By Mr. DOMENICI (for himself, Mr. FORD, Mr. DOLE, Mr. LOTT, Mr. HEFLIN, Mr. SHELBY, Mr. FAIRCLOTH, Mr. SIMPSON, Mr. COCHRAN, Mr. INHOFE, Mr. WARNER, Mr. HELMS, Mr. MCCONNELL, Mr. THURMOND, Mr. BURNS, Mr. JOHNSTON, Mr. BINGAMAN, Mr. NICKLES, Mr. LUGAR, Mrs. KASSEBAUM, Mr. COATS, and Mr. GRAMS):

S. 1646. A bill to authorize and facilitate a program to enhance safety, training, research and development, and safety education in the propane gas industry for the benefit of propane consumers and the public, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. PRESSLER (for himself, Mr. CRAIG, Mr. LOTT, Mr. BENNETT, Mr. SIMPSON, Mr. STEVENS, Mr. MURKOWSKI, Mr. INHOFE, Mr. KYL, and Mr. THOMAS):

S. 1647. A bill to amend the Federal Land Policy and Management Act of 1976 to provide that forest management activities shall be subject to initial judicial review only in the United States district court for the district in which the affected land is located, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Ms. SNOWE:

S. Res. 233. A resolution to recognize and support the efforts of the United States Soccer Federation to bring the 1999 Women's World Cup tournament to the United States; to the Committee on Commerce, Science, and Transportation.

By Mr. DASCHLE (for himself, Mr. DOLE, Mr. COHEN, and Ms. SNOWE):

S. Res. 234. A resolution relative to the death of Edmund S. Muskie; considered and agreed to.

By Mr. THURMOND:

S. Res. 235. A resolution to proclaim the week of June 16 to June 22, 1996, as ''National Roller Coaster Week''; considered and agreed to.

By Mr. LUGAR:

S. Con. Res. 49. A concurrent resolution providing for certain corrections to be made in the enrollment of the bill (H.R. 2854) to modify the operation of certain agricultural programs; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself, Mr. FORD, Mr. DOLE, Mr. LOTT, Mr. HEFLIN, Mr. SHELBY, Mr. FAIRCLOTH, Mr. SIMPSON, Mr. COCHRAN, Mr. INHOFE, Mr. WARNER, Mr. HELMS, Mr. MCCONNELL, Mr. THURMOND, Mr. BURNS, Mr. JOHNSTON, Mr. BINGAMAN, Mr. NICKLES, Mr. LUGAR, Mrs. KASSEBAUM, Mr. COATS, and Mr. GRAMS):

S. 1646. A bill to authorize and facilitate a program to enhance safety, training; research and development, and safety education in the propane gas industry for the benefit of propane consumers and the public, and for other purposes; to the Committee on Energy and Natural Resources.

THE PROPANE EDUCATION AND RESEARCH ACT OF 1996

● Mr. DOMENICI. Mr. President, today I am very happy to introduce the Propane Education and Research Act of 1996. Propane is an extremely important source of clean-burning, domestically-produced energy in the United States providing fuel for cooking, heating, and hot water in over 7.7 million homes, half of all farms, and in millions of recreational applications. Even though propane is the fourth most used fuel in America, no Federal funds are spent on propane research. My legislation keeps it that way and simply provides a mechanism that permits, not requires, industry to fund its own research and development [R&D] program for propane.

This act would allow the propane industry, composed of over 165 producers and 5,000 marketers, to vote to establish a checkoff program to fund much needed R&D modeled after the many checkoff programs already established in Federal law. Collected from the industry at an initial rate of 1/10th of 1 cent per gallon of odorized—propane destined for the retail market—propane sold, these funds would support R&D, educational, and safety activities. Propane producers and marketers, who would bear the cost of the checkoff programs, have indicated broad support for the legislation.

Propane has traditionally served rural and suburban citizens who are beyond reach of most natural gas lines. The propane industry consists of mostly small businesses that individually cannot afford the necessary R&D, safety, and educational activities that result in enormous benefits to consumers. Some of these benefits include increased efficiency in propane appliances, safer handling and distribution, and an improved environment for Americans from this clean-burning fuel. Small businesses have not historically received direct benefits from federally sponsored energy R&D. This legislation does not fit the traditional heavy-handed approach to energy research and development, but gives the propane small business community the flexibility and the framework to pursue research, safety, and education on their own.

There are similar programs in energy industries, however, such as the Gas Research Institute, the Electric Power Research Institute, the Texas Railroad Commission propane checkoff, and similar State programs in Louisiana, Missouri, and Alabama. These programs have enjoyed considerable success, for example, the Gas Research Institute boasts a 400-percent return for each dollar collected and invested. Their work primarily benefits urban and suburban natural gas consumers, the propane legislation will benefit rural and suburban consumers, as well as urban and suburban propane consumers.

The agricultural industry, for example, which accounts for 7 to 8 percent of all propane consumed in the United States, will see substantial benefits from propane research and development. With even marginal increases in equipment efficiency, the agricultural propane users will reap large returns. More efficient uses of propane in other businesses, such as home construction, will further increase the value of the return on investment.

The legislation I am introducing will not actually establish the propane checkoff, but calls upon the propane industry to hold a referendum among themselves, to authorize establishment of the checkoff before it can go into effect. If the industry, propane producers, and retail marketers, vote to establish the checkoff, then the Propane Education and Research Council consisting of industry representatives, will be formed to administer the program. The legislation also looks down the road and allows the industry to terminate the program by a majority vote of both classes, or by two-thirds majority of a single class.

A companion bill, H.R. 1514, was introduced in the House of Representatives and currently enjoys broad bipartisan support. This enthusiasm underscores the wide, regional appeal of this innovative approach to meeting our domestic energy research needs. Moreover, my bill foster industry's efforts toward efficient, clean fuels that benefit consumers and producers alike without Federal dollars and with minimal governmental involvement.

I encourage my colleagues to join me in cosponsoring this important legislation.

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. 1646

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 ''Propane Education and Research Act of 1996''.

SEC. 2. FINDINGS.

Congress finds that—

(1) propane gas (also known as liquefied petroleum gas) is an essential energy commodity that provides heat, hot water, cooking fuel, and motor fuel, and has many other uses to millions of Americans;

(2) the use of propane is especially important to rural citizens and farmers, offering an efficient and economical source of gas energy;

(3) propane has been recognized as a clean fuel and can contribute in many ways to reducing pollution in cities and towns of the United States; and

(4) propane is primarily domestically produced, and the use of propane provides energy security and jobs for Americans.

SEC. 3. DEFINITIONS.

In this Act:

(1) COUNCIL.—The term ''Council'' means a Propane Education and Research Council established under section 4.

(2) INDUSTRY.—The term ''industry'' means persons involved in the United States in—

(A) the production, transportation, and sale of propane; and

(B) the manufacture and distribution of propane utilization equipment.

(3) INDUSTRY TRADE ASSOCIATION.—The term ''industry trade association'' means an

organization exempt from tax, under paragraph 3 or 6 of section 501(c) of the Internal Revenue Code of 1986, that represents the propane industry.

(4) ODERIZED PROPANE.—The term ''odorized propane'' means propane that has had odorant added to it.

(5) PRODUCER.—The term ''producer'' means the owner of propane at the time at which the propane is recovered at a gas processing plant or refinery.

(6) PROPANE.—The term ''propane''—

(A) means a hydrocarbon, the chemical composition of which is predominantly C^3H^8, whether recovered from natural gas or from crude oil; and

(B) includes liquefied petroleum gas or a mixture of liquefied petroleum gases.

(7) PUBLIC MEMBER.—The term ''public member'' means a member of the Council, other than a representative of producers or retail marketers, representing significant users of propane, public safety officials, academia, the propane research community, or other groups knowledgeable about propane.

(8) QUALIFIED INDUSTRY ORGANIZATION.—The term ''qualified industry organization'' means the National Propane Gas Association, the Gas Processors Association, a successor of the National Propane Gas Association or the Gas Processors Association, or a group of retail producers or marketers that collectively represent at least 25 percent of the volume of propane produced or sold, respectively, in the United States.

(9) RETAIL MARKETER.—The term ''retail marketer'' means a person engaged primarily in the sale of odorized propane to ultimate consumers or to retail propane dispensers.

(10) RETAIL PROPANE DISPENSER.—The term ''retail propane dispenser'' means a person that sells, but is not engaged primarily in the business of selling odorized propane to ultimate consumers.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

SEC. 4. REFERENDA.

(a) CREATION OF PROGRAM.—

(1) IN GENERAL.—The qualified industry organizations may conduct a referendum among producers and retail marketers for the creation of a Propane Education and Research Council.

(2) EXPENSES.—A referendum under paragraph (1) shall be conducted at the expense of the qualified industry organizations.

(3) REIMBURSEMENT.—The Council, if established, shall reimburse the qualified industry organizations for the cost of the referendum accounting and documentation.

(4) INDEPENDENT AUDITING FIRM.—The referendum shall be conducted by an independent auditing firm agreed to by the qualified industry organizations.

(5) VOTING RIGHTS.—Voting rights in the referendum shall be based on the volume of propane produced or odorized propane sold in the calendar year previous to the year in which the referendum is conducted, or other representative period agreed to by the qualified industry organizations.

(6) CERTIFICATION OF VOLUME OF PROPANE.—All persons voting in the referendum shall certify to the independent auditing firm the volume of propane the person represents.

(7) APPROVAL.—On the approval of persons representing ⅔ of the total volume of propane voted in the retail marketer class and ⅔ of all propane voted in the producer class, the Council shall be established.

(b) TERMINATION OR SUSPENSION.—

(1) REFERENDUM.—On the Council's initiative, or on petition to the Council by producers and retail marketers representing 35 percent of the volume of propane produced and sold, respectively, in the United States, the Council shall conduct a referendum to determine whether the industry favors termination or suspension of the Council.

(2) EXPENSE.—A referendum under paragraph (1) shall be conducted at the expense of the Council.

(3) INDEPENDENT AUDITING FIRM.—The referendum shall be conducted by an independent auditing firm selected by the Council.

(4) TERMINATION OR SUSPENSION.—Termination or suspension shall take effect if approved by—

(A) persons representing more than ½ of the total volume of odorized propane in the producer class and more than ½ of the total volume of propane in the retail marketer class; or

(B) persons representing more than ⅔ of the total volume of propane in produced or sold in the United States.

SEC. 5. PROPANE EDUCATION AND RESEARCH COUNCIL.

(a) SELECTION OF MEMBERS.—

(1) SELECTION BY QUALIFIED INDUSTRY ORGANIZATIONS.—The qualified industry organizations shall select all retail marketer, public, and producer members of the Council.

(2) ALLOCATION.—The producer organizations shall select the producer members of the Council, the retail marketer organizations shall select retail marketer members, and all qualified industry organizations shall select the public members.

(3) VACANCIES.—Vacancies in unfinished terms of Council members shall be filled in the same manner as original appointments.

(b) REPRESENTATION.—In selecting members of the Council, the qualified industry organizations shall give due regard to selecting a Council that is representative of the industry, including representation of—

(1) gas processors and oil refiners among producers;

(2) interstate and intrastate operators among retail marketers;

(3) large and small companies among producers and retail marketers, including agricultural cooperatives; and

(4) all geographic regions of the country.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of 21 members, including—

(A) 9 members representing retail marketers;

(B) 9 members representing producers; and

(C) 3 public members.

(2) QUALIFICATIONS.—Each Council member representing retail marketers or producers shall be a full-time employee or owner of a business in the industry that the member represents or a representative of an agricultural cooperative.

(3) DISQUALIFICATION.—No employee of a qualified industry organization or other industry trade association shall serve as a member of the Council, and no member of the Council may serve concurrently as an officer of the board of directors of a qualified industry organization or other industry trade association.

(4) LIMITED COMPANY REPRESENTATION.—Not more than 1 person from any company (or affiliate of the company) may serve on the Council at any given time.

(d) COMPENSATION.—

(1) IN GENERAL.—Subject to paragraph (2), Council members shall receive no compensation for services performed or reimbursement for expenses relating to services performed.

(2) EXCEPTION FOR PUBLIC MEMBERS.—A public member may, on request, be reimbursed for reasonable expenses directly related to participation by the member in Council meetings.

(e) TERMS.—

(1) LENGTH OF TERMS.—A Council member shall serve a term of 3 years.

(2) NUMBER OF TERMS.—A Council member may not serve more than 2 full consecutive terms.

(3) MAXIMUM CONSECUTIVE YEARS.—A member filling an unexpired term may serve not more than 7 consecutive years.

(4) RETURN OF FORMER MEMBERS.—A former member of the Council may return to the Council only if the member has not been a member for a period of 2 years.

(5) INITIAL APPOINTMENTS.—Initial appointments to the Council shall be for terms of 1, 2, and 3 years, and shall be staggered to provide for the selection of 7 members each year.

(f) FUNCTIONS.—

(1) IN GENERAL.—The Council shall develop programs and projects and enter into contracts or agreements for implementing this Act, including programs to—

(A) enhance consumer and employee safety and training;

(B) provide for research and development of clean and efficient propane utilization equipment;

(C) inform and educate the public about safety and other issues associated with the use of propane; and

(D) provide for the payment of the costs of implementing subparagraphs (A) through (C) with funds collected under this Act.

(2) COORDINATION.—The Council shall coordinate activities with industry trade associations and others as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

(g) USE OF FUNDS.—

(1) UNITED STATES AGRICULTURE INDUSTRY.—Not less than 5 percent of the funds collected through assessments under this Act shall be used for programs and projects intended to benefit the agriculture industry in the United States.

(2) COORDINATION.—The Council shall coordinate the use of funds under paragraph (1) with agriculture industry trade associations and other organizations representing the agriculture industry.

(3) USE OF PROPANE AS AN OVER-THE-ROAD MOTOR FUEL.—The percentage of funds collected through assessments under this Act to be used in any year for projects relating to the use of propane as an over-the-road motor fuel shall not exceed the percentage of the total market for odorized propane that is used as an over-the-road motor fuel, based on an historical average of the use of propane as an over-the-road motor fuel during the 3-year period preceding the year in which the funds are used.

(h) PRIORITIES.—Issues related to research and development, safety, education, and training shall be given priority by the Council in the development of programs and projects.

(i) ADMINISTRATION.—

(1) CHAIRMAN.—The Council shall select a Chairman from among the members of the Council.

(2) OFFICERS.—The Council shall select from among the members of the Council such officers as the Council considers necessary.

(3) COMMITTEES.—The Council may establish committees and subcommittees of the Council.

(4) RULES AND BYLAWS.—The Council shall adopt rules and bylaws for the conduct of business and the implementation of this Act.

(5) INDUSTRY COMMENT AND RECOMMENDATIONS.—The Council shall establish procedures for the solicitation of industry comment and recommendations on any significant plan, program, or project to be funded by the Council.

(6) ADVISORY COMMITTEES.—The Council may establish advisory committees of persons other than Council members.

(j) ADMINISTRATIVE EXPENSES.—

(1) LIMITATION ON EXPENSES.—The administrative expenses of operating the Council (not including costs incurred in the collection of the assessment under section 6) plus amounts paid under paragraph (2) shall not exceed 10 percent of the funds collected by the Council in any fiscal year.

(2) REIMBURSEMENT.—The Council shall annually reimburse the Secretary for costs incurred by the United States relating to the Council.

(3) LIMITATION ON REIMBURSEMENT.—A reimbursement under paragraph (2) for any fiscal year shall not exceed the amount that the Secretary determines is the average annual salary of employees of the Department of Energy.

(k) BUDGET.—

(1) REVIEW AND COMMENT.—Prior to August 1 of each year, the Council shall publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover the costs.

(2) SUBMISSION.—Following review and comment under paragraph (1), the Council shall submit the proposed budget to the Secretary and to Congress.

(3) RECOMMENDATIONS BY SECRETARY.—The Secretary may recommend any program or activity that the Secretary considers appropriate.

(l) RECORDS.—

(1) IN GENERAL.—The Council shall keep minutes, books, and records that clearly reflect all of the actions of the Council.

(2) PUBLIC AVAILABILITY.—The Council shall make the minutes, books, and records available to the public.

(3) AUDIT.—The Council shall have the books audited by a certified public accountant at least once each fiscal year and at such other times as the Council may determine.

(4) COPIES.—Copies of an audit under paragraph (3) shall be provided to all members of the Council, all qualified industry organizations, and any other member of the industry on request.

(5) NOTICE.—The Council shall provide the Secretary with notice of meetings.

(6) ADDITIONAL REPORTS.—The Secretary may require the Council to provide reports on the activities of the Council and on compliance, violations, and complaints regarding the implementation of this Act.

(m) PUBLIC ACCESS TO COUNCIL PROCEEDINGS.—

(1) IN GENERAL.—All meetings of the Council shall be open to the public.

(2) NOTICE.—The Council shall provide the public at least 30 days' notice of Council meetings.

(3) MINUTES.—The minutes of all meetings of the Council shall be made readily available to the public.

(n) ANNUAL REPORT.—

(1) IN GENERAL.—Each year the Council shall prepare and make publicly available a report that includes an identification and description of all programs and projects undertaken by the Council during the previous year and those planned for the upcoming year.

(2) RESOURCES.—The report shall detail the allocation and planned allocation of Council resources for each program and project.

SEC. 6. ASSESSMENTS.

(a) IN GENERAL.—The Council may levy an assessment on odorized propane in accordance with this section.

(b) AMOUNT.—

(1) INITIAL ASSESSMENT.—The Council shall set the initial assessment at no greater than 1/10 cent per gallon of odorized propane sold and placed into commerce.

(2) SUBSEQUENT ASSESSMENTS.—Subsequent to the initial assessment, annual assessments shall be sufficient to cover the costs of the plans and programs developed by the Council.

(3) ASSESSMENT MAXIMUM.—An assessment shall not be greater than ½ cent per gallon of odorized propane, unless approved by a majority of those voting in a referendum in the producer class and the retail marketer class.

(4) MAXIMUM INCREASE.—An assessment may not be raised by more than 1/10 cent per gallon of odorized propane annually.

(5) OWNERSHIP.—The owner of odorized propane at the time of odorization, or at the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce.

(6) DUE DATE.—Assessments shall be payable to the Council on a monthly basis not later than the 25th of the month following the month of in which the assessment is made.

(7) EXPORTED PROPANE.—Propane exported from the United States is not subject to the assessment.

(8) LATE FEE.—The Council may establish a late payment charge and rate of interest to be imposed on a person that fails to remit or pay to the Council any amount due under this Act.

(c) ALTERNATIVE COLLECTION RULES.—The Council may establish an alternative means of collecting the assessment if the Council determines that the alternative means is more efficient and effective.

(d) INVESTMENT OF FUNDS.—Pending disbursement pursuant to a program, plan, or project, the Council may invest funds collected through assessments, and any other funds received by the Council, only in—

(1) obligations of the United States or an agency of the United States;

(2) general obligations of a State or political subdivision of a State;

(3) an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(4) obligations fully guaranteed as to principal and interest by the United States.

(e) STATE PROGRAMS.—

(1) IN GENERAL.—The Council shall establish a program coordinating the operation of the Council with the programs of any State propane education and research council created by State law, or any similar entity.

(2) COORDINATION.—The coordination shall include a joint or coordinated assessment collection process, a reduced assessment, or an assessment rebate.

(3) REDUCED ASSESSMENT OR REBATE.—A reduced assessment or rebate shall be 20 percent of the regular assessment collected in a State under this section.

(4) PAYMENT OF ASSESSMENT REBATES.—An assessment rebate may be paid only to—

(A) a State propane education and research council created by State law or regulation that meets requirements established by the Council for specific programs approved by the Council; or

(B) a similar entity, such as a foundation established by the retail propane gas industry in a State that meets requirements established by the Council for specific programs approved by the Council.

SEC. 7. COMPLIANCE.

(a) IN GENERAL.—The Council may bring a civil action in a United States district court to compel compliance with an assessment levied by the Council under this Act.

(b) COSTS.—A successful action for compliance under this section may require payment by the defendant of the costs incurred by the Council in bringing the compliance action.

SEC. 8. LOBBYING RESTRICTIONS.

No funds collected by the Council shall be used in any manner to influence legislation or an election, but the Council may recommend to the Secretary changes in this Act or other statutes that would further the purposes of this Act.

SEC. 9. MARKET SURVEY AND CONSUMER PROTECTION.

(a) PRICE ANALYSIS.—

(1) IN GENERAL.—Not later than 2 years after establishment of the Council and annually thereafter, the Secretary of Commerce, using only data provided by the Energy Information Administration and other public sources, shall prepare and make available to the Council, the Secretary, and the public an analysis of changes in the price of propane relative to other energy sources.

(2) METHODOLOGY.—

(A) IN GENERAL.—The propane price analysis shall compare indexed changes in the price of consumer grade propane to a composite of indexed changes in the price of residential electricity, residential natural gas, and refiner price to end-users of number 2 fuel oil on an annual national average basis.

(B) ROLLING AVERAGE PRICE.—For purposes of indexing changes in consumer grade propane, residential electricity, residential natural gas, and end-user number 2 fuel oil prices, the Secretary of Commerce shall use a 5-year rolling average price beginning with the year 4 years prior to the establishment of the Council.

(b) AUTHORITY TO RESTRICT ACTIVITIES.—

(1) IN GENERAL.—If in any year the 5-year average rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and refiner price to end-users of number 2 fuel oil in an amount greater than 10.1 percent, the activities of the Council shall be restricted to research and development, training, and safety matters.

(2) NOTIFICATION.—The Council shall inform Congress and the Secretary of Energy of any restriction of activities under this subsection.

(3) REANALYSIS.—On the expiration of each 180-day period beginning on the date on which activities are restricted under paragraph (1), the Secretary of Commerce shall conduct a new propane price analysis described in subsection (a).

(4) END OF RESTRICTION.—Activities of the Council shall continue to be restricted under this subsection until the percentage described in paragraph (1) is 10.1 percent or less.

SEC. 10. PRICING.

Notwithstanding any other provision of this Act, the price of propane shall be determined by market forces. The Council shall take no action, and no provision of this Act shall establish an agreement to, pass along to consumers the cost of the assessment provided for in section 6.

SEC. 11. RELATION TO OTHER PROGRAMS.

Nothing in this Act shall preempt or supersede any other program relating to propane education and research organized and operated under the laws of the United States or any State.

SEC. 12. REPORTS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and not less than once every 2 years thereafter, the Secretary of Commerce shall prepare and submit to Congress and the Secretary a report examining whether operation of the Council, in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on propane consumers, including residential, agriculture, process, and nonfuel users of propane.

(b) CONSIDERATION BY THE SECRETARY OF COMMERCE.—The Secretary of Commerce shall—

(1) consider and, to the extent practicable, include in the report submissions by propane consumers;

(2) consider whether there have been long-term and short-term effects on propane prices as a result of Council activities and Federal programs; and

(3) consider whether there have been changes in the proportion of propane demand attributable to various market segments.

(c) RECOMMENDATIONS.—To the extent that the report demonstrates that there has been an adverse effect on propane prices, the Secretary of Commerce shall include recommendations for reversing or mitigating the effect.

(d) FREQUENT REPORTS.—On petition by an affected party or on request by the Secretary of Energy, the Secretary of Commerce may prepare and submit the report required by this section at less than 2-year intervals.●

By Mr. PRESSLER (for himself, Mr. CRAIG, Mr. LOTT, Mr. BENNETT, Mr. SIMPSON, Mr. STEVENS, Mr. MURKOWSKI, Mr. INHOFE, Mr. KYL, and Mr. THOMAS):

S. 1647. A bill to amend the Federal Land Policy and Management Act of 1976 to provide that forest management activities shall be subject to initial judicial review only in the United States district court for the district in which the affected land is located, and for other purposes; to the Committee on the Judiciary.

THE FEDERAL LAND AND POLICY MANAGEMENT ACT OF 1976 AMENDMENT ACT OF 1996

Mr. PRESSLER. Mr. President, today I am introducing legislation to bring some common sense to the judicial review of land management activities. In 1995, every single proposed timber sale in the Black Hills National Forest was challenged by extreme environmental groups. Was this necessary? No. My legislation would prevent environmental activists from ''court shopping'' when they challenge Federal timber sales and other land management activities. Is this necessary? Yes.

The Black Hills National Forest in western South Dakota, famous for its enormous stands of ponderosa pine, is an essential part of South Dakota's economy. The Black Hills forest products industry includes 18 sawmills and 12 secondary manufacturers producing a full spectrum of lumber products, from housing quality lumber to particleboard and wood pellets. The list is endless. The industry sustains nearly 2,000 jobs. Preserving these South Dakota jobs and the future health of the forest requires careful management—both by the Forest Service and by the timber industry.

Mayor Drue Vitter, of Hill City, SD, said it best:

> Good management of the forest by the Forest Service helps sustain a good cut for the timber industry. If we groom the forest well and keep it healthy, then we will have a healthy economy.

Mr. President, the very first Federal timber sale in the Nation took place in the Black Hills near Nemo, SD, in 1899. That same area has been harvested twice since then. Today, a new generation of healthy ponderosa pine stands tall and strong—a testament to the proper stewardship of our national forests.

Recently, however, proper forest management has been hindered by lengthy court challenges of Forest Service timber sales. Environmental extremists challenge almost every proposed Federal timber sale—not just in South Dakota but across the country.

In the past 10 years, the number of Federal timber sales has decreased dramatically. In 1990, the Forest Service issued nine timber sale decisions in the Black Hills National Forest. In 1994, the Forest Service issued only four timber sale decisions on the Black Hills.

Why the decline? Mainly it is due to the never-ending court challenges. These reductions threaten the health of the forest, cause sawmills to go out of business, and cause loggers and other workers to lose their jobs. This is bad for the forests. This is worse for South Dakotans.

Angie Many, founder of the Black Hills Women in Timber organization, described the situation in a poignant letter to the editor of the Rapid City Journal newspaper. ''When less timber is harvested, the dangers of losing major portions of the Black Hills National Forest to wildlife or insect infestations are increased . . . local mills shut down or decrease shifts, disemploying real people with effects that trickle down to many other businesses . . . families like mine are torn apart as loggers and mill workers travel to other areas to find work . . .'' Sadly, Angie's description is accurate.

Often, when environmental extremists contest a Federal timber sale, they shop around for courts that will be most sympathetic to their environmental concerns and where they can get the longest delays. They seek court action in metropolitan areas—courts that frequently are busier and tend to be more liberal. Is this fair to loggers? Of course not.

Court-shopping is a sad fact of life right now in South Dakota. Here's an example: Two years ago, the Forest Service prepared the so-called Needles timber sale—a sale 6.77 million board feet in the Norbeck Wildlife Reserve. The Needles sale was aimed at thinning the stands of ponderosa pine which had become so dense from lack of management that wildlife no longer could survive there.

This presented the Forest Service with an opportunity—an opportunity to achieve a balanced approach to forest management. By thinning the forest, the Forest Service intends to create new habitat areas that would encourage the return of wildlife to the area. That's good sense—a plan that would result in both economic and environmental benefits.

The Needles sale also was needed to ensure the long-term health of the forest within the Norbeck Wildlife Preserve. The Preserve is deteriorating rapidly and poses a severe fire risk. A fire in this area would be devastating. It could destroy the forest and could cause permanent damage to the faces of the Mount Rushmore National Monument which lies within the Norbeck Wildlife Preserve. The Needles timber sale would reduce drastically the risk of fire and insect destruction.

Like almost every Federal timber sale in the Black Hills, the Needles timber sale was challenged almost immediately by a coalition of environmental extremists. For the past 2 years, this case has been pending in the Denver court system—with no hope of receiving any further attention. This just is not right.

As many of my colleagues know, the Denver court system is currently one of the busiest in the Nation. The Needles timber sale is not a high priority for this court, particularly now that the Oklahoma bombing trial has been moved to Denver. But, this is what environmental extremists want. They wanted a delay. They got a delay. My bill would put an end to that.

My legislation would require that Federal land management activities—including timber sales—be subject to initial judicial review only in the U.S. District Court in which the affected Federal lands are located. Under my bill, the Needles timber sale could have been heard in South Dakota—where there is no caseload logjam, so to speak.

That means no more court shopping. No more court backlog. No unnecessary delays. No lost timber revenue. And most important, no lost jobs. A court in South Dakota will understand the needs of South Dakota's forest and rangelands better than a remote big city, Federal court with a clear liberal bias.

Maurice Williams, the General Manager of Continental Lumber in Hill City, SD, agrees that South Dakotans are best equipped to determine how to manage the Black Hills:

> The proof is on the ground. The Black Hills National Forest represents more than a hundred years of solid management. A judge who never has seen the Black Hills just isn't qualified to decide how the forest should or should not be managed.

Mr. President, I agree with Maurice. I believe it is time to give States and conscientious timber harvesters the home court advantage. Already this legislation has been cosponsored by several of my colleagues, including Senators CRAIG, LOTT, BENNETT, SIMPSON, STEVENS, MURKOWSKI, INHOFE, KYL and THOMAS. I ask unanimous consent that a letter of support from the Black Hills Forest Resource Association be printed in the RECORD. I hope all my colleagues will take a close look at this bill and support its eventual passage.

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

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

S. 1647

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

SECTION 1. JUDICIAL REVIEW OF FOREST MANAGEMENT ACTIVITIES.

(a) IN GENERAL.—Title VII of the Federal Land Policy and Management Act of 1976 (Public Law 94–579; 43 U.S.C. 1701 et seq.) is amended—

(1) in the title heading, by adding: ''; JUDICIAL REVIEW'' at the end; and

(2) by adding at the end the following:

''SEC. 708. JUDICIAL REVIEW OF FOREST MANAGEMENT ACTIVITIES.

''(a) DEFINITION OF FOREST MANAGEMENT ACTIVITY.—In this section, the term 'forest management activity' means a sale of timber, the issuance of a grazing permit or grazing lease, or any other activity authorized under a land use plan under this Act or a land or resource management plan under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) to be carried out on Federal land.

''(b) JUDICIAL REVIEW.—A forest management activity and land use plan under this Act or a land or resource management plan under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) (including an amendment to or revision of a plan) shall be subject to initial judicial review only in the United States district court for the district in which the affected land is located.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Federal Land Policy and Management Act of 1976 (43 U.S.C. prec. 1701) is amended—

(1) in the heading relating to title VII, by adding ''; JUDICIAL REVIEW'' at the end; and

(2) by adding at the end the following:

''Sec. 708. Judicial review of forest management activities.''.

BLACK HILLS FOREST
RESOURCE ASSOCIATION,
Rapid City, SD, March 14, 1996.

Hon. LARRY PRESSLER,
U.S. Senate,
Washington, DC.

DEAR SENATOR PRESSLER: We have reviewed your draft legislation requiring that lawsuits involving forest management activities be filed in the United States district court in which the national forest is located.

We strongly support this legislation. Too often plaintiffs have ''shopped'' for courts that are backlogged or for the judges most inclined to offer favorable judgments. In our view, the public's interest is best served by keeping trials as local as possible to facilitate appearances by witnesses, other participants, and observers, as well as providing the best opportunity for local citizens to be fully informed.

Clearly, local decisions should be made locally, and the public's interest is not well served by allowing cases to be heard in far away courts with only a tangential stake in the outcome.

Thank you for your leadership on this issue.

TOM TROXEL,
Director.

Mr. LOTT. Mr. President, it gives me great pleasure to join Senator PRESSLER, my friend and colleague, as one of the original cosponsors for his timber sale proposal. This responsible legislative solution would cut court cost and remove delays which plague legitimate efforts to harvest timber from Federal lands.

Those who oppose any and all timber activities go to great lengths to obstruct the process. Frequently, they shop around for a court which supports their agenda. This usually creates a situation where the court making the ruling has neither a geographical connection nor a genuine first-hand understanding of the case and its consequences. Does this make judicial sense to any of my Senate colleagues?

Senator PRESSLER'S proposal is direct and straightforward. It simply requires that the court which conducts the judicial review and renders the decision must include the land in question within its district. Why is a Denver court more qualified to review a Black Hills timber sales than one in South Dakota? Common sense says the opposite would be true.

Senator PRESSLER'S approach will not prevent groups from challenging the timber sales on Federal lands. This proposal will not roll back any environmental statutes. To the contrary, it actually means the judicial decisions will be made more promptly. Why would any of these groups not want their court challenges acted upon promptly?

Senator PRESSLER'S plan also would cover other public policy issues like grazing permits and resource management plans. It makes sense that these judicial decisions, like timber sales, are made by those who will be directly affected, and who have the most knowledge of the situations.

Senator PRESSLER'S approach can be characterized as a focused and precise fix to the underlying statues. It is in keeping with the administration's ''rifle-shot'' procedure. The fundamental law is left in place and mere fine tuning occurs.

I ask all of my colleagues to give serious examination to this legislative proposal. It has merit and deserves both your support and your cosponsorship.

ADDITIONAL COSPONSORS

S. 287

At the request of Mrs. HUTCHISON, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 287, a bill to amend the Internal Revenue Code of 1986 to allow homemakers to get a full IRA deduction.

S. 953

At the request of Mr. CHAFEE, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Minnesota [Mr. WELLSTONE], and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 953, a bill to require the Secretary of the Treasury to mint coins in commemoration of black revolutionary war patriots.

S. 969

At the request of Mr. BRADLEY, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 969, a bill to require that health plans provide coverage for a minimum hospital stay for a mother and child following the birth of the child, and for other purposes.

S. 1039

At the request of Mr. ABRAHAM, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 1039, a bill to require Congress to specify the source of authority under the United States Constitution for the enactment of laws, and for other purposes.

S. 1183

At the request of Mr. HATFIELD, the name of the Senator from Wisconsin [Mr. FEINGOLD] was added as a cosponsor of S. 1183, a bill to amend the act of March 3, 1931—known as the Davis-Bacon Act, to revise the standards for coverage under the act, and for other purposes.

S. 1189

At the request of Mr. DEWINE, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 1189, a bill to provide procedures for claims for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products.

S. 1245

At the request of Mr. ASHCROFT, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 1245, a bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to identify violent and hard-core juvenile offenders and treat them as adults, and for other purposes.

S. 1397

At the request of Mr. KYL, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 1397, a bill to provide for State control over fair housing matters, and for other purposes.

S. 1512

At the request of Mr. LUGAR, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 1512, a bill to amend title 23, United States Code, to improve safety at public railway-highway crossings, and for other purposes.

S. 1610

At the request of Mr. BOND, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1610, a bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees.

S. 1612

At the request of Mr. HELMS, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 1612, a bill to provide for increased mandatory minimum sentences for criminals possessing firearms, and for other purposes.

S. 1613

At the request of Mr. COCHRAN, the names of the Senator from Iowa [Mr.