we make sure judges will reflect a broad perspective. For example, speaking of Justice Thurgood Marshall, Justice Sandra Day O'Connor said: "At oral arguments and conference meetings, in opinions and dissents, Justice Marshall imparted not only his legal acumen but also his life *experiences, pushing and prodding us to re*spond not only to the persuasiveness of legal argument but also the power of moral truth."

Judicial pluralism is important for another reason. It is difficult to have a court that in the long run has the respect of most segments of the population if the court has no or minuscule pluralistic strands. Of course, pluralism does not absolutely and forever guarantee an effective and fair judiciary. Nothing really does. However, pluralism is a sine qua non in building a court that is both substantively excellent *and* respected by the general population. In other words, judicial pluralism breeds judicial legitimacy. Judicial homogeneity, by contrast, is more often than not a deterrent to, rather than a promoter of, equal justice for all.

Many Americans have rightly condemned South Africa's wretched system of apartheid. but we should also ask ourselves: How is it that in President F.W. de Klerk's less than three years in office, one of his 31 appointments to South Africa's courts is a black lawyer while of the 115 Bush and Reagan appointments to the Courts of Appeals in 12 years, only two have been African-American?

I am forced to conclude that the record of appointments of African-Americans to the Courts of Appeals during the past 12 years demonstrates that, by intentional Presidential action, African-American judges *have been turned into an endangered species,* soon to become extinct.•

TAIWAN AND TRADE: STATEMENT OF THE HONORABLE FREDRICK F. CHIEN

• Mr. DASCHLE. Mr. President, on May 9, 1992, Taiwan's Minister of Foreign Affairs, the Honorable Fredrick F. Chien, delivered a major speech in Taipei on the Republic of China's international trade and economic growth policy. *It is a statement of commit*ment to open, mutually beneficial international relationships. It is a statement about free enterprise and democracy. It is a statement about responsibility.

Foreign Minister Chien's speech reflects Taiwan's increasing role in the economy of its own Asian-Pacific region as well as the global economy. It offers new approaches to attacking the poverty of the third world. And, finally, it addresses Taiwan's trade relations with the United States.

Foreign Minister Chien's May 9, 1992, speech is an important reminder of the unique challenges and opportunities facing Taiwan in the trade arena. I commend it to my colleagues and ask that it be printed in the RECORD.

The material follows:

A VIEW FROM TAIPEI: GLOBAL IMPLICATIONS OF THE ROC ECONOMY

(Address by Hon. Fredrick F. Chien)

Ladies and Gentlemen: I want to take just a few minutes to provide some perspective on the Republic of China's economic situation as it bears upon our foreign policy and international relationships. There is no need for *me to belabor the essential facts about our* present national economic conditions and policy, as others with us today will address those details. Let me simply begin by stating this axiom: today, increasingly, economic considerations are the driving force behind diplomacy, the world over. Whether we are talking about bilateral relations countries, a particular nation's global role, multi-national regional trade arrangements, or whatever, the commercial and financial element bears heavily upon the course of contemporary international politics. We cannot escape the fact. Like everyone else, we have to *operate within the context of reality.*

Realistically, the ROC's financial strength and sustained economic growth is the compelling feature of our foreign policy. It is the sound basis upon which our future role will be constructed in the international arena. This is not so-called "dollar diplomacy" in the negative sense; it is practical recognition of the very real force which defines politics among nations. It reflects our intent and willingness to share our resources generously with others who need help, and who can help us in return.

Practically speaking, in order to function internationally, the ROC must strive to make as many friends as possible. Our diplomatic efforts to maintain old ties and develop new friends are pragmatic and in earnest. Ours is a policy of vision, as well as necessity.

Based upon a realistic assessment of our national interests and present circumstances, we seek to consolidate and reinforce our cooperation with those countries with whom we have formal diplomatic ties. In addition, we are striving to develop ties with countries which do not currently have formal relations with us. To date, we have 83 representative offices in 54 such countries. These offices facilitate bilateral cooperation in areas like trade, culture, technology, and environmental protection. We seek to establish semi-official relations with these countries.

My country's economic success in the past two decades has merited admiration and careful study by both developing and developed nations. Our achievements, in face of *many adversities,* give us international credibility and respect. Though the island of Taiwan is small and our natural resources are scarce, our ability and contributions are acknowledged worldwide. Others now recognize the practical value of interacting with us.

What the ROC has done, is doing, and can do on the international stage is of obvious consequence to East Asia and the Pacific, as well as to the world more generally. Our success in the post-1949 years lay in creating a vital and energetic society, extending social justice; expanding prosperity; and engaging *the enthusiastic support and commitment of* our middle class, our skill technicians, and our young.

The ROC's commitment to maintaining a free, fair, and prosperous society is our most important national asset. We wholeheartedly embrace the historically-proven "winning formula" of free market economics plus democracy. It has brought us spectacular re*sults, and we are eager to contribute by shar*ing that experience with others.

Our purpose, in large part, is to invest our hard-won resources toward the expansion of prosperity and security. In the process, we hope to develop symmetrical, mutually beneficial relations with others. Today we have trading relations with more than 140 countries; and we are the ninth largest investor in overseas enterprises. These worldwide cooperative ties, in themselves, represent de facto recognition of our existence and our relevance to the global system. Gradually, over time, our role as a developmental model *and as a net benefactor to the international* system has become better understood. Our substantive contributions can be instructive as well as compensatory. Taiwan's own developmental experience in national growth, social cohesion, and political maturity offers valuable lessons for those who care to examine them.

We hope to play a very constructive role in the international context. As one example, my government in 1996 established an "International Economic Cooperation and Development Fund" (IECDF) with an appropriation of US$1.2 billion for economic aid to friendly *developing countries. In addition,* we currently have 36 teams of technical experts working in 25 countries on various agricultural, social, and resource development projects. Other notable international programs include our Chiang Ching-kou Fundation for International Scholarly Exchange, and the ROC Fund for International Disaster Relief.

We want to see democracy and free enterprise flourish in our own Asian-Pacific region. We want to help cultivate peace and stability; economic cooperation; and integrated approaches towards dealing with com*mon problems like conservation of energy,* environmental, and natural resources. That is why we actively participate in regional multilateral forums like the Pacific Economic Cooperation Conference (PECC) the *Asia Pacific Economic* Cooperation Group (APEC), and the Asian Development Bank (ADB). On a larger scale, our application to join the General Agreement on Tariffs and Trade (GATT) as a customs territory has been pending for more than two years. Our contributions to those organizations through the years have been, and will be, constructive and generous. As the region's 4th largest trading partner, and the world's 14th, we are a logical and necessary participant in such forums.

Our commercial activity is no longer directed primarily at North America. In fact, *ROC trade and investments in recent years* reflect growing global diversity. Much of this activity has been right here in our own region. We take seriously our responsibilities and our rights as a member of the greater Asian-Pacific community. Although our political status among most of our neighbors is unique, our practical role is significant and growing. The quest by others for our cooperation in providing technology, private investment, and technical training programs is increasing. And the interest in my government's development assistance programs has been enthusiastic. We are quite *willing to engage with others in common ef*forts to advance the position of the Pacific Basin nations, individually and collectively.

As the general tendency towards regional cooperation continues, Taiwan's active in-

volvement in area-wide economic planning and development will grow more essential. My country applauds the principle of greater cooperation among free market nations, for the sake of promoting our shared interests and goals.

A strong factor in the dynamism of this region is the increasing flow of investment and trade between the market economies of Northeast and Southeast Asia. The ROC has become the second-largest investor, after Japan, in Southeast Asia, particularly in Malaysia, Indonesia, Thailand, and the Philippines. Also, our exports to these four countries have grown substantially just in the past three years.

Hundreds of our private manufacturers have already set up large and small factories for textiles, footwear, etc. In Southeast Asia, where they can be closer to their markets and where labor costs are less expensive. Our official Industrial Development and Investment Center reports that, since 1988, more than US$3 billion worth of projects in Thailand, Malaysia, the Philippines and Indonesia involving Taiwan interests were approved by those governments. In March of this year, the Philippines signed an official investment guarantee agreement with us, similar to accords we already have with Singapore and Indonesia. Business links with Southeast Asia will continue, strengthening the forces of free enterprise and democracy in our neighborhood.

Commercial cooperation with Central America took a dramatic step forward last year when Vice President Li visited Costa Rica, Nicaragua, and Honduras. All three nations offered to sign investment guarantee agreements with us; and all have received low-interest loans through our IECDF fund. We have been participating in the Fund for the Economic and Social Development of Central America, donating US$150 million to help finance social and economic programs in those countries which are members of the Central American Bank for Economic Integration. We will have a seat on the Board of Directors of the Bank. Taiwan's entrepreneurs will likely engage in various construction projects, training programs, and technical services with Central American enterprises. During the March visit of Nicaragua's President Chamorro to Taipei, we signed agreements to provide medical aid and technical assistance for that country's agriculture and industrial sectors. So we foresee a new chapter in ROC relations with these forward-looking governments of Central America.

In Africa, we continue our judicious approach towards cooperation with stable and friendly governments and multilateral institutions. Only a few months ago, we resumed full diplomatic relations with the Central African Republic. It will benefit from our technological assistance in developing its rich agricultural and mineral resources. South Africa and Malawi are also close friends. Still others have sought our help through expressions of friendship and support. We hope that democratic government and free enterprise may become even more firmly rooted on the African continent in years to come.

We have made significant advances in Europe over the past year. Britain and France, among other West European nations, have shown strong interest in our new National Construction Plan and sent cabinet-level officials to Taipei for consultations. Our trade with the seven countries of Eastern Europe grew approximately 50 percent in 1991 over that of 1990. We now have trade offices in Hungary and Czechoslovakia, and plan to open one in Poland soon. Some of our most recent progress has come in dealing with the free Baltic nations. Last November, Latvia, Lithuania, and Estonia signed government-to-government agreements with us to exchange trade representative offices with consular functions. These offices will promote commercial, cultural, and scientific relations. In January, Latvia chose to upgrade our new office to the "Consulate-General of the Republic of China in Riga, the Republic of Latvia," further facilitating our bilateral cooperation. We intend to encourage our manufacturers to do more business with the Baltic Republics, which share our core philosophy of democracy, free enterprise, and freedom for the individual.

Of course, our commercial relations with the United States remain substantial and strong, with two-way trade totaling over US$36 billion last year. Our bilateral trade surplus, which once was over US$16 billion, has fallen by ten percent annually in recent years, to approximately US$8.2 billion in 1991. Taiwan's six-year Construction Plan offers major opportunities to U.S. firms, as one of the best overseas markets for American projects. Already, U.S. companies have won a third of the contracts let out last year under this program, worth about US$1 billion.

This March, the President's Export Council delegation from Washington visited Taipei for discussions on Construction Plan projects, and on upgrading industrial technology in Taiwan. The visiting delegation declared U.S. willingness to enhance economic cooperation with Taiwan on an equal and reciprocal basis.

ROC's entrepreneurs show steady interest in the United States as well. One-third of our country's overseas investments last year went to the United State, where some fourteen hundred Taiwan firms have set up either manufacturing plants or branch offices. Much of the manufacturing capital has gone into production of high-tech computers, other electronics, and petrochemical goods. By some calculations, several billions of dollars already have gone into partnerships with U.S. firms. While our commercial ties have always been strong, in recent years they reflect increasing maturity and complexity, to our mutual advantage.

In sum, our foreign policy reflects the vitality, creativity, and diversity needed to deal effectively with new circumstances here at home and abroad. That policy, while rightfully serving our own practical needs, also demonstrates a certain moral responsibility we accept as a successful practitioner of capitalism and democracy. "Realpolitik"—imbued with a responsible degree of compassion for the needs of our friends—aptly describes our international policy at this time.

We support and will encourage the continued integration of responsible regional approaches to common Asian problems. The Republic of China will do her part. We intend to remain a major player in the regional and global trading systems, with all that entails.

We harbor no illusions. We understand and accept the responsibilities, just as we expect sincere and substantive responses from those who would be our partners. Together, we can accomplish a great deal for the benefit of mankind, in this generation. Let us resolve to keep this common purpose clearly before us. Thank you.•

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BUDGET DEFICIT REAPS A HIGH PRICE

• Mr. SIMON. Mr. President, recently, the president of the American Society for Public Administration, Thomas D. Lynch, had a letter to the editor in the Chicago Tribune that outlined some of the reasons that we have to get hold of this deficit.

We need a bipartisan assault on the deficit rather than a bipartisan ignoring of the deficit.

We cannot ignore the reality of the deficit, as we approach the end of this fiscal year and as we soon approach the beginning of a new Congress that I hope will be more responsive to the deficit.

I ask to insert the Thomas D. Lynch letter into the RECORD at this point.

The letter follows:

[From the Chicago Tribune, July 24, 1992]

BUDGET DEFICIT REAPS A HIGH PRICE

(By Thomas D. Lynch)

WASHINGTON.—As president of the American Society for Public Administration, I represent the professional public managers who carry out the policies of our elected leadership. However, the continuing yearly bipartisan budget deficits are profoundly limiting our ability to administer these policies. We believe that the American people should demand that their elected representative act responsibly in reducing the deficit and the growing national debt.

Look at the figures. In the current fiscal year, there is a $400 billion deficit; the federal government is spending 37 percent over the year's revenues. But what about next year? Like baseball managers, presidents always predict the next year will be better. So the perennially optimistic White House is now predicting that for the next fiscal year the federal government need only spend 30 percent more than it receives.

The total national debt has ballooned from an unprecedented $1 trillion under President Reagan and the 97th Congress to $4.1 trillion under President Bush and the 102nd Congress. Furthermore, for the first time in U.S. history, a president admits that the yearly deficit is likely to continue well into the future.

Economists Ethan S. Harris and Charles Steindel noted that the huge federal deficit was the key component of low American savings rates. Further, they said that by 1989 the low savings rate had cost the economy about 15 percent of its capital stock and about 5 percent of its potential gross national product.

Even if the economic impact of the deficit is ignored, it continues to erode future national policy options. Each year, we must spend more money for interest on the national debt, leaving less money available for other needs.

As a result of the unavoidable requirement to pay the interest on the national debt, other national policy priorities are squeezed out—unless a national emergency exists. To address emergencies such as war, failed financial institutions or the recently passed urban aid legislation, deficits are forgotten.

However, burdened by large interest payments, the only way the federal government could address new and even continuing domestic or defense policy concerns would be during a state of emergency. A more deliberate policy over a period of years, such as

increasing the national human and capital infrastructure, becomes increasingly difficult because the unceasing national payment to service the debt crowds out such options.

One important consequence of an increasing deficit-inspired debt is a national *de facto* policy of transferring the nation's wealth from the middle class and poor to the rich and from the young to the old. Charles A. Bowsher, U.S. comptroller general, noted that servicing the national debt is the largest transfer of American wealth in U.S. history. At a time when the middle class is shrinking and baby boomers are growing older, this added economic reality vitiates the intent of our progressive income tax.

Our representatives are not elected to make easy decisions that guarantee their return to elected positions. They are elected to make decisions that further the public good. As public managers we will continue to carry out the policies set by our democratic process, but these budget policies are irresponsible. We urge the American people to demand more from our elected leaders; the public trust calls for nothing less.●

TRIBUTE TO W.F. "BILL" JAMES

● Mr. BOND. Mr. President, Senator DANFORTH and I would like to pay tribute to Mr. W.F. "Bill" James who has devoted his life unselfishly to his family, church, and community.

Bill James is testimony of what individuals can do to help improve oneself, as well as, the lives of others. As a county agent for the University of Missouri extension in southeast Missouri, he has assisted in the betterment of agriculture, home economics, elderly, and our Nation's most important resource, youth. He became known as a helper to the farmers, a friend to the elderly and youth, and a leader to the community.

In addition to his professional achievements, Mr. James still devoted time to volunteering his services. For nearly two decades, he has served as superintendent of Sunday school at the Presbyterian Church in Clarkton, MO. Mr. James has assisted in organizing a senior and nutrition center for the poor and needy. He has served on the local council for the aging, delivering meals to the elderly and coordinating local nondenominational prayer services. He has also organized the local poverty program and has worked as a Rotarian. These just represent a portion of the volunteer services Bill James has contributed in his lifetime.

Senator DANFORTH and I would like our colleagues to know that this dedicated Missourian is representative of the Americanism which still exists in this great Nation today. Our Nation has been blessed because of people like Mr. W.F. "Bill" James. We commend his lifetime of service and extend our appreciation for his compassion toward his fellow man.●

A TRIBUTE TO PSYCHOLOGY ON THE OCCASION OF THE CENTENNIAL OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION: A CENTURY OF SCIENCE AND SERVICE

● Mr. INOUYE. Mr. President, as the American Psychological Association [APA] celebrates its 100th anniversary, and is reflecting on its past and looking at the future of psychology and its opportunities to promote human understanding and to serve human needs, I would like to take this opportunity to invite each of my colleagues to visit a very special museum exhibition about the science of psychology at the Experimental Gallery, Smithsonian Institution.

EXHIBITION ON PSYCHOLOGY AND HUMAN BEHAVIOR AT THE EXPERIMENTAL GALLERY OF THE SMITHSONIAN INSTITUTION

For thousands of years, people have pondered the mysteries of human behavior. Now, for the first time, museum visitors can explore their own psychological processes—thoughts, feelings, and attitudes—in an exciting hands-on museum exhibition developed by the APA called "Psychology: Understanding Ourselves, Understanding Each Other."

This hands-on exhibition opened at the Experimental Gallery in the Arts and Industries Building of the Smithsonian Institution in Washington, DC, on May 18, 1992, and will run through Labor Day, September 7, 1992. Following its display at the Smithsonian, the exhibition will tour nine science museums throughout the United States, including the Science Place, Dallas; the Carnegie Science Center, Pittsburgh; Exploratorium, San Francisco; Science Museum of Minnesota, St. Paul; Museum of History and Science, Louisville; Museum of Science, Boston; Cincinnati Museum of Natural History, Cincinnati; and Oregon Museum of Science and Industry, Portland. The exhibition's tour is managed by the Association of Science-Technology Centers.

Planned to coincide with the APA's centennial, the exhibition is designed to introduce the general public to the breadth, depth, and diversity of over 100 years of psychological research. This is the first major museum exhibition ever devoted to this scientific discipline.

Through a variety of unique experiments and activities, museum visitors are able to experience, touch, and examine psychology in action. For example, in one exhibit, visitors experience the interaction between mind and body by participating in a video game based on the tortoise and hare race. Visitors can make the tortoise win by controlling their galvanic skin response [GSR] through increased relaxation. In another exhibit, visitors are asked to walk only on the black squares of a checkerboard floor. At the end of the walkway, visitors are asked if they followed the instructions and why or why not. Video footage of controversial research on compliance, such as Stanley Milgram's famous obedience experiments of the 1960's, is presented, and the social and ethical implications of this type of research are explored.

The exhibition offers many exciting activities for families, including a play space area in which children 4 years and younger, and their adult companions, can play and do simple developmental tasks. Trained staff guide visitors in observing aspects of child development and enable parents to conduct miniexperiments with their own youngsters.

Throughout the exhibition's run at the Smithsonian, there will be family days, films, puppet shows, and other programs for children and adults that will challenge visitors to examine their own behavior and the ways in which human beings are similar but at the same time unique. Topics for these special programs will include child development, parent-teen communication, substance abuse, maturing and aging, sex and gender, and ethnic and cultural differences in parenting and childrearing styles.

"Psychology: Understanding Ourselves, Understanding Each Other," was developed by the APA in collaboration with the Ontario Science Centre, Toronto, Canada, and is funded in part by the National Science Foundation, the William T. Grant Foundation, the Alfred P. Sloan Foundation, the National Institute of Mental Health, and the Office of the Associate Administrator for Prevention, Alcohol, Drug Abuse, and Mental Health Administration.

Again, Mr. President, I wish to commend the APA on the occasion of its centennial, and to recommend to my colleagues the Smithsonian Institution Experimental Gallery exhibition, "Psychology: Understanding Ourselves, Understanding Each Other," which offers a look at the breadth, depth, and diversity of over 100 years of psychological research.●

THE INAUGURAL ADDRESS OF MALI'S DEMOCRATICALLY ELECTED PRESIDENT, ALPHA OUMAR KONARE

● Mr. SIMON. Mr. President, there is a tendency, when we talk about Africa, to concentrate on the problems of Africa, and they are very real. 28 of the 42 poorest nations in the world are from Africa, and the problems of hunger and drought in Somalia and across the southern part of Africa cause concerns for all of us who follow that.

But one of the little understood realities in Africa is that democracy is spreading. Multipart systems are the reality, and in more and more of Africa democratically elected leaders are emerging.

Recently, the excellent publication, AFRICANews published the inaugural address of the new democratically elected President of Mali, Alpha Oumar Konare.

It is an example of what is taking place in the way of change.

He gives tribute to those who made possible democracy. He also gives specific tribute in his inaugural address to the leaders of the opposition parties.

I urge my colleagues in the Senate and the House to read his remarks, and I ask to insert them into the RECORD at this point.

The remarks follow:

THE INAUGURAL ADDRESS OF MALI'S DEMOCRATICALLY ELECTED PRESIDENT, ALPHA OUMAR KONARE

Today, thanks to God, thanks to the sacrifices of our martyrs and thanks to the blessings of our ancestors, the sovereign people of Mali have entrusted me with the heavy but exalted mission of guiding the destiny of our country. I am ready to assume this awesome honor. At this moment when our people are turning to a page of hope in their glorious history, I would like to greet and thank the brotherly and friendly countries that have helped us, demonstrated their solidarity and made this day possible.

I would like especially to thank their excellencies, the heads of state, the prime ministers, ministers, special envoys and foreign personalities who have greatly honored us today by coming to demonstrate their brotherhood, esteem and solidarity. The Malian people will always remember it.

This day represents for us a stage in the long struggle, which our people have been waging for more than half a century now, for greater control of their own future, happiness, prosperity, in order to escape a gloomy wave of poverty, despair, exclusion and death.

This day has been achieved after the bloody days in January and March 1991, after the great rallies and marches that preceded these bloody days, when the united democratic movement presented its demands on the streets of our towns. This day has been achieved following the underground struggle which many of us waged for 23 years. Today is the aftermath of our metamorphic pains. This day must bring back some memories, but it also brings a strong responsibility to make a change for the great majority.

As an elected president of a people who have suffered and who, for several decades now, have been expecting better, I want to be the man who will bring hope. I do not want to be a peddler of illusion. I want the people to believe that with me things can change, that actions will speak louder than words.

I am not a father of the nation. Let me pay tribute to the fathers of our nation who have contributed to our political awareness and who have led our country to independence. I am only a son, a son among others, who is today called upon to play the elder's role without being the eldest. I need the help of everyone—fathers, mothers, brothers and sisters, sons and daughters—because nothing can change all those social ties that must continue to function alongside new responsibilities.

I know that our people are capable of doing great things, provided that [the great things] are reconciled with the set of values that has characterized [us] historically, such as hard work, solidarity and a social creativity that has enabled us to produce active balances between individual perspectives and our collective destiny. These values also include dignity, a sense of past commitments and responsibility.

I want to be an instrument of reconciliation. To achieve this—and I will commit myself resolutely to this—democratic institutions need to be strengthened to guarantee the participation of everyone while laws are being written; a law-abiding state must ensure that the law is applied to everyone; and an active policy of social and national integration must be formulated.

One of our priorities will be to provide social peace and stability. It is essential that the states' authority be asserted, controlled and accepted by all. We shall ensure that the laws are known to all and that no one is above them. I will scrupulously see to the respect of the constitution, the separation of powers and the indispensable basic freedoms of the mass media.

The means to this reconciliation will be the revival of our economy through the liberation of and support of individual and collective economic initiatives. Justice and solidarity must back one another to share the wealth produced. The fight against corruption and waste and the decentralization of authority will form the living framework for the participation of the greater number of people in state affairs.

Finally, the effective accomplishment of African integration, the readiness shown by our people as early as 1960 to give up all or part of their sovereignty in favor of African unity, is irreversible.

These are the terms of the five-year contract I have signed with the Malian people, a contract of shared, rigorous efforts. I would like it to be a contract that defines the necessary collaboration, the desirable affinities and the reciprocal responsibilities that are necessary for the harmonious development of our country. For the time being, the nation's unity depends on the successful and strict implementation of the provisions of the National Pact signed on April 11. The pact cannot exalt the victory of one group over another. It offers a change to strengthen the democratic process. My compatriots of the northern region can count on my commitment to ensure that both peace and unity last forever. The means to this will be development, solidarity and justice.

National unity can also be achieved by the completion of the reconciliation of the Malian people with their army. A lot has been done in this direction, but a lot remains to be done. No democracy can be built with a worried army which has been made to feel guilty. I would hereby like to assure officers, NCOs, corporals and soldiers of our army of our complete solicitude [for them]. Together we shall strengthen the republican virtues of our army.

Finally, reconciliation depends on an independent, credible and fair system of justice. Judgments will gain greater credibility. Justice also needs to be exercised in a climate of tranquillity.

During the next few days I will appoint a prime minister. Together we shall form a government made up of men and women from different political parties, all determined to bring changes for the improvement of people's living conditions. This arrangement seems necessary to create conditions for a genuine education in democracy.

The prime minister will negotiate specific contracts of substance and fairness with academics, labor unions and professional organizations—all the social partners and all the people involved in our country's development.

Consultation will be the watchword of our policy. I have no doubt that all the democrats who fought for the advent of a new era that would herald an improvement in people's living conditions will understand that the most serious danger that could threaten the democratic process is to demand from the state what we know it does not have.

The government of the republic has no right to cheat our people with empty promises that will not be honored. It will, however, have to operate in accordance with the rules of discipline, good management, openness, solidarity and justice.

Everybody knows the catastrophic heritage of the former regime; everybody is aware of the courage with which the Transition Committee for the Salvation of the People [CTSP], led by Amadou Toumani Toure, and the government of Soumana Sacko set about restoring life, confidence and health to our country. May thanks be given to them always for this.

May thanks be given to Lt. Col. Amadou Toumani Toure, for whom our country's honor and the honor of his word as an officer served as a political creed and a guide for action during the 14 months in which many difficulties arose—difficulties which his dynamic courage and patriotism managed to confront and overcome.

Mr. Chairman of the CTSP, the nation will always be grateful to you for making it understand that it has no need of a savior or a supreme guide. It will always be grateful to you for restoring confidence in the sons of Mali so that they could supervise the democratic process. In doing this, you adopted the tradition of change that is necessary for any democratic process. The lesson that you are teaching everyone will guide us. I wish you a very long life and a lot of satisfaction for you and your entire team. I am convinced that together we will always strengthen the basis for a democratic Mali. I am convinced that tomorrow you will be one of the best mediators of the country and one of the great messengers of the Malian nation.

Your Excellencies, ladies and gentlemen, yesterday I invited Malians both at home and abroad to be united more than ever before and to build a future of hope. I call upon the men and women of our country, the old and young—yes the young—always to defend the ideals of March 1991, which include making an effort, working and respecting others. I call on all the forces of change to show more unity, and to not confuse battles or enemies. I call on Almamy Sylla, Amadou Ali Niangado, Baba Akhib Haidara, Demba Diallo, Idrissa Traore, Moutaga Tall, Mamadou Batourou Diaby and Tieoule Konate [presidential candidates]—all worthy representatives of our people—and all the other political leaders to stand with us, so that together we can lift Mali up. Today is the time for practicing democracy. It is also a time for tolerance. Today, our country is shaken by different shades of opinion. This is normal for a sick person. But it is also a sign of life. Mali is a big boat and none of its occupants should want it to capsize. Mali can shake, but Mali will never capsize again.

Difficulties are assailing us today. More serious tests may appear tomorrow. I am convinced that we have the means to overcome them. It is a great honor for me and my entire team to be called upon to confront these trying moments. We will face them with our people, mobilized in a calm and determined manner. Nobody will build Mali except Malians.

My dear fellow citizens, today a brighter future is being launched for Mali and Africa,

I hope. And I will work towards it. Long live the republic, long live democratic Mali in a united Africa.●

FAIRPORT CELEBRATES 125 YEARS

● Mr. D'AMATO. Mr. President, I rise today in honor of the Fairport Village's 125th anniversary of their founding which will be celebrated in style this Saturday, August 8, 1992, with a parade hosted by the Fairport Fire Department. This monumental occasion calls for a gala celebration and Fairport is geared up and ready to celebrate in an appropriate fashion.

Fairport is a village of approximately 6,000 residents located on 1¼ square miles of land within the town of Perinton, county of Monroe, State of New York.

Fairport's beginnings date back to 1812, when a hamlet located in the northern part of Perinton was known as Perrintonville. It consisted of seven log cabins, a block house, and a frame house. Economic growth surged after the decision was made to construct the Erie Canal through the drained lowlands and Perrintonville.

In 1827, the name was changed from Perrintonville to Fairport after several travelers of the Erie Canal stopped for the night and described the hamlet to others as a "fair port." The Erie Canal was thriving and the political and economic center of Perinton was moved from the surrounding area to Fairport. Warehouses filled with potatoes, grains, apples, and other foodstuffs lined the canal. Commercial traffic increased steadily as ships and barges stopped to load goods on what was Fairport's Main Street.

Fairport thrived and incorporated on April 30, 1867. Over time, Fairport has gone through many changes. Shortly after the beginning of the 20th century, the old Erie Canal was widened to make the barge canal. As a result, many old buildings along the banks of the south side of the canal were moved or demolished. Many of Fairport's beautiful homes were built during the last quarter of the 19th century. Victorian architecture is noticeable throughout the village. Flour and sawmills, carriage and manufacturing shops, and handsome homes have provided a rich past for the community of today. Canal life in Fairport continued to grow strongly until the 1950's when railroads began cutting into canal commerce.

During the past two decades dramatic changes have been made in the commercial area using a canal town theme. New businesses of the 1990's have replaced those of the past and many of the homes have been restored to their original beauty. Today, the canal banks support public parks and docking facilities. Once again the village has taken on the reputation it had when the fair port first evolved. Fairport residents are proud of the lovely village which even now reflects ties with its historical past.

Fairport has a long, proud tradition and has become a community with much to celebrate. I wish to add my voice in commemoration of this momentous occasion. Many community members have contributed to the development of Fairport. I wish to congratulate and thank them for making New York State the great place that it is to live and prosper.●

SACRIFICIAL LAMB

Mr. SIMON. Mr. President day after day after day what we see happening in the People's Republic of China is discouraging.

The most recent was the harsh sentence given to former Communist Party official, Bao Tong, who had made clear that he was for political reform in China.

That is not a safe position to take there.

Why this administration continues to cuddle up to the dictators of the People's Republic of China is beyond me.

I hope any Member of the House and Senate who has any questions about China will read the editorial from the Los Angeles Times titled, "Sacrificial Lamb."

I ask unanimous consent to insert it into the RECORD at this point.

SACRIFICIAL LAMB

Beijing needed a high-profile scapegoat for its murderous handling of the Tian An Men Square demonstrations in 1989. Three years later it has found one: Former Communist Party official Bao Tong was sentenced this week to seven years on trumped-up charges that he leaked state secrets and created "counter-revolutionary incitement" during the demonstrations.

Chinese authorities conducted the trial in private barring even Bao's family until his sentencing. No wonder. Bao was arrested in May, 1989, before the June massacre. By design, Beijing obfuscated the specifics of his political crimes, never saying what secrets he allegedly leaked. It ignored requests from the Unites States and other governments to have independent observers present. Bao can appeal, but in China this typically is a dead-end process.

Bao was the sacrificial lamb in the political machinations of aging hard-liners, desperate to protect status quo politics. He is the highest-ranking official to be put on trial as a result of the Tian An Men massacre. Bao was chief aide to former Communist Party chief Zhao Ziyang, who himself has been under house arrest for his attempt during the demonstrations to meet with students. Bao, a former member of the party's Central Committee, was among younger party members trying to refashion China within the system, a strategy supported at the time by leaders such as Deng Xiaoping.

Imprisoning Bao is clearly aimed at further squelching free political expression in China. Truly confident leaders would not be intimidated by such dissent.

WILLIAM F. WOO REMARKS AT THE ELIJAH P. LOVEJOY HUMAN RIGHTS AWARD CEREMONY

● Mr. SIMON. Mr. President, recently, the Reverend Robert Tabscott, a Presbyterian minister who has championed preserving the heritage of another Presbyterian minister, Elijah P. Lovejoy, handed me the remarks made by William F. Woo, editor of the St. Louis Post-Dispatch, when Mr. Woo received the Elijah P. Lovejoy Human Rights Award last year.

The ceremony was aboard a riverboat on the Mississippi.

Lovejoy was killed by a mob in Alton, IL, 145 years ago because he dared to stand up publicly and forcefully against the practice of slavery. Illinois was, in theory, a free State, but the sentiment for slavery was very strong in much of Illinois, and the sensitivity to freedom was not as strong as it should have been.

Lovejoy became the first martyr to freedom of the press in the history of our country.

In his remarks, Mr. Woo observes:

Lovejoy came upon something very basic to liberty; and that is while liberty may be authorized by law, it cannot be made real unless it is lived, often at great risk, as a part of a life; and that unless you live it, the concept is without worth or meaning.

He also discusses Socrates and praises "the public virtue of compassion for those whose small, vulnerable, often abused lives, eked out in infinitely fragile circumstances, pass unnoticed by a political community that is focused on constituencies and not on people."

I ask that the entire statement by Mr. Woo be entered into the RECORD at this point.

The statement follows:

REMARKS OF WILLIAM F. WOO AT THE ELIJAH P. LOVEJOY HUMAN RIGHTS AWARD, NOVEMBER 16, 1991, ABOARD THE TOM SAWYER RIVERBOAT

The great river upon which we are embarked this afternoon was laid down about 2 million years ago, at the beginning of the Pleistocene Epoch, when sabre toothed tigers and wooly mammoths walked the land, long before the first people made their way across the Bering Straits. Since the Ice Ages, it has bisected the continent, dividing it and defining the boundaries of human activity.

A strong brown god is what Eliot called the Mississippi, and to this day, despite our best efforts to tame it and to abuse it and to trivialize it, the river retains its power to stir our imagination with images and metaphors and symbols. "The river is within us," Eliot wrote, and when we look out upon it, we think of beginnings and endings and of time, which except for cosmologists has neither beginning nor end.

Once the river marked the divide between the land of the people who had come before and were there and of the ones who came inexorably after, moving westward. It delineated the frontier, which was the work applied to it by those whose destinies were manifest. It served as the western boundary of the Louisiana Purchase, by which the United States government presumed to take

perpetual ownership of nearly 1 million square miles of earth.

And on November 7, 1837, 154 years and 10 days ago, it divided, at this place where we are gathered in midstream, a state where men and women lived free from one in which they lived in chattel slavery, treated under the law like other pieces of movable property, such as pigs or wagons or the stools beside the hearths. In our history, we have drawn many distinctions between the varying degrees of liberty; but never was the contrast so stark, nor the results of it so cruel and devastating, as it was then.

Elijah Parish Lovejoy lived on the Missouri side of the river, where some men and some women were at liberty to own other men, women and children, to buy and sell them for labor or for breeding stock. The evil of it was not immediately apparent to him. The newspaper of which he was a partner carried advertisements for slaves, much as the Post-Dispatch today carries advertisements for automobiles.

But in time, Lovejoy came to change his views and to speak out against slavery and to write about it. By then he had become a minister and had gone to another paper. He had become an abolitionist, a voice of conscience and an offense to the status quo. A mob sacked his paper, destroying everything except the printing press.

And so Elijah Lovejoy crossed the river to live in a free state. And there, almost immediately, Lovejoy came upon something very basic to liberty; and that is while liberty may be authorized by law, it cannot be made real unless it is lived, often at great risk, as a part of a life; and that unless you live it, the concept is without worth or meaning. For on the day that Lovejoy arrived in Illinois, the printing press that he had brought with him was thrown into the river at Alton, by people who did not wish him to live and express a life of conscience.

Lovejoy persisted, and we are familiar with what happened. The freedom of the press to publish abolitionist views was bitterly debated, not only in Alton but throughout the state of Illinois. Many people, then as today, were prepared for liberty to be authorized but not practiced. Another mob broke into Lovejoy's paper and destroyed everything, including the press.

A third press was ordered and delivered, but this one, too, was thrown into the Mississippi from the docks of Alton. A fourth press arrived and went into a warehouse for safekeeping. "The contest has commenced here and here it must be finished," Lovejoy said: ". . . If I fall, my grave shall be made in Alton."

Another mob formed and the warehouse was stormed. A torch was put to the roof. Lovejoy and another man ran out and toppled the ladder. The ladder was put up again, and one more time Lovejoy came forward; and he was shot to death. Five bullets pierced his body.

November 7, 1837. In two days, Lovejoy would have been 35 years old. So he was a young man, a father; doubtless, he was frightened and did not wish to die.

But Elijah Parish Lovejoy had crossed the river, and he did not shrink from the consequences of that decision. And that is why we remember him. He did not die merely for his opinions, he died for the right to publish them in the newspaper.

His story reminds me of another martyr to free opinion, someone far larger in the eyes of history than Lovejoy. I am thinking of Socrates, who was condemned to die in 339 B.C. for the crime of talking. Officially, Socrates was executed for corrupting youth and making light of the gods, but in truth, he was killed for talking and helping other people to think, an action that remains dangerous to this day.

After he had been found guilty by the Athenian court, Socrates was given the opportunity to plead for a punishment other than death. And what he had to say, I think, was remarkably to the point of our assembly here today.

If a man is willing to throw away his arms on the battlefield or do many other things in the face of danger, he may escape death, Socrates said. The difficulty was not to avoid death but to avoid unrighteousness, which runs faster than death. Unrighteousness: Let's not be afraid of, or embarrassed by, large words and concepts. For Elijah Lovejoy, unrighteousness would have meant writing about things other than the abolition of slavery.

There was no greater good, said Socrates, than to discourse daily on virtue; indeed, it was the only good, for the unexamined life was not worth living. What does this mean for those of us who are journalists? I think it means a great deal. It does not mean idle speculation or posturing about right and wrong, no more in the columns of our newspapers than in the squares or markets of Athens in the Age of Pericles. Socrates was not talking about discourse unrelated to the moral lives of the people.

What he had in mind, we may conclude, was liberty and its perversion, and the stench upon it brought by the systematic dehumanization of a people, a system that as Lovejoy pointed out corrupted the oppressor no less than it ruined the victim. He had in mind, we may conclude, the public virtue of confronting homelessness and joblessness and despair in a land where speculators raid and loot and destroy corporations and spend more on the luxury of their dogs in a week than many good men and women bring home to feed their children in a month; the public virtue of holding the face of racism and bigotry to the light and doing so again and again, though the business and political leaders say, you would divide a town merely to sell more papers; the public virtue of compassion for those whose small, vulnerable, often abused lives, eked out in infinitely fragile circumstances, pass unnoticed by a political community that is focused on constituencies and not on people.

What Socrates had in mind, we may conclude, included a journalism that I and my colleagues should practice but so often do not. There is a price for such journalism, and it can be as high as the price Elijah Lovejoy paid, although it rarely is. But too often the price of criticism, of being shut out of favor or access to power and influence, of being cut out of the pack is prohibitive enough. Unrighteousness still runs swiftly. Socrates was talking about a life on the other side of the river.

Nothing evil can happen to the good man either living or dead, he said, as he accepted the sentence of execution. Socrates had three sons, two described as small, the other as older. He wished them lives of virtue, not comfort, lives on the side of the river that Elijah Parish Lovejoy would know and experience, and for which, after Lovejoy's death, we continue to honor him.

I am deeply touched by this award in his name, and I thank you for giving it to me. Now let me say to you that I accept it. Acceptance carries with it an obligation and responsibility on my part. I cannot accept this award unless I am willing to live on the far side of the river and to do the journalism that is required there. I shall try not to let you down, or Lovejoy, who made his grave in Alton and who died young, beside this river, for liberty. Thank you.●

ORDER OF BUSINESS

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business.

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

The Senator from Hawaii is recognized.

Mr. AKAKA. I thank the Chair.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 3124 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:45 a.m. on Tuesday, August 4; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; that there then be a period for morning business not to extend beyond 10 a.m., with Senators permitted to speak therein for up to 5 minutes each and with Senator LEVIN recognized for up to 10 minutes; that at 10 a.m. tomorrow, the Senate proceed to the consideration of Calendar Item No. 578, H.R. 5518, the Department of Transportation and related agencies appropriations for fiscal year 1993; and that on Tuesday, the Senate stand in recess from 12:30 p.m. until 2:15 p.m. to accommodate the party conferences.

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

RECESS UNTIL TOMORROW AT 9:45 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess, as previously ordered.

There being no objection, the Senate, at 8:28 p.m., recessed until Tuesday, August 4, 1992, at 9:45 a.m.

EXTENSIONS OF REMARKS

IAN ROSS CALLS FOR A NATIONAL TECHNOLOGY AGENDA

HON. GEORGE E. BROWN, JR.
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. BROWN. Mr. Speaker, "America's future is being foreclosed in part because we are experiencing the erosion of our high-technology industry." This is a warning offered by one of America's most thoughtful industrialists, Ian M. Ross, president emeritus of AT&T Bell Laboratories, and reflects the continuing decay in the international leadership of our high technology industries.

In his recent article "A National Technology Agenda," published in the Bridge, Dr. Ross carefully steps through key attributes of high technology that will increasingly challenge American firms as they struggle to remain competitive, and which point to the need for a coherent national technology policy. The nine attributes identified by Dr. Ross include the need for: First, a large knowledge base; second, large capital investment; third, a highly skilled work force; fourth, large economies of scale; fifth, accelerated time cycles; sixth, large market shares; seventh, strong inter-firm linkages; eighth, low-margin commodity products to support investment and advance skills critical to high-margin technologies; and ninth, overcoming barriers to entering or reentering high-tech businesses.

If Government and industry do not work together to meet the challenge, Dr. Ross cautions that the future of the Nation will be bleak. In the darker, but possible scenarios, he notes that the loss of high technology industries can result in our trade falling back to natural resource commodities and our work force becoming deskilled and unable to keep up with nations that have much more supportive, synergistic policies.

To reverse this negative course, Dr. Ross calls for a national technology agenda. He argues that the Nation must create an environment for high-tech industries that is at least as favorable as in other nations by facilitating investment in R&D, plant and worker training; establishing fair trade with other nations; and strengthening our national education system. He asserts that we must stimulate, and in some cases repatriate, our high-volume electronics industries which form the basis for many other high value industries. He notes that we must change our culture to support the coordination of precompetitive technology development and encourage consortia, alliances, and collaborations. And he calls for a renewed commitment to a total quality program, including high-quality manufacturing skills.

Many of the actions that Dr. Ross calls for parallel the provisions of the National Technology Competitiveness Act of 1992 (H.R. 5231), introduced by Mr. VALENTINE and recently reported out of the Committee on Science, Space, and Technology. This is legislation that recognizes the very attributes of high technology articulated by Dr. Ross and responds with the same policy priorities that he recommends.

As the article by Dr. Ross is both timely and insightful, I would like to submit excerpts to the CONGRESSIONAL RECORD:

[Excerpts from the Bridge, vol. 22, No. 2, Summer 1992]

A NATIONAL TECHNOLOGY AGENDA

(By Ian M. Ross)

America's future is being foreclosed. The promise of prosperity is being broken. Foreboding reports are numerous: The United States has gone from the world's leading creditor to the world's leading debtor; real wages for the majority of Americans have fallen; the nation has faced a persistent trade deficit; our students have consistently shown comparatively low academic achievement; we have been frustrated by our inability to solve problems of poverty at home, or to help the economically disadvantaged abroad; we have been vexed by the deterioration of our cities, roads, and bridges, along with the transfer of our choicest assets and properties to foreign ownership; and we have endured an ominous recession, a recession from which jobs did not return, consumer confidence did not rebuild, and business did not rebound, as we would have liked. All these reports suggest a single question: Will our standard of living survive?

A country's standard of living has many dependencies. A major one, will recognized as a driver of productivity, prosperity, and economic growth in advanced nations, is such high-technology industries as electronics, aerospace, chemicals, and biotechnology. Consider the ubiquitous role of high tech: Our national security depends on state-of-the-art technology for weapons and intelligence. Our health care depends on sophisticated instruments for diagnosis and treatment, as well as on advanced pharmaceuticals. We eat well because America has been "greened" by agricultural science. We have commerce and personal mobility because of the myriad technologies embodied in cars, planes, boats, and trains. We communicate and stay informed thanks to complex telecommunications networks. Service and manufacturing jobs are everywhere dependent on computers and automation. Even the quality of our leisure time is based on consumer electronics and the technological wizardry of the entertainment industry. The things we need, need technology, and the providers of the things we need are those who possess the best technologies, the high technologies. In the world of today, and increasingly in the world of the future, the technology rich are the "haves," and the technology poor are the "have-nots."

THE NINE ATTRIBUTES

High-technology industry has at least nine key attributes that, to different degrees in different sectors of the industry, define its requirements and dynamics. The drive of corporations and nations to cultivate these attributes helps explain the past and predict the future; it also provides a basis for developing a national technology agenda.

The first attribute is the large knowledge base needed by high-tech industry. Basic technology generation needs research, often over long periods. The development of such new technologies as genetic engineering or nuclear power can take decades. There is a need to acquire a deep experience base; characteristically, one finds a broad buildup of intellectual property in high technology. This translates into heavy investment in R&D. To cite some examples, it can take $1 billion to bring to market an advanced electronic switching system for a telecommunications network, or a new jet engine for commercial airliners. In the semiconductor field, it takes about $200 million to develop a new-generation product, such as a memory chip, and the needed investment is not diminishing: by the end of the decade, we expect this number to triple. On average, it takes about 12 years and over $200 million for a pharmaceutical firm to developing a new drug.

The second attribute of high-tech industry is the need for large capital investment. The advanced manufacturing equipment not complex process management required for production drive large capital demands across most high-tech industries. In the semi-conductor industry, for example, a fabrication line can today cost about half a billion dollars; by the start of the next century, it is expected to cost about $2 billion. In the mid-1980s, the chemical industry had to capitalize at over $90,000 per worker, compared with an average of $43,000 for all manufacturing.

The third attribute is the need for a highly skilled work force. It is not always possible to apply the classical tradeoffs of labor for capital; advanced equipment and automation are essential. Mechanization has always been a path to productivity, but the use of advanced manufacturing machinery is today often the only path to a high-tech product. Thus, high-tech production and service jobs will increasingly require technical literacy and strong basic skills. As a corollary, the labor market itself has split into the higher-wage, highly skilled jobs that revolve around the core intellectual content of the product, and the low-wage, "tail-end" assembly jobs.

The fourth attribute concerns the large economies of scale inherent in many high-tech areas. Capital intensive manufacture and heavy investment in R&D tend to economies of scale, since large fixed costs must be amortized. Even a "big ticket" item such as a new commercial aircraft requires production of 400 to 500 units to break even.

The fifth attribute is accelerated time cycles. In some high-tech sectors, the rapid pace of technological progress has compressed product life cycles to years and shortened the life span of factories, thus amplifying the effects of economies of scale. Semiconductors and optical communications products—the underpinning technologies of the Information Age—double their capacity per unit cost every 12 to 18 months, a spectacular pace for any human endeavor. Technical progress is not new, but such speed and

magnitude of progress have been experienced only in high technologies during the last few decades.

The sixth attribute follows from the prior attributes: it is the need for large market share. In an effort to maximize market size, high-tech businesses must seek global markets and become fewer in number. To the economist this latter trend is called "fewness," and it reflects the simple fact that large market share cannot be held by many. High-tech sectors are increasingly ruled by a global business oligopoly. For example, about 12 major corporations supply more than 80 percent of the world's telecommunications network products. Similarly, the world's automobiles and commercial aircraft are produced by a small number of giant corporations. Looking at the high-tech segments of the textile industry, we see that about 90 percent of all U.S. synthetic fiber is produced by 10 companies.

The seventh attribute is that there are strong linkages, both horizontal and vertical, in high-tech industries. There is a web of customer and supplier relationships that knit high-tech businesses closely together. Horizontal linkages are seen in the dependency of financial services on computers and communications, or of aircraft and automobile production on hundreds of subcontracted industries. A premier example of horizontal linkages is provided by electronic systems, which, as already pointed out, are at the core of almost every high-tech industry, from aerospace to manufacturing, from medicine to entertainment. And these linkages continue to grow: in the past decade, the cost of electronic systems in some American cars has tripled as a percentage of the total cost; at least one European car manufacturer already claims electronics accounts for 20 percent of its auto costs. By the mid-1990s, it is projected that 30 to 35 percent of auto costs will be in electronic components and systems. Electronic systems are vertically dependent on advanced semiconductors and vice versa. Both are dependent on materials and manufacturing equipment and skills, and all are dependent on basic research, which in turn relies on the education system for its talent, and on the prosperity of our society for its funding. These are important linkages; weakness in any link affects the strength of the whole.

The eighth attribute is the importance of commodity, low-margin products. There is temptation to exit low-margin, high-volume, commodity-type areas, a temptation the United States yielded to in consumer electronics. We would prefer to work in higher-margin, but usually lower-volume, areas such as computers. But this, as already noted, is a dangerous strategy because high-volume, commodity production has many values: it generates large revenues needed to support investment, it advances our skills in high-volume manufacturing, and it increasingly drives leading-edge technology. Furthermore, there is growing evidence that high-volume commodities form a base for expansion into the higher-margin areas, as demonstrated in the current challenge to the computer industry coming from high-volume electronics. Another example is found in the Japanese auto industry's progression from economy cars to luxury-class autos, or the advances made by Japan in multiple video and image areas (including film) arising from competencies in precision optics or miromechanics gained from a base position in cameras. Indeed, it may not be possible to sustain a position in the higher-margin products without a strong position in that base.

The ninth attribute is concerned with the barriers to entering or reentering high-tech businesses. If we were to talk to a classical economist, we might hear the following logic: if a country that is currently manufacturing an item finds it can be obtained cheaper elsewhere, it is in the best interest of the consumer to buy the product from the foreign supplier. Later, if the supplying country were to corner the market and raise the price, the buying country should simply go back into production. This logic encounters difficulties when the high-tech attributes are considered. In trying to reenter a high-tech field, a manufacturer would lack the knowledge base, and would have to absorb large losses while building the market volume needed to compete. In modern economics, these are recognized barriers to entry into industries with large economies of scale. In particular, where technology moves very rapidly, those who drop out of the race—or even fall behind for only a short period—find it very difficult to catch those who have continued to run. This pace affects business plans in major ways: long-term commitment and staying power are often essential to success in a high-tech enterprise.

From these nine attributes, we can make two observations relevant to a technology agenda. Regardless of a country's natural wealth, there is an opportunity for a poor or emerging country to increase productivity, create wealth, and raise its standard of living by creating comparative economic advantage through high-tech industry. This opportunity becomes an imperative in most nations that care about their people.

The second observation relates to a threat to established high-tech industry in advanced nations. In effect, industries in these nations often find themselves competing against foreign governments. Given the tactics discussed above, they can find their overseas markets foreclosed and their domestic markets eroded. In consequence, the advanced nation's industry may be less able to afford investment. Thus, the industry falls behind, further eroding its position, and the process starts feeding on itself, potentially moving at a very rapid pace. Even though only a few industry sectors may be targeted by foreign competitors, the "linkage" and "commodity base" attributes can undermine strength in nontargeted sectors. Finally, once an industry is lost, the advanced nation is then itself faced with barriers to reentry. This is how the "haves" become the "have-nots," and this is the course we are on!

THE BETTER WAY—A NATIONAL TECHNOLOGY AGENDA

The starting point for a national technology agenda is to declare that leadership in high-technology industries is a national objective. This must be a bipartisan objective, led by the President, supported by Congress, endorsed by business, and recognized as vital by the American people. The connection between leadership in high-tech industry and an increased standard of living must be understood and supported by all. The resultant benefits to all Americans must be proclaimed, perhaps debated, but ultimately accepted by the nation as a whole. This is not "picking winners and losers"; rather, it is choosing to be a winner instead of a loser!

THE ELEMENTS OF A NATIONAL TECHNOLOGY AGENDA

First, we must establish a level playing field for our high-tech industry, a field at least as favorable as that in other advanced nations:

We need to facilitate investment in R&D, plant, and worker training. For more than a decade, the real cost of capital to business—not just the interest on debt—has been higher, by a factor of two or more, for U.S. firms than for many foreign competitors. In consequence, our competitors are out-investing America in R&D and plant, and are investing for a longer-term payoff. We must employ a range of tactics aimed at making capital available at lower cost. Balancing the national budget and creating incentives for Americans to save will serve this objective. New tax and fiscal policies, such as investment tax credits, R&D tax credits, and accelerated depreciation schedules, are needed. This will, of course, require difficult tradeoffs—trade-offs of short-versus long-term gain, of consumption versus savings—in order to create the proper environment for capital formation if our high-tech industry is to flourish.

We need to establish fair trade in our global markets.

We need to strengthen our national education system as a means to create a globally competitive work force. High-tech jobs are knowledge intensive, not just in the research laboratory, but also on the factory floor or at the business workstation. National technical literacy is a clear priority. However, we cannot wait for improvement in our school systems to produce results in the workplace, since this can take decades. We need to seek short-term remedies together with permanent, long-term cures.

Second, we must stimulate, and in some cases repatriate, our high-volume electronics industries. While high-volume electronics is not the only industry that we may want to bring back onshore, it is a critical one, and exemplifies strategies that can be used for high-tech repatriation. Reentering manufacture of mature products in the face of large, established foreign competitors is a tough, uphill fight. There are opportunities, however, where the technology or the marketplace is going through major changes or discontinuities.

In these cases the barriers to entry are somewhat equalized for all players, providing openings for those with ingenuity and determination. Examples of technology discontinuities that may be expected include broadband communications, intelligent vehicle and highway systems, advanced displays, speech and image processing, and high-definition television.

There is the possibility, however, that relying on technology discontinuities will not be enough in some areas. With effectively zero United States manufacturing market share, and recognizing the large size and rapid growth of our foreign competitors, the barriers in consumer electronics may be too high to be surmounted, at least in a timely way, by relying only on emerging markets. We may need our government to ensure technology transfer from Asia for consumer electronics, and we may need to arrange import and export agreements on specific products while our manufacturing capability matures. Were we to decide on this type of action, proposals must be embraced cautiously, with full understanding of the hazards, and with strict limitations on duration and scope.

Third, we must make changes to our culture to support the coordination of precompetitive technology development, and to encourage the formation of consortia, alliances, and collaborations. Other nations have benefited from the economics of cooperating in the early phases of technology development, even extending the benefits to

the development and manufacturing phases; yet they have retained the ability to compete fiercely in the marketplace. We in the United States have been late to recognize this opportunity and to learn how to cooperate and compete at the same time. We have, however, made some progress in this direction. The administration has concluded that it is proper for government to encourage and fund generic, precompetitive technology. The task of identifying strategic technologies that are candidates for such treatment has already been accomplished: the White House, the Department of Defense, the Department of Commerce, and the Council on Competitiveness have, with remarkable consensus, published lists of strategic technologies. And not only is there domestic agreement in these lists, but America's view is essentially the same as the Japanese and European Community views. So again there is no issue of picking winners and losers. What remains is to select areas that are appropriate for cooperative programs between government, industry, and academia—and to make them work. In this too we have already made some progress, although there is still much to be learned from our successes and failures. Sematech has provided a model by demonstrating that U.S. institutions can cooperate in developing generic technology for the semiconductor industry. But we lack a process for selecting specific areas for cooperation. We need at least a forum in which enthusiastic, knowledgeable, and influential members of government and business can meet and recommend suitable action. It is important to note that forums without enthusiastic membership are doomed to fail.

We must not too narrowly interpret this agenda item. It does not imply that the United States should not continue to build international partnerships. Some of the high-tech industries of the future will be the property of large, worldwide consortia. But in any worldwide consortium, the United States must have a strong and equitable position. This agenda item does say that America must maximize its domestic strength through cooperation, and thus be a strong, not a weak, player in global high-tech activities.

Fourth, we need a renewed commitment to a total quality program, including high-quality manufacturing skills. We have erred in the past by not insisting on product quality as essential to customer satisfaction, corporate profitability, and international competitiveness. In some cases, we have lost sight of customer needs in designing and delivering products. The Malcolm Baldrige Award is an example of an instrument that can build quality awareness in U.S. business. We know today what has to be done, and we have an increasing number of examples of success. What we need is total commitment.

This agenda is not foreign to the American Way. We have long benefited from encouraging such broad classes of industry as aerospace and agriculture. What is proposed here is the encouragement of the very broadest class of industry, one that leads to improved living standards for all our people. This can be achieved by providing an environment that nurtures the basic attributes of the industry. No special targeting is needed.

How practical is this technology agenda? I believe we have the resources to carry out this program. Our basic science and technology are the envy of much of the world. Our research universities are the first choice for aspiring scientists and engineers from around the globe. Our North American market is large enough to provide a powerful competitive base. Our best factories meet world-class quality standards, and our best workers and managers can compete with anybody. Our productivity is still unmatched in many areas. Our country is rich in natural resources, and our agriculture is without equal. With these assets, what can get in the way? What must we do?

Clearly, our national priorities must be recordered, and a number of tough decisions must be made. To begin, the leaders of government, industry, and academia must embrace the concept of leadership in high-tech industry as a national goal. This concept must be discussed and understood widely so that the electorate can support the administration, the Congress, and business in the actions that must be taken. We must decide to save and to invest adequately for the future of our industry, albeit at the expense of some short-term benefits. Economic advantage must be given proper weight relative to military advantage. We must, as a people, value wealth creation over consumption, and demand industry promotion as our ultimate goal. We must build a degree of understanding and trust between government and industry so they can work effectively together in the national interest. We must take the tough decisions, country by country, to establish conditions of fair trade that serve U.S. interests. With the support of government, industries must learn to cooperate in the precompetitive phases of their activities while competing vigorously in the world marketplace. We must identify and implement short-term and long-term measures to improve our education and training. And all this must be done promptly, while we still have an asset base strong enough on which to build.

EULOGY FOR JEANNE HYDE

HON. JOHN T. MYERS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. MYERS of Indiana. Mr. Speaker, on July 28, Jeanne Hyde, the wife of our colleague HENRY HYDE, passed away after a long illness. Many of us were privileged to know Jeanne. To know her was to admire and love her. At her Mass of Christian burial, her son Robert Hyde of Irving, TX, delivered a eulogy to his mother that was so very appropriate. I would like to share it with my colleagues—especially those who knew Jeanne as did my wife Carol and I:

EULOGY FOR JEANNE HYDE

(Eulogy by Robert Hyde)

Thank you all for your many kindnesses and comforts that you have provided our family during these sorrowful months.

Your support and prayers have lightened our burdens in incalculable ways. We are very much in your debt, so thank you and bless you.

Prior to this year, I never contemplated delivering a eulogy.

I sincerely hope that the next occasion is many years away.

I find this to be a very bittersweet effort.

On one occasion during my mother's last remaining days, I told her that I was preparing her eulogy and asked her if she wanted me to mention anything in particular.

Her only concern was—and always seemed to be—not for herself but whether I could manage well enough on my own under these difficult circumstances.

It is difficult, however its a very small sacrifice to perform compared to the mountains of sacrifices my mother had made during her life.

She was and remains a Godly person.

One personal insight I'd like to share with you has to do with God's Commandment to "Honor Thy Father and Mother." During our youth this commandment often posed quite a challenge—however, after these short months—honoring my parents is now quite easy.

We recognize this obvious fact, that we are supposed to feel this pain, sorrow and sense of loss. Something would be very wrong if we did not feel this way.

The ache exists because we are still bound to this Earth.

One of the most discomforting aspects of our sense of loss involves our inability to correctly articulate the very contradictory and mixed feelings that exist within ourselves.

On one hand, we will all miss her very terribly because we all loved our mother very—very much.

It becomes a very painful effort to mention her within the past tense.

On the other hand, our Catholic faith tells us to be glad and have a joyful heart because she in now, deservedly, in heaven.

We know that she is completely free of the many pains of this world and is now enjoying everlasting life.

She deserved our love, respect, honor, and admiration.

She, in fact, made it very easy for us to love her.

I first "met" my mother on December 11, 1952. She was almost 26 years of age.

Since that date she has been a constant source of inspiration.

She taught all her children that we were part of a Catholic family.

She taught us all the worthy values through her own constant example.

She taught us the meaning and value of virtue, of honesty, of the selflessness of hard work, of humor and of joy, of being Irish and of the importance of having a sense of proportion.

She taught us that even though the world often seems to reward those individuals who choose avarice over charity, anger over justice, pride over modesty and stupidity over thought; that it was our mission to follow God's will through the gift of His Holy Grace.

Service to others is love and the absence of service to others can quickly develop into the slavery of sin.

She taught us the joy of giving and of compassion for others, for friends and for family, for neighbors and even strangers.

Best of all, she taught us to seek forgiveness from others that we have injured as well as giving forgiveness to all our trespassers gladly and with an open and kindly heart, regardless of whether it is accepted or not.

She taught us that the most important time for oneself is not within the past nor the future but in the present.

She taught us that it is most important to make a positive difference in other people's lives as often as one possibly can.

She told us to avoid taking people for granted, to use every opportunity that comes our way during our life's brief journey.

She showed us the way to live and how to face sufferings with courage and misfortune with gracious integrity.

We have learned much from both of our loving parents.

We have learned that one's spiritual comfort is far more important than the momentary material contentments of this world.

Our mother was unfettered by material possessions, her thoughts and deeds throughout her days were for others.

We've learned that in order to appreciate the gift of joy, one must endure periods of anguish and distress.

During these last few weeks our mother taught us how to die.

She died in the same manner in which she lived, at peace, in readiness and in the state of Grace.

It was very obvious that Jesus was with her and though the strength of her flesh continued to dwindle—as all flesh must decline—one could not help but observe the peace of her wonderful faith and the majestic nobility of her very precious spirit.

Like the saints, my mother accepted the challenge to run the "great race".

She has finished the course.

She had kept the faith.

Very early in her life Christ gave her His receipt for everything.

When she had returned it—seemingly early—to Him, the receipt was in full and complete payment.

Love has dignity and honor.

There is nothing love cannot face, there is no limit to its faith, its hope and endurance. Love will never come to an end, will never vanish away.

We should not be bewildered about our own personal burdens—as if it is something extraordinary.

These ordeals give us a share of Christ's sufferings and that is a cause for joy.

Salvation was the theme which the prophets pondered and explored.

Through Christ's own sacrifice, salvation is made available to us all.

We are called out of darkness into our Lord's marvelous good light.

We are healed by His Redemptive Presence, today and throughout all tomorrows.

Christ suffered on our behalf.

He set us an example and we are all called to follow in His path.

Our spiritual inheritance, for which we are born, is a legacy that can never be tarnished much less destroyed if we keep our faith strong and pure.

We are commanded by Christ to Love one another as He has loved us.

My mother understood and accepted this Holiest of laws.

To her it was accepted as a fundamental condition of her being.

To her this law wasn't something remote or profound. It was as natural as breathing.

Through her actions, strong faith and spiritual readiness she has received her heavenly reward of everlasting life.

Scholars and theologians have often speculated and debated on the experience of the moment of death.

One author, C.S. Lewis, likens the event to a final stripping away of a well worn and cherished garment.

This author thought that the now unrestrained spirit would be enjoying the complete cleansing of pure and instantaneous liberation.

At the hour of death, one moment you are of Earth—perhaps in pain/perhaps not—and the next moment the sting of death was gone, gone like a bad dream, never again to be of any account.

At this instant the mortal flesh enters a new "life."

Suddenly, all is well.

All her doubts within the twinkling of an eye become trivial.

Her spirit may now be saying to herself: "Yes, of course, it was always like this! The extraction hurt more and more and then the tooth was out. One dies and dies and then you are beyond death. How could I ever have doubted it!"

Now her soul stands upright and can converse with those heavenly spirits about her.

The awe and mystery of it all is simply another cause for joy.

These spirits seem extraordinary to mortal eyes and yet they are not unfamiliar.

Till that very hour most humans have not the faintest conception of how these spirits would look and many individuals might have even doubted their existence.

But when my mother saw these beings she understood that she had always known them, and realized what part each one of them had played in her life even when she supposed herself alone, so that she could say to him, one by one, not Who Are You?—but, So It Was You All The Time!

This meeting will wake all the memories of a dim consciousness that had once perplexed her solitudes from infancy until now.

All such questions and feelings will at last, be fully explained.

That central music in every pure experience which had always just evaded memory was now, at last, recovered.

She not only saw God's holy saints and angels but she also saw Him.

His cool light is clarity itself and wears the form of a Man.

She is caught up into an existence where pain and pleasure take on a transfinite value and where all Earth's "arithmetic" is dismayed.

There is much more I'd like to say to you all but my mother asked me to be brief and I'll remain her obedient son.

Again, thank you all for your thoughts and prayers.

God's blessing of peace to you all.

THE BLOODSHED IN BOSNIA CONTINUES—ETHNIC CLEANSING INTENSIFIES

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. LANTOS. Mr. Speaker, the savage war in the Balkans continues as the Serbian Nationalists and their Communist leaders continue their campaign of ethnic cleansing. As mayhem reins, as families are ripped apart, and as hundreds of thousands of refugees flee the war-torn region for their lives, the world stands by—and does nothing.

The leaders of Europe have failed in their efforts to end the bloodbath. Their impotence in this shocking matter has been tragic. It is they who bear the greatest responsibility for brokering an end to the war that rages in their backyard, within hailing distance of the autobahn and the affluent beaches of Italy's eastern coast. And yet they seem unable to muster the political and diplomatic wherewithal to end this nightmare. Where is the leadership?

The Bush administration, for its part, has been pitiful in responding to this crisis. It took thousands of deaths and tens of thousands of casualties before the administration took the first step of imposing limited economic sanctions against the Serbian Communists. Its early misguided policy of supporting the status quo in Yugoslavia prior to the armed conflict has in large part contributed to the carnage that shocks us daily. Where is the outrage? Where is the response? Where is the action?

Warnings of an imminent crisis and demands for action, primarily sanctions, were sounded early and often by Congress. They were met with deafening silence from the administration.

I introduced two bills designed to send Serbia a strong message that its ruthless and lawless actions against its independent neighbors would not be tolerated. H.R. 3518, which would impose sanctions against Serbia, and H.R. 448, which would deny recognition to Serbia and Montenegro until they suspend their aggressive activities, enjoy a great deal of support among my colleagues.

The toll of human tragedy in Bosnia and other parts of the former Yugoslavia is immeasurable. The Serbian Communists are perpetrating intolerable human rights abuses against civilians and the reports of these heinous acts are getting worse. I was shocked and disgusted by recent accounts that Serbians were deporting thousands of Moslems and Croats in sealed freight trains. Condemnation of this despicable act must ring in every corner of the international community.

The image of civilians—young children, the old and infirm—being herded into cattle cars brings to mind another war, another unspeakable horror. It reminds us in no uncertain terms of the extent to which this conflict has spun out of control, and how much more deadly and catastrophic it has become.

The Jewish Community Relations Board of San Francisco has issued a statement that underscores the scale and severity of the human rights abuse taking place in Bosnia and in parts of the former Yugoslavia and calls for an entirely appropriate response on the part of the administration. I insert it in today's RECORD. In light of the catastrophe taking place in Europe, I ask my colleagues to give this excellent statement the serious attention it deserves.

JEWISH COMMUNITY CONDEMNS REPORTED ETHNIC CLEANSING IN BOSNIA-HERZEGOVINA"

(Statement by Sandy Svetcov, chairman, Jewish Community Relations Council, San Francisco)

The San Francisco-based Jewish Community Relations Council, representing more than 60 synagogues and Jewish organizations, strongly condemns the reported deportations of thousands of Muslim and Croat civilians in sealed freight trains allegedly carried out in the last five weeks by Serbian forces in Bosnia-Herzegovina.

If the accounts of thousands of civilians having been forced from their homes at gunpoint and packed into sealed cattle cars without food or water leading to the deaths of many children and elderly are accurate, then this represents not just an excess of war—which is abominable in itself—but a monstrous violation of human rights which must be stopped.

We call upon President George Bush and Secretary of State James Baker to promptly investigate these reports and if they turn out to be authentic then we urge immediate

and rigorous measures be taken by the United States and the world community to put a stop to these heinous criminal actions.

The images of cattle car deportations and ethnic cleansing are forever etched in the minds of the Jewish people. Our memories prompt us to urge a most energetic response by the United States and United Nations.

EARLY TRADE BETWEEN INDIANS AND NONINDIANS

HON. ENI F.H. FALEOMAVAEGA

OF AMERICAN SAMOA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. FALEOMAVAEGA. Mr. Speaker, through Public Law 102–188 (S.J. Res. 217, H.J. Res. 342), Congress and the President designated 1992 as the "Year of the American Indian." This law pays tribute to the people who first inhabited the land now known as the continental United States. Although only symbolic, this gesture is important because it shows there is sympathy in the eyes of a majority of both Houses of the Congress for those Indian issues which we, as a Congress, have been struggling with for over 200 years. In support of the Year of the American Indian, and as part of my ongoing series this year, I am providing for the consideration of my colleagues a recollection of Wolf Calf, a member of the Piegan Tribe, as published in a book entitled "Native American Testimony." The editorial comment which precedes the article is provided also.

SOME STRANGE ANIMAL

The "sky dogs," as the people of the far western plains called horses, inspired a cultural revolution. Suddenly tribes could cut their hunting time by a significant fraction and roam great distances to trade and raid. The costume art of the Plains Indian blossomed; tipis became taller, and their furnishings very elaborate. Ceremonies increased in complexity. Personal wealth was tallied in mounts.

Whereas in 1730 the southern Blackfoot were relatively defenseless against attacks by mounted northern Shoshoni, three generations later they had become lords of the northern Plains. Around the turn of the nineteenth century, Wolf Calf, a Piegan—the southernmost of the three Blackfoot tribes—told the Plains Indian scholar George Bird Grinnell this story of the tribe's first sight of horses and of a chief whose name appropriately changed from Dog to Many Horses.

The first horses we ever saw came from west of the mountains. A band of the Piegans were camped on Belly River, at a place that we call "Smash the Heads," where we jumped buffalo. They had been driving buffalo over the cliff here, so that they had plenty meat.

They had come over the mountains to hunt buffalo a Kutenai who had some horses, and he was running buffalo; but for some reason he had no luck. He could kill nothing. He had seen from far off the Piegan camp, but he did not go near it, for the Piegans and the Kutenais were enemies.

This Kutenai could not kill anything, and he and his family had nothing to eat and were starving. At last he made up his mind that he would go into the camp of his enemies and give himself up, for he said, "I might as well be killed at once as die of hunger." So with his wife and children he rode away from his camp up in the mountains, leaving his lodge standing and his horses feeding about it, all except those which his woman and his three children were riding, and started for the camp of the Piegans.

They had just made a big drive, and had run a great lot of buffalo over the cliff. There were many dead in the piskun [corral] and the men were killing those that were left alive, when suddenly the Kutenai, on his horse, followed by his wife and children on theirs, rode over a hill nearby. When they saw him, all the Piegans were astonished and wondered what this could be. None of them had ever seen anything like it, and they were afraid. They thought it was something mysterious. The chief of the Piegans called out to his people: "This is something very strange. I have heard of wonderful things that have happened from the earliest times until now, but I never heard of anything like this. This thing must have come from above (i.e., from the sun), or else it must have come out of the hill (i.e., from the earth). Do not do anything to it; be still and wait. If we try to hurt it, maybe it will ride into that hill again, or maybe something bad will happen. Let us wait."

As it drew nearer, they could see that it was a man coming, and that he was on some strange animal. The Piegans wanted their chief to go toward him and speak to him. The chief did not wish to do this; he was afraid; but at last he started to go to meet the Kutenai, who was coming. When he got near to him, the Kutenai made signs that he was friendly, and patted his horse on his neck and made signs to the chief. "I give you this animal." The chief made signs that he was friendly, and the Kutenai rode into the camp and were received as friends, and food was given them and they ate, and their hunger was satisfied.

The Kutenai stayed with these Piegans for some time, and the Kutenai man told the chief that he had more horses at his camp up in the mountains, and that beyond the mountains there were plenty of horses. The Piegan said, "I have never heard of a man riding an animal like this." He asked the Kutenai to bring in the rest of his horses; and one night he started out, and the next day came back driving all his horses before him and they came to the camp, and all the people saw them and looked at them and wondered. . . .

This young man . . . finally became head chief of the Piegans. His name at first was Dog, and afterward Sits-in-the-Middle, and at last Many Horses. He had so many horses he could not keep track of them all. After he had so many horses, he would select ten boys out of each band of the Piegans to care for his horses. Many Horses had more horses than all the rest of the tribe. Many Horses died a good many years ago. These were the first horses the Piegans saw.

When they first got horses, the people did not know what they fed on. They would offer the animals pieces of dried meat, or would take a piece of backfat and rub their noses with it, to try to get them to eat it. Then the horses would turn away and put down their heads, and begin to eat the grass of the prairie. . . .

White people had begun to come into this country, and Many Horses' young men wanted ropes and iron arrowpoints and saddle blankets, and the people were beginning to kill furs and skins to trade. Many Horses began to trade with his own people for these things. He would ask the young men of the tribe to kill skins for him, and they would bring them to him and he would give them a horse or two in exchange. Then he would send his relations in to the Hudson's Bay post to trade, but he would never go himself. The white men wanted to see him, and sent word to him to come in, but he would never do so.

At length, one winter, these white men packed their dog sledges with goods and started to see Many Horses. They took with them guns. The Piegans heard that the whites were coming, and Many Horses sent word to all the people to come together and meet him at a certain place, where the whites were coming. When these came to the camp, they asked where Many Horses' lodge was, and the people pointed out to them the Crow painted lodge. The whites went to this lodge and began to unpack their things—guns, clothing, knives, and goods of all kinds.

Many Horses sent two men to go in different directions through the camp and ask all the principal men, young and old, to come together to his lodge. They all came. Some went in and some sat outside. Then these white men began to distribute the guns, and with each gun they gave a bundle of powder and ball. At this same time, the young men received white blankets and the old men black coats. Then we first got knives, and the white men showed us how to use knives; to split down the legs and rip up the belly—to skin for trade.

WOLF CALF,
Piegan.

NATO, DOWN AND (SOON) OUT

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. FRANK of Massachusetts. Mr. Speaker, for the first time in more than 50 years the United States faces a world in which there is no enemy or combination of enemies capable physically of destroying our civilization. Correctly understood, this should free up enormous resources for civilian purposes, both private and public sectors. Of course we will remain the strongest Nation in the world. The point is that we are able to do so in the current world situation at a far lower cost than it previously took us just to stay even with our major adversary.

But the Bush administration seems unhappy at the prospect of freeing up these resources. It seems convinced that we should continue to spend tens of billions of dollars unnecessarily. No where is this more mistaken view clearer than in their insistence that we continue to spend vast sums maintaining American forces on the continent of Western Europe, despite the complete absence of the physical threat which called that presence into being.

In the New York Times recently, Daniel Plesch and David Shorr of the British American Security Information Council published an insightful article on this subject. As they note, NATO has outlived its usefulness and the administration's continued insistence on maintaining it gets in the way of the kind of enlightened foreign policy we should be pursuing both in our own interest and in that of the values we seek to advance in the world. I ask that their interesting article be printed here.

NATO, DOWN AND (SOON) OUT

WASHINGTON.—With war raging in the former Yugoslavia, the institutions that are supposed to promote security in Europe are overdue for a hard look.

NATO and the Conference on Security and Cooperation in Europe should be judged on whether they can bring stability and avert future conflict in Central and Eastern Europe.

The organization with the least to contribute to the new political order is NATO, and its recent behavior has only weakened its case for a major role. NATO points with pride to its decision in June to offer peacekeeping services to the 52-nation conference on security. As the situation in Bosnia-Herzegovina demonstrates, however, peacekeeping is applicable only when a truce has been achieved.

NATO's bind over peacekeeping symbolizes the fading relevance of the alliance, whose leaders have failed to realize that large military structures are of little use in the new Europe. Instead, they are struggling obsessively to protect NATO's military primacy.

A glimpse at the alliance's agenda shows why its priorities are misplaced and why its military organization should be mothballed by the end of the decade. The force structure should be disbanded, with a plan for reconstitution if danger, now remote, arises.

In NATO's highest councils, topic No. 1 is the plan for a new army corps France and Germany announced in October. The initiative has been inflated to nearly crisis proportions in Washington, where concern runs high that both countries will ultimately turn their backs on NATO (and the U.S.) and build their own military force as part of the European Community's plans for political union. But with the threat from the old Warsaw Pact gone, it seems absurd to debate who should defend Western Europe.

The wish of former East bloc countries to join NATO is often cited as evidence of NATO's value. Such an emphasis on admitting countries to the club as they prove their democratic mettle overlooks the more urgent goal—which is not in NATO's competence—of preventing other societies from coming apart at the seams.

The potential admission of Poland to NATO in the year 2000 is small consolation to citizens in Bosnia-Herzegovina, Nagorno-Karabakh, Trans-Dniester or South Ossetia, where demagogues are whipping up nationalist, racist and religious hatreds into war frenzy.

It is beginning to dawn on the international community that its hopes of avoiding more tragedies like Yugoslavia lie with the Conference on Security and Cooperation in Europe, where all the countries of North America, Europe and the former Soviet Union have seats at the table.

In the last two years and until the recent summit meeting in Helsinki, most Western leaders, especially the U.S. and Britain, resisted proposals to reshape the unwieldy conference into a problem-solving political forum that would go beyond its traditional role of codifying principles and give it a lot more clout. In Helsinki, the delegates approved a more extensive set of political mechanisms to enable the conference to spot conflicts earlier and respond to them more flexibly. The question is whether governments will use the new apparatus.

The phasing out of NATO need not mean the end of U.S. involvement in Europe. The U.S. may want to maintain a military link to the Continent by keeping a symbolic presence of 20,000 to 30,000 troops there. The priority, however, should be to build an economic and political presence. Besides, Germany is no more likely than the Philippines to welcome American troops forever.

So far, it seems, the U.S. is trapped in its own old thinking, a far cry from the response that transformed Europe after World War II. America is indeed weak if all it can offer is a military defense; we should be weaving closer ties through more generous aid and frequent exchanges between businessmen and farmers in the U.S. and Eastern Europe.

By retiring NATO to an honorable place in history, we can focus our energies more usefully on the primary task of international diplomacy—helping rival nations grope their way toward co-existence and cooperation.

HONORING ANDY STASIUK UPON HIS RETIREMENT AS MANAGING EDITOR OF THE STAR LEDGER

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. ROE. Mr. Speaker, I take great pleasure in rising today to pay special tribute and national recognition to an outstanding citizen who for over 40 years has devoted his career and extraordinary talents to informing, illuminating, and inspiring the citizens of Newark and the entire State of New Jersey. Mr. Henry "Andy" Stasiuk will retire on September 1 after 44 years of exemplary service from the leading daily news publication in New Jersey, the Star Ledger in Newark, where he has been managing editor since 1965.

In tribute to this pillar of journalistic integrity, there will be a reception held Sunday, August 9 at the Livingston Country Club in Livingston, NJ. At this laudatory reception attended by people from across the State, Andy's friends and family will gather to congratulate him on his long and productive career. Andy came to the Star Ledger as a part-time reporter in 1948 after working for a weekly paper, the Teaneck Sun. He became a full-time reporter in 1952 and covered political campaigns and elections. In 1954, he rose to the post of assistant city editor and shortly thereafter became city editor, a post which he held until 1965 when he was elevated to the position of managing editor.

From this station, Andy worked closely with the Star Ledger's nationally recognized editor, Mort Pye, to build the paper's circulation into the largest in the State of New Jersey at 488,000 daily and 707,000 Sunday subscribers. With the growing circulation, there was an unending improvement in the quality and stature of the paper. Andy maintained a close tab on the daily operations of the paper keeping his office in the newsroom. Known for his dynamic personality, he worked diligently to enhance the Ledger's service to it's readers.

Today, the Star Ledger, whose motto is "The Newspaper for New Jersey," is known across the country as one of the finest daily newspapers in the Nation. This reputation was built through the hard work and dedication of men like Mort Pye and Andy Stasiuk.

Andy also served his country for 3½ years as a combat pilot in the U.S. Navy during World War II. For daring and bravery in the Pacific Theater, he received the Silver Star, numerous other military honors and decorations.

In his leisure, Andy built a vacation home with his own hands in the forests of northern Maine, where he spends his time boating and swimming. In his retirement, Andy plans to remain active doing consulting work, traveling, and playing golf. He will move to Las Vegas where he plans to build a home.

In the past half century, Andy has been witness to many dramatic changes in history and many singular events. Through it all, he has maintained his objectivity and retained the confidence of New Jersey's leaders, in business, the State Legislature, Congress, Governors, Democrats and Republicans alike.

Mr. Speaker, I would like to join with Andy's wife Mary, his seven children and five grandchildren, and all his friends in wishing him well in the new life ahead of him. He is truly a unique and exemplary citizen.

WHY IS SADDAM HUSSEIN CONTINUING TO CHALLENGE THE U.N. RESOLUTIONS

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. ASPIN. Mr. Speaker, last week I spoke to the House about the disturbing trends in United States policy toward Iraq. I would like to continue that discussion today by suggesting why Saddam Hussein is blatantly challenging U.N. authority.

While Iraqi belligerence and noncompliance is nothing new, the scope and magnitude of recent challenges are unprecedented. Since June, Iraq has:

Rejected the border demarcation recommended by the U.N. Boundary Commission and stopped attending meetings of the Commission;

Impaired U.N. relief efforts by blocking visas and transportation and refused to sign an extension of the memorandum of understanding [MOU], which expired June 30, for United Nations and relief personnel in Iraq;

Engaged in a growing terrorist campaign against U.N. personnel in the Kurdish enclave;

Launched a new military offensive against the Shi'a in the south, including attacks with fixed-wing aircraft; and

Impeded U.N. inspectors' access to the Ministry of Agriculture.

Judging by press reports, even the Bush administration has noticed this trend. One unnamed official was quoted as saying a "season of challenge" has begun. The only thing wrong with that discovery was its timing. The season opened some time ago. What is going on? There are a number of theories.

SADDAM IS WEAK

According to this school of thought, the sanctions and other international pressures are finally getting to Saddam. Prices have escalated sky high and the monetary system is in shambles. He has already effectively conceded part of the north of the country to the Kurds and fears that barring aggressive military action the same will happen with the Shi'a in the south.

In early July press reports swept Washington that Saddam had been assassinated—lending credence to the Saddam is weak theory. While many of the reports proved exaggerated, something did happen which subsequently prompted the execution of more than 140 of Saddam's army officers. Proponents of the Saddam is weak theory believe that the coup was a legitimate move against Saddam which his security forces foiled only at the last minute.

According to this theory, this is Saddam's last gasp—a desperate move to regain the advantage and preserve his power by demonstrating strength to his people.

SADDAM IS STRONGER

According to this theory, Saddam believes that he is acting from a position of strength—he has survived the worst and is now prepared to move more aggressively. Despite the sanctions, Saddam Hussein continues to rebuild his country at an impressive pace. He has successfully manipulated the sanctions to keep himself, his security forces, and his key cronies comfortable. He is convinced, with some basis in fact, that international support for the sanctions and other actions against Iraq is waning.

Saddam is stronger supporters also have an explanation for the attempted coup in early July. They say that if the coup was legitimate, it was discovered early and was never a serious threat. Some go so far as to say that the coup might have been a deliberate ruse to permit a minor purge of troublesome army officers.

According to the Saddam is stronger theory, Saddam Hussein believes he is about to win the waiting game. Now that the worst is over, a stronger Saddam will continue to challenge the United Nations more aggressively until the conditions of the U.N. resolutions and the sanctions are removed.

PRESIDENT BUSH IS PREOCCUPIED

Proponents of this theory suggest that Saddam's actions are based on his reading of the American political scene. No doubt Saddam Hussein, a CNN junkie himself, has followed the President's dropping ratings and worsening election prospects with glee. He clearly relishes the thought that he might outlast George Bush.

In an interview July 27 Iraq's Deputy Prime Minister Tariq Aziz referred repeatedly to George Bush's rating of 22 percent, indicating that Saddam Hussein enjoyed far greater support from the Iraqi people.

Saddam may believe that George Bush is handicapped by his election campaign and therefore unable to stand up to his challenges—creating a window of opportunity for Saddam to move aggressively.

THE SADDAM THEORIES: MISSING THE OBVIOUS

While all this speculation is fascinating, I believe it misses the point. Saddam is aggressively opposing the United Nations authority for one good reason. It works. Through his persistent belligerence Saddam Hussein is:

Projecting an image of strength to the people and further convincing them that his overthrow is hopeless;

Delaying inspections to allow time to remove or disguise evidence of his unconventional weapons programs;

Dragging out the implementation of the resolutions in the hope that international support for maintaining sanctions will diminish;

Using "cheat-and-retreat" tactics to chip away at the authority and effectiveness of the U.N. resolutions; and

Strengthening his internal control by evading the sanctions and manipulating humanitarian assistance to support his security forces and cronies.

This latest standoff regarding the Agricultural Ministry is a case in point—Saddam Hussein gained a lot and lost nothing. In an interview on July 27 Iraqi Deputy Prime Minister Tariq Aziz described their success this way:

I believe this confrontation was very useful because it revealed power * * *. This means that when an inspection team that comes and behaves in a provocative manner and tries to insult us, it will know that the consequences will be very difficult for it. The entry into a building took 22 days, including all that happened. I believe that this experience will reflect positively on guaranteeing the considerations which we have been seeking in our conflict with the Security Council.

Until Saddam is convinced that continued intransigence hurts more than it helps, he will keep on doing it. Weak, strong, or indifferent, he will do it because it works.

PROMOTE AND SUPPORT HIGH SPEED RAIL DEVELOPMENT

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. MAZZOLI. Mr. Speaker, last week, regrettably, the House voted down legislation which would encourage private investment in high-speed rail systems. The measure that I fully supported, offered by the gentleman from Pennsylvania [Mr. COYNE] would remove tax-exempt bonds for high-speed rail projects from any existing dollar limitations imposed on State bond issues for private purposes.

Mr. Speaker, urban transportation gridlock has practically become a way of life. The need for alleviating this near paralysis and for providing safe and economical alternatives to intercity highway and air transportation routes is enormous.

In my view, and in the view of many, high-speed rail systems offer one answer to the mounting bottlenecks on our Nation's highways and in our Nation's skies. High-speed rail can play a significant role in helping meet the need for an efficient national transportation system that a vibrant American economy dictates.

This vision of the impending role of high-speed rail is nowhere more apparent than at the local level. In my hometown of Louisville, KY, the city of Louisville established a railroad study task force in 1990, that studies, researches and plans for the future transportation needs of Louisville and Jefferson County.

The task force, joined by many other interested citizens, devotes itself to examining ways to revive modern rail passenger service. Their study includes all phases of rail passenger service, including high speed and long distance, commuter and light rail.

Mr. Speaker, the residents of Louisville and Jefferson County overwhelmingly acknowledge the advantages of rail—its speed, it cost effectiveness, its efficient use of space, its environmental soundness, and its ability to create jobs.

The enthusiasm and momentum for passenger rail service are growing in Louisville and across the country. I remain hopeful that Congress will seize the opportunity and help make this exciting initiative a reality.

COMMENDING LT. GEN. SAMUEL E. EBBESEN

HON. RON de LUGO

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. DE LUGO. Mr. Speaker, today, Lt. Gen. Samuel E. Ebbesen assumes command of the 2d U.S. Army at Fort Gillem, GA. I congratulate this Virgin Islander and commend him on this important achievement in service to our Nation.

Born in St. Croix, VI, on September 15, 1938, Samuel Ebbesen was commissioned a second lieutenant in 1961 through the Reserve Officer Training Corps. He holds a bachelor of arts degree in political science from City College of New York and a masters degree in public administration from Auburn University. He has attended U.S. Army Command and General Staff College and the Air War College.

General Ebbesen has served as commander, 6th Infantry Division (Light), Fort Wainwright, AK; assistant division commander, maneuver, 6th Infantry Division (Light), Fort Wainwright, AK; deputy chief, legislative liaison, Office of the Chief of Legislative Liaison, U.S. Army, Washington, DC; Chief of Staff, I Corps, Fort Lewis, WA; commander, 1st Brigade, 101st Airborne Division (Air Assault), Fort Campbell, KY; deputy chief, plans and operations division, and later executive officer, Office of the Chief, Legislative Liaison, Office of the Secretary of the Army, Washington, DC; commander, 2d Battalion, 32d Infantry, 7th Infantry Division; Executive officer, 2d Brigade, 7th Infantry Division; and G3, 7th Infantry Division, Fort Ord, CA.

He has been awarded the Legion of Merit with three oak leaf clusters, the Bronze Star Medal with "V" device with two oak leaf clusters, and the Meritorious Service Medal with oak leaf cluster. He is the recipient of the Air Medal and the Army Commendation Medal with two oak leaf clusters.

The 2d U.S. Army General Ebbesen will command oversees and evaluates the training of Army Reserve and Army National Guard units and provides combat ready units for deployment worldwide. The 2d U.S. Army has responsibility for the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, as well as Puerto Rico and the Virgin Islands.

As General Ebbesen assumes his new command, I know that all Virgin Islanders share my pride in this native son who has earned this recognition in service to his country. It is an honor and trust certainly befitting this man of such proven ability.

SHOULD STATE EXECUTIONS RUN ON SCHEDULE?

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. EDWARDS of California. Mr. Speaker, on April 21, 1992, Robert Alton Harris was executed by cyanide gas at San Quentin Prison in California. The execution was carried out despite a courageous order from Federal Judge Marilyn Hall Patel delaying the execution until a hearing 10 days later on the issue of whether or not execution by cyanide gas was cruel and unusual punishment prohibited by the U.S. Constitution. Meeting at 3 a.m. on Tuesday, April 21, the U.S. Supreme Court ruled that despite Judge Patel's order, the execution must go ahead.

In the New York Times article below, Judge John P. Noonan, U.S. Court of Appeals, Ninth Circuit, forcefully argues that it was treason to the Constitution "for the Federal courts to abstain from exercising their jurisdiction" in the face of the issue of whether the execution by cyanide gas violated the U.S. Constitution.

Mr. Speaker, Judge Noonan, a most respected jurist, is a former constitutional law professor at Boalt Hall School of Law, University of California. I commend his remarks to all of my colleagues:

[From the New York Times, Apr. 27, 1992]

SHOULD STATE EXECUTIONS RUN ON SCHEDULE?

(By John T. Noonan)

SAN FRANCISCO.—"Treason to the Constitution" is a strong charge. It was the phrase employed in 1821 in argument before Chief Justice John Marshall to describe a Federal court's failure to exercise its jurisdiction in a case properly brought before it. On Saturday evening April 18, a courageous Federal judge, Marilyn Hall Patel, refused to commit treason to the Constitution and, in a suit brought under the Civil Rights Act, ordered a hearing on whether death by cyanide gas was cruel and unusual punishment prohibited by the Constitution. Her order also affected the execution of Robert Alton Harris, the condemned murderer scheduled to die on April 21. The state immediately appealed to my court, the Ninth Circuit.

The established standards, built up over the years by the judiciary, are these: First, "cruel and unusual" means "cruel and unusual" in today's terms. Not even the most doctrinaire "original intent" jurist maintains that the determination is to be made as of 1791, when the Bill of Rights became part of the Constitution. Since Weems v. United States in 1909, we have been committed to an evolving standard of human decency.

Second, a good index of what is cruel and unusual is what the state legislatures allow. In 1992, just three states authorize cyanide gas as the only means of inflicting capital punishment. One, Arizona, is in the process of abandoning the method, and another, Maryland, has not had an execution since 1961. It is a serious question whether the consensus of all the other legislatures shows that California's means of carrying out the death penalty violates the constitutional norm.

Third, any "unnecessary suffering" in imposing the death penalty is forbidden by the Constitution. The Constitution permits capital punishment: it does not permit torture. Judge Patel was presented Saturday night with a mass of affidavits asserting that the use of the gas chamber did lead to a tortured death. It is an important question whether this evidence could be rebutted.

Concluding as a matter of common sense that these questions could not be answered on a Saturday night, Judge Patel set a hearing to be held in 10 days where testimony could be taken and the arguments pro and con fully explored. Pending the hearing, she prohibited the use of lethal gas to execute anyone. The immediate beneficiary was Robert Alton Harris.

He was only one of 323 death-row inmates in California on whose behalf the civil rights action was brought. The state, anxious for him to meet his date with death, claimed that the case was really "a Harris case," unfairly brought at the last moment to throw his execution off track. The state's contention brought into focus an issue now before the country—not the death penalty itself, but whether the precedents, built up over this century for guarding everyone's civil rights are to be suspended or set aside to assure the orderly keeping of an execution date. About 3 a.m. on Tuesday, the U.S. Supreme Court decided that the Harris execution must stay on track. Federal courts must no longer exercise their jurisdiction in ways that would derail it.

Profound ambivalence had existed. We are a country with a Constitution and a Bill of Rights, which we celebrate and cherish and which the courts enforce. We are a country with a Civil Rights Act that no one wants to appeal. But we are also a country where some states by vote have determined that atrocious crimes may be punished by death.

Prompt enforcement of that penalty conflicts with the precedents built up under the Constitution, Bill of Rights and Civil Rights Act. If death penalties are to be inflicted according to a state's schedule, these protections must give way. A Federal court must even commit "treason to the Constitution" and abstain from exercising its jurisdiction.

So, at least, is the present position of the U.S. Supreme Court, Justices Harry A. Blackman and John Paul Stevens dissenting. That Court has resolved the national ambivalence and decided that it is intolerable for a Federal court to delay an execution to decide a constitutional question. Robert Alton Harris was a casualty of this decision. Was the Constitution, too?

SURVIVING DIFFICULT TIMES IN THE PORK INDUSTRY

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. MICHEL. Mr. Speaker, I would like to bring to the attention of my colleagues in Congress an inspiring example of the hard-working constituents of the 18th District of Illinois.

The Edge family of Chandlerville, IL, proves that the good, old-fashioned successful family business is not obsolete. With approximately 130,000 hogs marketed annually, their business is among the largest hog operations in the country. Their farm, Triple Edge Pork, Inc., performs contract finishing, onsite finishing, contract farrowing, and farrowing operations. This comprehensiveness allows them to remain competitive in an increasingly tight market.

At this time, I would like to insert an article from Hogs Today by Karen Brown McMahon which gives an indepth account of the admirable efforts of the Edge family to perserve a solid family business.

[From Hog Today, July–August 1992]

AT A CROSSROADS—CRITICAL CHOICES AHEAD EVEN FOR THIS THRIVING HOG BUSINESS

(By Karen Brown McMahon)

It's decision time at Triple Edge Pork, Inc. The central Illinois hog business achieved steady growth during the past decade. They tried new partnerships for producing pork and found success. Today the family's hog operations run the gamut—contracting for finishing, farrow-to-finish and sow contracting.

As margins narrow and the pork industry consolidates, the Edge family look ahead with uncertainty. Which enterprise will maintain profitability, which will not?

"We're at a crossroads," says Milton Edge. "Should we put in more sows of our own or build finishers? Or should we go with sow contracts?

"I don't know where we have to be three to five years down the road," he adds. "I've heard that by the year 2000, only 5,000 people will control the hog business. If that's the case, it's not very many people."

If future success is based on size, the Chandlerville, Ill., business may have a foot in the door. It ranks among the larger hog operations in the U.S.— marketing roughly 130,000 hogs annually. Milton and his wife Hazel along with their son Stan and his wife Kim, own the business.

Is their current size big enough to sustain a role in the future?" "We don't know," admits Milton. "I think the large [producers] will get larger. And I think there will always be small producers. They will be efficient."

"We don't have the deep pockets that big companies have," adds Stan. Unprofitable operations can't be written off against other enterprises. The majority of their income is from hogs.

The Edges now grapple with the future of four areas where they produce hogs. Here's a look at each:

CONTRACT FINISHING

The Edges' contract-finishing business showed big growth in the past few years. They now finish 80,000 hogs a year on contracts. Most of the feeder pigs are purchased. They also contract finish some of the overflow pigs from their own farrowing units.

The Edges contract with 30 farmers. When hog prices dropped, they weeded out less profitable contracts to reach the group they use now. The larger units especially manage to keep death loss under 3 percent, an ADG of 1.6–1.7 lb. and feed efficiency at 3 lb. for animals from 40 to 240 lb.

"We're trying to get away from so many Cargill open-front buildings and get more into modified-open-front, totally slatted type buildings," Milton says. "We've also cut down on people. Back when hogs were $60, we could get away with anything. There is no room for error in the markets today."

The family business has stayed away from long-term contracts tied into new finishing facilities. "There are a lot of people looking for someone to build buildings," Milton says. "They want you to commit to keeping a building full for five years to guarantee payment on the building."

Instead, the Edges could be out of the contracting business in five months, Milton

says. Yet he doesn't expect this to happen as long as costs stay in line. But the bottom line for staying in the contracting business is showing profit. As margins narrow, buying pigs and paying to finish them may not cut it. That leads to another question the Edges now consider. Should they put up their own finishing units?

ON-SITE FINISHING

Gradually the Edges have built up their own finishing capabilities to handle 50,000 head. Last year they put in facilities for 5,000 hogs. Now they wonder if they should keep on this route. "You're talking big dollars if we put up those buildings," Stan admits.

A vastly improved efficiency makes this option attractive. The Edges report a tremendous difference in feed conversion and cost of production between their new finishing facilities and contract operations. "Feed conversion in the new buildings is 2.6 or 2.7," Milton says.

Production costs run $10.65/head more in open-front buildings than in new facilities, he adds. "You turn the building three times a year and that is over $31/head. You can build a building for $120/head."

Fewer medications are used in the new facilities. While this means lower costs, it also may mean survival in the future. "If they ever take some of the major drugs off the market, you just won't feed hogs in [open-front] facilities," Milton says.

The Edges expect their new finishing buildings to last 20 years. The buildings are naturally ventilated, total slats, shallow pit and lagoon. They use concrete where possible.

CONTRACT FARROWING

This winter, the Edges received their first feeder pigs from a sow-contract operation in Missouri. The Edges own the sows and provide the feed. The contractee owns the facilities and is responsible for labor and insurance.

The prospects for this arrangement look good to the Edges. "I'd like to get into more sow contracting," Stan says. "We can get good-quality pigs at a set cost. The only thing that changes is feed costs."

Cost of production remains one drawback for this option. Stan says they produce a pig for $32 in their own farrowing units. A sow-contract unit costs $40-$45 per pig.

Yet the cost of getting into a sow-contracting agreement runs less than starting up a farrowing unit. The Edges have experience in that, too.

FARROWING OPERATIONS

Milton bought into a sow cooperative in the late 1970s. When the arrangement didn't work out, he and his family bought out the other partners in 1981. The Edges remodeled the operation and expanded farrowing from 750 to 1,300 sows.

Three years ago, they purchased another farrowing unit. After remodeling and repopulating the facility, they farrow 780 sows.

"I think in the long haul, it will be the farrow-to-finisher who will make it," Stan says. "the margins will get skinnier. You make a little money on the pigs, a little on the finishers."

While the Edges consider their future, they closely monitor the production and finances of their hog businesses. Stan says they could not manage so many contracts without computer records.

Recently, the Edges remodeled offices in their small retail feed business to house two computers. Hazel and Kim keep track of the production and financial records.

So for now, the debate on the Edge farm continues. Their careful analysis of the business and finances will help guarantee the Edges a solid spot in the pork industry's future.

HONORING THE U.S. CADET NURSE CORPS

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mrs. LOWEY of New York. Mr. Speaker, I rise to honor the 50th anniversary of the U.S. Cadet Nurse Corps. The corps played an indispensable role during World War II and in the post war years by providing skilled nurses to treat the many casualties of that conflict.

During World War II, we faced a crippling shortage of skilled nurses as more and more were called overseas to help with the war effort. The corps was able to fill this void with able and skilled young eager to serve their country.

Franklin Delano Roosevelt brought the corps into existence in 1943 when he signed into law the Bolton Act, named for it's original sponsor Congresswoman Frances P. Bolton. The corps allotted Federal funds to provide young women with a chance to go to nursing school, uniforms, and a stipend to support them as they studied. In exchange, they agreed to stay in either military or essential civilian nursing through the remainder of the war.

Although most of the young women who graduated from nursing school on corps scholarships were not called overseas, they all provided crucial skills in either military or civilian hospitals on the home front. After the war was over, the need for highly skilled nurses diminished, and the crops was disbanded.

Army Surgeon General Norman T. Kirk pointed out the unique contribution of the Cadet Nurse Corps to the war effort. He said:

"[the Corps] stabilized the civilian home front nursing service at a time when the military demands would have disrupted a less efficient organization, [and] they assumed nursing responsibilities in Army hospitals second only to our own Army nurses."

As their 50th anniversary draws near, we should take time out to pay tribute to the dedicated group of women who promised to stay in nursing in service of their country for as long as was necessary to win the war that raged when they entered service. Their contribution was critical to the many young men for whom they cared. It was a contribution we should never forget. By stepping into uniform for their country, the Nurses Corp played an essential role in ending the war. They should be honored for their efforts.

RESTORE THE NAVY'S HONOR

HON. C. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. COX of California. Mr. Speaker, more than any other of the military services, the Navy has been called upon in recent years to project American power to the far corners of the globe. Carrier aviators from the flight deck of the U.S.S. *Independence* provided the first tangible form of deterrence during Operation Desert Shield. From the first night of Operation Desert Storm, when the U.S.S. *Wisconsin* fired its Tomahawk cruise missiles with such great accuracy, the U.S. Navy performed superbly in the Persian Gulf war—not only making us proud, but keeping us secure and free. Even now, the *Independence* battle group waits dutifully on station in the Persian Gulf, while the *Saratoga* battle group sails to take up position, in the event they are called upon to once again become an instrument of national policy. The Navy has always been there to protect our vital interests overseas, and to defend us from attack at home.

Today, however, it is the Navy itself that is under attack. Today, as never before in America's history, the popular press and politicians are indiscriminately denigrating the entire service. The well-publicized transgressions of a relative few have provided the patina of respectability to numerous noisy critics who place little value on protecting the national security, and less still on the honor of those in the Navy who have so faithfully carried out the task.

Ironically, it is for the ideal of freedom that so many Navy men and women have long sacrificed their own freedoms, and their own lives. Even in peacetime, sailors today routinely spend 6 months at a time aboard ship, at every corner of the globe. In times of conflict, they are always at risk, often under fire, and in many cases wounded, captured by the enemy, or killed. They deserve our full measure of respect for the sacrifices they and their families have made for so many years of hard work, training, faithful service, and combat. As individuals, each is entitled to the same fundamental fairness that they have worked so hard to guarantee all of us in a free society. Sadly, however, it appears that many of them are being treated unfairly indeed.

Some of the most grievous wrongs ever committed in American politics and Government were justified by noble purposes. The Army-McCarthy hearings, just as the Japanese internment during World War II, waived concerns about justice for individuals in order to wage a broader war. It is to be hoped that the lessons of history will not be lost upon us today—and that the rights of individuals will be protected even as some in the media and in politics proclaim that "heads must roll."

In a society that paroles murderers, gives drug dealers a second chance, and affords even Members of Congress the fifth amendment when they are suspected of law breaking, it would be tragic indeed if even one naval officer were peremptorily presumed guilty, stripped of his career, and professionally humiliated for having been in proximity to a crime. I do not know whether that is happening. Still, one cannot help but wonder when so many officers with such fine careers are relieved of their commands and positions of responsibility when they have not been charged—let alone found guilty—of any civil offense or infraction against the Uniform Code of Military Justice.

It is time that someone in this body rose to the defense of common sense, even handed-

ness, and the American way of fair play. We need not apologize for any person's misdeed to speak up for the truly heroic deeds that so many in our Navy have performed. Today, I would like to single out four naval officers, stationed in my home State of California, who are deserving of some special recognition in light of recent events.

Capt. Richard S. Braden, recently the chief of staff to commander, Fighter Airborne Early Warning Wing, U.S. Pacific Fleet, has been serving his country in the U.S. Navy for nearly a quarter century. With over 4,500 flight hours, over 400 carrier arrested landings, five cruises and 6 years at sea to his credit, he is one of our Nation's most experienced naval aviators. His extensive career also includes service as an instructor pilot, as a key staff member in Navy program planning, as commanding officer of a carrier airborne early warning squadron aboard the U.S.S. *Kitty Hawk*, and as commander of the Carrier Airborne Early Warning Training Squadron at NAS Oceana. Captain Braden's record is bristling with awards and commendations, including four Meritorious Service Medals.

Capt. George L. Moe, recently the commanding officer of Fighter Squadron 124, served as operations officer for the U.S.S. *Midway* throughout that ship's extensive participation in the Persian Gulf war. He was awarded the Bronze Star for his actions as air resources coordinator for four carrier battle groups in theater during that conflict. Captain Moe has over 3,200 flight hours, 800 carrier arrested landings, and has made eight cruises while accumulating over 8 years of time at sea. Earlier in his career, as commanding officer of Fighter Squadron 1, then-Commander Moe earned his squadron the Admiral Clifton Award, gaining them recognition as the finest fighter squadron in the Navy. Twice during his tenure, that squadron earned the coveted battle "E" for being the most combat-ready fighter squadron in the Pacific Fleet. His numerous other awards include three Meritorious Service Medals, the Navy Commendation Medal, and the Navy Achievement Medal. Captain Moe has been selected to command one of the Navy's 13 carrier air wings.

Comdr. David M. Tyler, recently the commanding officer of Fighter Squadron 51, has over 5,700 flight hours and 600 carrier arrested landings. Additionally, he has logged over 6 years at sea, including four deployments. As an airwing strike leader, Commander Tyler served with distinction during Operation "Praying Mantis," flying from the deck of the U.S.S. *Enterprise* while it was deployed to the Persian Gulf. Earlier in his career, he was recognized as "Instructor of the Year" while attached to Training Air Wing 5. He was also considered as the prime candidate to become the next commanding officer of the Navy's "Blue Angels" Flight Demonstration Team. His personal awards include two Navy Commendation Medals and the Navy Achievement Medal.

Comdr. Robert H. Clement, recently the commanding officer of Fighter Squadron 111, has over 17 years of distinguished military service, 2,600 flight hours, and over 600 carrier arrested landings. He has deployed on six cruises encompassing over 4 years at sea. Graduating top in his class from flight school, he was one of the first junior officers to fly the F–14 Tomcat. Later, Commander Clement was one of the few selected to attend the Navy's prestigious Fighter Weapons School. As an adversary pilot, Commander Clement helped to provide Navy fighter pilots the critical air combat training required to ensure their undisputed success during Operation Desert Storm. In service to his Nation, Commander Clement has been awarded two Navy Commendation Medals and the Meritorious Unit Commendation, among others.

These four naval officers are fine men. Their collective careers represent over 80 years of dedicated naval service, including 18 years of family separation while they were deployed at sea. Our country has invested over $80 million to train them and to keep them combat ready. Mr. Speaker, let us hope that the same good judgment that causes us to condemn the acts of those who have stained the handsome Navy shield will permit us to recognize the tremendous debt of gratitude we owe to patriots such as these. I highlight them specifically, because I have been made aware of their records; but their circumstances are emblematic of many, many other extraordinarily skilled and loyal Navy officers.

Let us keep them in mind, each individually, as we in this Congress do our part to restore the Navy's honor. They have serviced us well over many, many years. If we can restore their dignity, we can restore that of the Navy. They, and the Navy, deserve no less.

TO COMMEMORATE THE BICENTENNIAL OF THE TOWN OF HAWLEY, MA

HON. JOHN W. OLVER

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. OLVER. Mr. Speaker, I rise to commemorate the bicentennial of the town of Hawley, MA. Situated in the green hills of western Massachusetts, Hawley has outstanding natural beauty and proud traditions.

Hawley was first settled in 1771 through the efforts of people from the towns of Springfield and Hatfield. Those first settlers included the Longley, White, Stiles, Rice, and Scott families, some of whose descendants continue to pay a prominent role in the town. The people of Plantation No. 7, as it was originally known, cleared the farms, harnessed the rivers and built the mills, providing a livelihood for the population.

On February 1, 1792, the town was incorporated and named in honor of Joseph Hawley of Northampton, a leader of western Massachusetts throughout the Revolution. Hawley's early prosperity was based on its agriculture, its water power, and the iron ore of Forge Hill. Hawley's government was then, as it is today, in the hands of the annual town meeting, that pure form of democracy which has found its fullest expression in New England.

In the latter part of the 19th century and through the middle of this century, Hawley saw many of its people leave for the West or for the growing urban centers, yet it has retained a strong sense of its history, which is manifested in this yearlong bicentennial celebration. A bicentennial parade will be held on August 8 to celebrate the accomplishments of the citizens of Hawley. Mr. Speaker, I ask my colleagues to join me in congratulating the town of Hawley on its 200th year.

TO EXPRESS THE APPRECIATION OF THE ENVIRONMENTAL AND ENERGY STUDY CONFERENCE TO JIM KETCHAM-COLWILL

HON. ROBERT E. WISE, JR.

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. WISE. Mr. Speaker, as House Chairman of the Environmental and Energy Study Conference, I would like to thank James F. Ketcham-Colwill as he leaves the study conference after 7½ years of superb service.

Jim is taking a position with the Environmental Protection Agency.

As you know, the study conference does not take positions. Its job is to provide the more than 300 of us in the House and 90 Senators who are conference members with objective analysis of environmental, energy, and natural resources issues. Jim's contribution to that work is nearly legendary.

Jim's careful, thorough, and tireless reporting have been of enormous assistance to Congress in clarifying the science, the politics, and the policy choices of the issues we face. Jim has on many occasions worked nearly 24 hours straight to provide us with the publications on which we so rely.

Congress is clarifying the science, the politics, and the policy choices of the issues we face. Jim has on many occasions worked nearly 24 hours straight to provide us with the publication on which we so rely.

Over the years, Jim has developed an invaluable expertise in critical areas such as air and water pollution and solid and hazardous waste. Jim's depth of knowledge and institutional memory will be sorely missed.

We are pleased, however, that Jim has chosen to remain in Government; and we will continue to benefit from his expertise at EPA.

We thank Jim for his important contribution to the splendid reputation the study conference enjoys, and wish him and his family all the best for the future.

TRIBUTE TO WILLIAM DALE CLARK

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. WELDON. Mr. Speaker, it is with special privilege that I rise today to offer my congratulations to William Dale Clark of Malvern, who has been selected as this year's Outstanding Postal Employee with Disabilities from the Postal Service's Eastern Region.

Mr. Clark, a Lansdale postal employee, was chosen from among a number of nominees

throughout the eastern region, which extends from south Jersey to South Carolina, and as far west as Kentucky. He is one of five regional winners who was honored at a special luncheon tribute in Washington, DC, on July 15. It is honorees such as Clark who "serve as an example for all of us and represent the value and importance of disabled employees in our work life," said Postmaster General Marvin Runyon.

As a fireman-laborer, Clark wears many hats: That of truck driver, electrician, vehicle mechanic, carpenter, custodian, grounds keeper, and even handyman. According to his supervisor, Postmaster Jerry Strothers, Clark performs exceedingly well at his job despite being physically challenged, and therefore, it is no wonder that he is considered to be the "backbone" of the Lansdale postal facility.

Clark joined the U.S. Postal Service in 1984, and he has unquestionably excelled in his career, gaining the respect and admiration of many. It is a pleasure to recognize such a fine employee and an impressive individual, and I certainly hope that his diligence will be imitated in workplaces everywhere. Once again, I offer my sincere congratulations, and I commend Mr. Clark for his determination and a job well done.

FISCAL YEAR 1993 COMMERCE, JUSTICE, STATE APPROPRIATIONS

HON. THOMAS C. SAWYER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. SAWYER. Mr. Speaker, on July 28, 1992, the House of Representatives passed H.R. 5678, the fiscal year 1993 Commerce, Justice, State Appropriations bill.

As chairman of the Subcommittee on Census and Population, which has jurisdiction over Federal holiday commissions, I am pleased to note that the legislation before us contains full funding for the Martin Luther King, Jr. Federal Holiday Commission. The King Commission, established in 1984, has worked tirelessly to institutionalize the King holiday and coordinate holiday activities across the Nation. When the Commission first began its work, only 17 States observed the King holiday. Today, through the Commission's efforts, all but two States have made Dr. King's birthday a paid holiday, and over 100 foreign countries celebrate the occasion as well. Thirty-four States, and a growing number of cities, now have King Holiday Commissions of their own.

The Commission received no Federal funding prior to 1990. This modest appropriation of $300,000 will greatly assist the Commission as it prepares for a historic and significant year in 1993. The Commission is planning expanded programs and activities to recognize the 10th anniversary of the establishment of the King holiday, the 25th anniversary of Dr. King's assassination, and the 30th anniversary of Dr. King's historic "I Have A Dream" speech at the Lincoln Memorial.

The Commission's goals through 1993 include the establishment of a clearinghouse and library on the King holiday; wider recognition and observance of the holiday by business and industry, schools, and law enforcement facilities; holding a Regional Educational Conference; ensuring observance of the holiday in all 50 States; and establishment of additional State and city holiday commissions.

I commend the committee for recognizing the particular importance of the King Commission's work in the coming year and for ensuring that the Commission will have an adequate appropriation to carry out its programs.

H.R. 5678 also contains an appropriation of $205,000 for the Christopher Columbus Quincentenary Jubilee Commission. While this amount is $15,000 below the Commission's request, I believe that it will enable the Commission to meet its basic operating expenses as it prepares for a very important year in 1993.

The Columbus Commission, also established in 1984, has worked to develop and coordinate activities that will focus attention on the anniversary of Christopher Columbus' maiden voyage to the New World. Next year, 1993 is an important year for the Commission because it will be its last full fiscal year of authorization. While the Commission must raise private funds to support its wide range of programs, the modest appropriation contained in this legislation will greatly assist the Commission as it prepares for an important year in 1993. In addition, it ensures that the Commission will be able to meet its primary expenses such as staff salaries, rent, and other administrative costs.

Even though the quincentennial year itself is passing, the Commission is pursuing a wide range of programs to complete its mission. Its plans for 1993 include coordinating the National Maritime Celebration, and serving as a clearinghouse of information and compiling an official record of worldwide activities and impressions of the quincentenary. The Commission will also pursue its efforts to establish a Columbus Scholars Program, which seeks to bring students from around the world together for accelerated instruction in history, geography, foreign languages, and international affairs.

As many of you know, the Columbus Commission suffered from poor management in the past under its former chairman, However, I am confident that under the leadership of its current chairman, Frank Donatelli, the Commission has been operating in a fiscally responsible manner. In order to carry out useful activities related to this historic event, the Commission needs the continued support of Congress.

I urge the committee to support the levels of funding contained in H.R. 5678 for these two Federal Commissions during its conference with the Senate.

LEONARD P. MULLINS RECEIVES OLIN E. TEAGUE AWARD

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Monday, August 3, 1992

Mr. MONTGOMERY. Mr. Speaker, in a ceremony on Wednesday in the House Veterans' Affairs Committee hearing room, Mr. Leonard P. Mullins will receive this year's Olin E. Teague award for his efforts on behalf of disabled veterans.

The Teague award is presented annually to a VA employee, or group of employees working as a team, whose achievements have been of special benefit to veterans with service-connected injuries.

Mr. Mullins is the vocational rehabilitation and counseling officer at the VA regional office in Louisville, KY. He is being cited, in part, for his involvement with the Cain Center for the Disabled Inc. The Cain Center is a nonprofit, tax-exempt organization that provides suitable living accommodations for the disabled. Mr. Mullins worked tirelessly with the Paralyzed Veterans of America and the Disabled American Veterans to identify seriously disabled veterans who are in need of housing that will enable them to live and function independently. He gained approval from the board of directors at the Cain Center for veterans and their families to use this housing while they pursue their vocational rehabilitation programs.

The first individual to benefit from this unique plan is a veteran who lost a leg in the Persian Gulf war. This individual has relocated to Louisville, KY, to pursue a degree from the University of Louisville under the VA's vocational rehabilitation program.

Mr. Speaker, the name Olin E. "Tiger" Teague is synonymous with exemplary service to the Nation's veterans. The late "Tiger" Teague served on the House Veterans' Affairs Committee for 32 years, 18 as its distinguished chairman. No one who opposed him on veterans issues ever had to ask why he was called Tiger. He set the standards by which we can best serve all veterans.

I know my colleagues join me in offering our deep appreciation to Mr. Mullins for his concern, dedication, and innovation in meeting the special rehabilitation needs of disabled veterans. We congratulate him for the excellence of his work and for the distinguished award he received.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, August 4, 1992, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

AUGUST 5

8:30 a.m.
Foreign Relations
Western Hemisphere and Peace Corps Affairs Subcommittee
To hold hearings on S. 2918, to promote a peaceful transition to democracy in Cuba through the application of appropriate pressures on the Cuban Government and support for the Cuban people.
SD-419

9:00 a.m.
Select on POW/MIA Affairs
To continue hearings to examine unanswered questions and United States efforts with regard to U.S. prisoners of war and soldiers missing in action, focusing on live sightings.
SH-216

9:30 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

10:00 a.m.
Banking, Housing, and Urban Affairs
To hold hearings on the semi-annual review of the Resolution Trust Corporation.
SD-538

Governmental Affairs
Business meeting, to consider pending calendar business.
SD-342

Judiciary
Constitution Subcommittee
To hold oversight hearings on the implementation of the Hate Crime Statistics Act (P.L. 101-275).
SD-226

Labor and Human Resources
To hold hearings to examine the use of television as a means of facilitating school readiness programs for preschool and elementary children.
SD-430

2:00 p.m.
Foreign Relations
To hold hearings on the nominations of Kent N. Brown, of Virginia, to be Ambassador to the Republic of Georgia, Richard Monroe Miles, of South Carolina, to be Ambassador to the Republic of Azerbaijan, Mary C. Pendleton, of Virginia, to be Ambassador to the Republic of Moldova, David Heywood Swartz, of Virginia, to be Ambassador to the Republic of Byelarus, Henry Lee Clarke, of California, to be Ambassador to the Republic of Uzbekistan, William H. Courtney, of West Virginia, to be Ambassador to the Republic of Kazakhstan, Stanley T. Escudero, of Florida, to be Ambassador to the Republic of Tajikistan, Joseph S. Hulings III, of Virginia, to be Ambassador to the Republic of Turkmenistan, and Edward Hurwitz, of the District of Columbia, to be Ambassador to the Republic of Kyrgyzstan.
SD-419

Judiciary
To hold hearings on S. 640, to regulate interstate commerce by providing for a uniform product liability law.
SD-226

AUGUST 6

9:00 a.m.
Commerce, Science, and Transportation
Surface Transportation Subcommittee
To hold oversight hearings on high-speed ground transportation.
SR-253

9:30 a.m.
Governmental Affairs
Oversight of Government Management Subcommittee
To hold oversight hearings on the activities and programs of the Defense Commissary Agency, Department of Defense.
SD-342

Small Business
Business meeting, to mark up H.R. 5191, to encourage private concerns to provide equity capital to small business concerns.
SR-428A

Select on Indian Affairs
Business meeting, to mark up S. 2833, to resolve the 107th Meridian boundary dispute between the Crow Indian Tribe, the Northern Cheyenne Indian Tribe and the United States, and various other issues pertaining to the Crow Indian Reservation, S. 2836, to promote economic development on Indian reservations by making loans to States to assist States in constructing roads on Indian reservations, and the proposed "Buy Indian Act"; to be followed by hearings on proposed legislation to settle water rights claims in southern Arizona.
SR-485

10:00 a.m.
Foreign Relations
Business meeting, to mark up S. 2064, to impose a one-year moratorium on the performance of nuclear weapons tests by the U.S. unless the Soviet Union conducts a nuclear weapons test during that period, and to consider pending nominations and treaties.
SD-419

2:00 p.m.
Energy and Natural Resources
Public Lands, National Parks and Forests Subcommittee
To hold hearings on S. 2890, to provide for the establishment of the Civil Rights in Education: Brown v. Board of Education National Historic Site in the State of Kansas, H.R. 2109, to direct the Secretary of the Interior to conduct a study of the feasibility of including Revere Beach, located in the city of Revere, Massachusetts, in the National Park System, S. 2244, to require the construction of a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate U.S. participation in that conflict, H.R. 3665, to establish the Little River Canyon National Preserve in Alabama, S.J. Res. 161, to authorize the Go For Broke National Veterans Association to establish a memorial to Japanese-American War Veterans in D.C. or its environs, and S. 2549, to establish the Hudson River Artists National Historical Park in New York.
SD-366

AUGUST 7

9:30 a.m.
Governmental Affairs
To hold oversight hearings on the Chief Financial Officer Act (P.L. 101-576) and Army audit.
SD-342

Joint Economic
To hold hearings to examine the employment-unemployment situation for July.
SD-628

10:00 a.m.
Veterans' Affairs
Business meeting, to mark up S. 2575, to revise certain pay authorities that apply to nurses and other health care professionals, S. 2973, to improve the care and services furnished to women veterans who have experienced sexual trauma, S. 2774, to revise certain administrative provisions relating to the United States Court of Veterans Appeals, and proposed legislation relating to veterans home loan programs.
SR-418

AUGUST 10

9:30 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Credit Subcommittee
To hold hearings on S. 3119, to establish a National Appeals Division of the Department of Agriculture to hear appeals of adverse decisions made by certain agencies of the Department.
SR-332

Governmental Affairs
To hold hearings to examine the health risks posed to police officers who use traffic radar guns.
SD-342

AUGUST 11

2:00 p.m.
Governmental Affairs
Oversight of Government Management Subcommittee
To hold hearings on proposed legislation authorizing funds for activities of the Independent Counsel Law of the Ethics in Government Act of 1978.
SD-342

2:30 p.m.
Energy and Natural Resources
Public Lands, National Parks and Forests Subcommittee
To hold hearings on S. 2505, to revise the Land and Water Conservation Fund Act of 1965 to authorize expansion of the existing entrance fee program at units of the National Park System to all areas administered by the Secretary of the Interior and certain Forest Service recreation areas administered by the Secretary of Agriculture, S. 2723 and H.R. 4999, to revise the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, S. 3100, to authorize and direct the Secretary of the Interior to convey certain lands in Cameron Parish, Louisiana, and H.R. 4276, to revise the Historic Sites, Buildings, and Antiquities Act to place certain limits on appropriations for projects not specifically authorized by law.
SD-366

AUGUST 12

9:00 a.m.
Environment and Public Works
Environmental Protection Subcommittee
To hold hearings on S. 2762, to assure the preservation of the northern spotted owl and the stability of communities dependent on the resources of the public lands in Oregon, Washington, and northern California.
SD-406

9:30 a.m.
Select on Indian Affairs
Business meeting, to mark up S. 2975, to provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona; to be followed by an oversight hearing on Indian trust fund management.
SR-485

10:00 a.m.
Labor and Human Resources
Business meeting, to consider pending calendar business.
SD-430

SEPTEMBER 22

9:00 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to review the legislative recommendations by the American Legion.
334 Cannon Building

CANCELLATIONS

AUGUST 5

10:00 a.m.
Finance
To resume hearings to examine the state of U.S. trade policy, focusing on proposed legislation to open foreign markets to U.S. exporters and to modernize the operations of the U.S. Customs Service.
SD-215