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No. 145

Senate

The Senate met at 9:45 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Father, You always are right, just, and fair. Your fairness is the result of Your righteousness and justice. Today, we pray for the character pillar of fairness, of fairness for our own lives. Help us to play by Your rules of absolute honesty, purity, and love. We not only want to do to others what we would want them to do to us, but we want to treat others as You have treated us.

Thank You that we have Your commandments and Your truth in the Bible as our guide. You have taught us not only to meet but to go beyond the just standard. May we be distinguished for our generosity in exceeding what is expected.

May our expression of the character trait of fairness also include our judgments of other people and what we say about them. Forgive us when our evaluations of people are polluted by pride, envy, or competitiveness. Remind us of the power of words to assassinate other people's characters. When we can say nothing positive, may we say nothing.

Lord, You know the strength of this pillar of character called fairness. It is tested when people are unfair in what they say about us or are unfair in their dealings with us. Our temptation is to retaliate, but we know that resentment fired by retaliation usually results in recrimination. Help us break that cycle by being fair by Your standards and with Your strength. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, the distinguished Senator from Kansas, is recognized.

SCHEDULE

Mr. ROBERTS. Mr. President, this morning the Senate will immediately begin a cloture vote on the committee amendment to the ISTEPA legislation. It is the leader's hope that cloture will be invoked. Let me repeat that. It is the leader's hope that cloture will be invoked and the Senate will be able to consider and dispose of highway-related amendments. If cloture is not invoked, the Senate may consider any available appropriations conference reports—possibly the Interior conference report. Therefore, additional votes may occur during today's session.

As always, all Members will be notified as additional schedule information becomes available in regard to votes today, and the leader will update all Senators later today as to the schedule for Monday's session.

CLOTURE MOTION

The PRESIDENT pro tempore. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the modified committee amendment to S. 1173, the Intermodal Surface Transportation Efficiency Act:

Trent Lott, John H. Chafee, Pat Roberts, Slade Gorton, Jon Kyl, Dan Coats, Ted Stevens, Mitch McConnell, Mike DeWine, John W. Warner, Larry E. Craig, Don Nickles, Jesse Helms, Chuck Hagel, Dirk Kempthorne, Lauch Faircloth.

CALL OF THE ROLL

The PRESIDENT pro tempore. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDENT pro tempore. The question is, Is it the sense of the Sen-

ate that debate on the modified committee amendment to S. 1173, a bill to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes, shall be brought to a close?

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

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Mexico [Mr. DOMENICI], the Senator from Oklahoma [Mr. INHOFE], the Senator from Arizona [Mr. KYL], the Senator from Arizona [Mr. MCCAIN], the Senator from Wyoming [Mr. ENZI], and the Senator from Utah [Mr. HATCH] are necessarily absent.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota [Mr. WELLSTONE] would vote "no."

The yeas and nays resulted—yeas 43, nays 49, as follows:

[Rollcall Vote No. 278 Leg.]

YEAS—43

Abraham	Faircloth	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Roberts
Bond	Grams	Roth
Brownback	Grassley	Sessions
Burns	Gregg	Shelby
Campbell	Hagel	Smith (NH)
Chafee	Helms	Smith (OR)
Coats	Hutchinson	Stevens
Cochran	Hutchinson	Thomas
Coverdell	Jeffords	Thurmond
Craig	Kempthorne	Warner
D'Amato	Lott	
DeWine	Lugar	

NAYS—49

Akaka	Bryan	Daschle
Baucus	Bumpers	Dodd
Biden	Byrd	Dorgan
Bingaman	Cleland	Durbin
Boxer	Collins	Feingold
Breaux	Conrad	Feinstein

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



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Ford	Lautenberg	Robb
Glenn	Leahy	Rockefeller
Graham	Levin	Santorum
Hollings	Lieberman	Sarbanes
Inouye	Mack	Snowe
Johnson	Mikulski	Specter
Kennedy	Moseley-Braun	Thompson
Kerrey	Moynihhan	Torricelli
Kerry	Murray	Wyden
Kohl	Reed	
Landrieu	Reid	

NOT VOTING—8

Domenici	Hatch	McCain
Enzi	Inhofe	Wellstone
Harkin	Kyl	

The PRESIDING OFFICER. On this vote the yeas are 43, the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Senator from Rhode Island is recognized.

Mr. CHAFEE. 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. BREAUX. 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. BREAUX. Mr. President, I would just ask, what is the order of business for the Senate?

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 1173) to authorize funds for the construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Chafee-Warner amendment No. 1312, to provide for a continuing designation of a metropolitan planning organization.

Chafee-Warner amendment No. 1313 (to language proposed to be stricken by the committee amendment, as modified), of a perfecting nature.

Chafee-Warner amendment No. 1314 (to Amendment No. 1313), of a perfecting nature.

Motion to recommit the bill to the Committee on Environment and Public Works, with instructions.

Lott amendment No. 1317 (to instructions of the motion to recommit), to authorize funds for construction of highways, for highway safety programs, and for mass transit programs.

Lott amendment No. 1318 (to Amendment No. 1317), to strike the limitation on obligations for administrative expenses.

Mr. BREAUX. Mr. President, I ask unanimous consent, if no one else is waiting to speak, that I be allowed to speak as in morning business for up to 3 minutes.

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

SUPPORT OF THE FEDERAL MARITIME COMMISSION REGARDING JAPANESE PORT PRACTICES

Mr. BREAUX. Mr. President, I will just use this time to make a comment about a resolution that is soon to be introduced in a bipartisan fashion, dealing with trade practices between our country and the country of Japan. As many may have recognized recently in the news, we have been involved in a very long and very serious dispute with the country of Japan regarding access, opening up their ports to our industries the same way that our American ports are open to Japanese ships when they call on United States ports here in this country. This dispute has been going on for a number of years. It has gotten to be very, very serious.

We will soon be introducing a resolution. We have talked to Chairman HELMS and Majority Leader LOTT and our Democratic leader, TOM DASCHLE. I know Senator HOLLINGS is very interested in this as well. We worked on a resolution, which will be introduced, which will commend the administration and also the Federal Maritime Commission for their efforts to date in bringing this 15-year problem with the Japanese port practices to a successful conclusion. Since the press and many of my colleagues have already adequately described the history of the Japanese port practices, I am not going to repeat it here. But I would like to make a few comments on what has happened.

First, I think it is very important from this Senator's perspective to recognize that we have been able to work for a successful and satisfactory conclusion of this problem because of the strong, independent action that the Federal Maritime Commission was able to take. As an independent agency, the Federal Maritime Commission has the flexibility to carry out policies that are good for America without having to go through a number of steps and consultations with agencies within our Government that sometimes actually impede the process of quickly and appropriately making decisions that must be made. Because of its independent status, it was able to take this action in a way that should bring about what I think will be a satisfactory conclusion.

The second point I would like to make is I think it is appropriate at this time to recognize the decision of our U.S. Trade Representative, Charlene Barshefsky, last year, to refuse to commit the United States to an inadequate GATS maritime agreement. Had the United States accepted that proposal last year, which was a so-called standstill proposal, these same Japanese port barriers would have been grandfathered in and would have been recognized as the international law of the land. The Federal Maritime Commission, including the rest of the U.S. Government, would have then been powerless to do anything about them except to try to negotiate them away

during subsequent rounds of talks with the WTO starting in the year 2000. No agreement is better than a bad agreement. This is a clear example that what the U.S. Trade Representative did at that time was appropriate and proper.

Finally, I believe any agreement on the port practices dispute involving the United States and the country of Japan must include two fundamental points: First, a collection of fines to the extent it shows other countries around the world, not only Japan, that the United States is very serious about reciprocal market access and compliance with our laws; and, second, a vigilant, continued monitoring and enforcement by the Federal Maritime Commission of the changes in port practices promised by the Government of Japan. Both of these two elements are absolutely essential for any type of credible agreement. The Federal Maritime Chairman, Hal Creel, the Federal Maritime Commissioners, Ming Hsu, Del Won, Joe Scroggins and their staffs are to be commended for their extraordinary efforts to resolve this matter in a firm and fair manner. Likewise, I commend our State Department Undersecretary for Economic Affairs Stu Eisenstadt and his staff. They are to be commended for their perseverance in this matter.

Now is not the time, however, for congratulations. We are not quite there yet. Negotiations are continuing. But with additional fortitude, consumers and carriers and their customers, both in Japan and the United States, will soon enjoy the fruits of our labors. We have come too far to settle for any type of mediocre agreement. We cannot and should not give up now. I think a solid resolution of this issue is feasible and I expect one to be concluded in a reasonable amount of time.

Mr. President, if no one else is seeking recognition, 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. ABRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THE INVESTITURE OF ERIC CLAY

Mr. ABRAHAM. Mr. President, I rise today to comment on an event that will be taking place in Detroit, MI, a little later on this morning. Unfortunately, because of our votes today, it was not possible for me to attend what will be the investiture of Eric Clay, of Michigan, to become a judge on the Sixth Circuit Court of Appeals. I worked on behalf of Mr. Clay during the nomination process. It was a long and arduous one. Although his nomination was first sent up here in 1996, because of various factors we did not complete action on his nomination during the 104th Congress. Therefore, his

nomination was sent up again at the beginning of the 105th Congress. Happily, after another hearing and after once again being able to seek and receive unanimous support on the Judiciary Committee, he was confirmed by the full Senate in July of this year.

Mr. Clay has been an able advocate of his profession. He has been a very successful attorney. He is one of the cofounders of one of the Nation's largest minority-run law firms, and a very successful one in our State. He is well respected by people throughout the legal community. So, for those reasons and for a variety of others, I was delighted to support his nomination and to work for his confirmation.

Unhappily, as I say, I will not be able to be at the investiture today, but I know his many friends and colleagues are with him and will celebrate his official swearing in to the Sixth Circuit Court of Appeals. As I indicated at the hearing, in any case where people might not necessarily agree, as we find ourselves perhaps occasionally in disagreement on matters that come before the court, or before the Senate for that matter, I think he will bring strength and competence.

He served at one time as a clerk to Judge Damon Keith, who is currently on the sixth circuit and has just recently taken senior status. And, although not directly filling Judge Keith's spot, he, I am sure, will carry on Judge Keith's legacy on the bench and I think will be a fine advocate for the State of Michigan on the sixth circuit, and also, I think, will bring to the Sixth Circuit Court of Appeals a great deal of talent and will make a valuable contribution.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. CHAFEE. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

Mr. CHAFEE. Mr. President, I am authorized to say that there will be no further votes today.

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

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

ANOTHER TRAGEDY

Mr. DEWINE. Mr. President, I rise today to call the attention of my colleagues to a story that appeared last week in the Cincinnati Post. This is the story. The headline is: "Woman Torched Nephew, Police Say—Youngster's Burns Untreated for Weeks"

Mr. President, the article tells the story of the awful abuse of an 8-year-old child in the Cincinnati area. The boy was set on fire—set on fire—with nail polish remover, and then sent to school for 3 weeks with his burns unattended.

Cincinnati police investigated what happened to this little boy. They have now charged his aunt with child endangering. They charged his aunt with setting him on fire—and also with abusing him with a belt, an extension cord, and shoes.

Mr. President, this is an obscene crime. After this woman's arrest, it was revealed that she had been charged with a similar crime involving the same little boy 2 years before. Don't we have to ask, Mr. President, what on Earth was that woman doing taking care of that child or any child? Why in the world was that child put back into that same home, put back with that abusive woman?

Mr. President, 3 weeks ago, I rose on the Senate floor to tell a similar tragic story. That story took place in Washington, DC. It was the story of a little 4-year-old girl named Monica Wheeler who was found dead, beaten to death in the bathroom of a man who was an acquaintance of her mother. Three years ago, one of Monica's siblings, her brother Andre, then aged 2, was also found dead in the same man's bathroom.

Mr. President, as I have come to the floor and cautioned before, it is up to the police and the courts to find out the truth about these particular cases. And we should not be interested in prosecuting anyone here on the Senate floor, no matter what we think. That certainly is what the courts are for. But I cannot stress enough that these awful crimes point to a responsibility that lies with us here in Congress, the responsibility to make sure we do all we can to stop these crimes from ever happening.

One thing we know for certain about these two cases—the Cincinnati case and the Washington case, and far too many other cases—is that there are too many children in this country today being returned to the care of people who have already abused and battered them, people who should not be allowed to take care of these children. Children are being returned to homes that are homes in name only and to parents who are parents in name only.

Every day in this country, three children actually die of abuse or neglect at the hands of a parent or their caretakers. That is approximately 1,200 children a year who die. And almost half of these children, shockingly, Mr. President, are killed after—after—their

tragic circumstances have come to the attention of the child welfare agencies.

At the end of 1996, Mr. President, over 525,000 children were in foster homes across this country. Over a year's time, it is estimated that 650,000 children will be in a foster home for at least a portion of that year. And shockingly, roughly 25 percent of the children in the foster care system at any one time will languish in foster care longer than 4 years. And 10 percent of these children will be in foster care longer than 7 years.

Mr. President, this problem has been growing for many years. It is at least in part the very unintended consequence of a law passed by Congress in 1980, a law that I have spoken on this floor I suppose at least a dozen times about since I came to the Senate. It is a law that was passed in 1980 that requires that reasonable efforts always be made to reunify families. In practice, Mr. President, this law has resulted in unreasonable efforts, unreasonable efforts being made to reunite families that are families in name only, families that never should be reunited. Children are being sent back to abusive parents, abusive care givers, and many times the result is death.

Mr. President, I have been working to change this for almost 3 years now. Last month, along with Senators CHAFEE, CRAIG, and ROCKEFELLER, and others, I introduced a bill that I hope will represent the culmination of this effort. The PASS Act—the Promotion of Adoption Safety and Support for Abused and Neglected Children Act—would make a difference. It would save young lives. It would change this 1980 law that I referenced. It would put an end to a tragic policy that has put parents' interests above the health and safety and even the survival of innocent children.

It would help child welfare agencies move faster to rescue these children. Mr. President, every child deserves a better fate than being shuttled from foster home to foster home for years on end.

That is why, Mr. President, we are working to pass this very important bill. Let us work together, after we pass the bill, then on the next step, which will be to continue to try to improve the system.

But the work that is in front of us today, Mr. President, is to pass the PASS Act, a bill that has been worked on extensively, a bill that will in fact benefit children in two ways: One, by moving them quickly through the system once they are in fact in foster care so that they do not languish in foster care for years on end so that they can have what every child needs, which is a caring and loving family; and the second thing the bill would do is save lives. We will never know what child's life will be saved or how many, but I am convinced, after talking with caseworkers throughout the State of Ohio, children service agencies, and after having talked to many people throughout this country, that the 1980 law that

our bill will amend will in fact, by amending that law, save lives.

So I urge my colleagues, when this bill is brought to the floor, as I hope it will be in the next several weeks, to look at this bill, to pass it, and to move on so that we can make a very strong statement and do something very positive for America's children.

Mr. President, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I want to thank the distinguished Senator from Ohio very much for the work he has done on this legislation, the support he has given it, the kind things he has had to say about my part in it.

I think it is very important to stress that the Senator from Ohio has long been active in children's matters, particularly this area that we are involved with, namely, adoption and foster care. He knows the existing problems in this system and has been very, very helpful in the meetings we have had in putting this legislation together.

So I thank the Senator from Ohio very much for his work. And I share his enthusiasm and his desire to see this legislation come up this year, before we leave hopefully. So certainly both of us will do everything we can. We have had some fine meetings with the majority leader on it. Next week, we will be meeting with the chairman of the Finance Committee. Hopefully this legislation can come before us before we leave.

If there is nobody else desiring to speak, 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. FAIRCLOTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

(The remarks of Mr. FAIRCLOTH pertaining to the introduction of S. 1313 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

LEGAL CUSTODY OF MEI MEI

Mr. DEWINE. Mr. President, I rise this morning to draw the attention of my colleagues to a very sad, unnecessary controversy involving the Government of the United States and the Government of China, a controversy which also involves a little 3-year-old girl.

Mr. President, this is the sad story. A Chinese woman living in Cleveland was diagnosed with schizophrenia. For many reasons, including this diagnosis, it was clear that this woman was not capable of taking care of her daughter. In fact, they had both been evicted from a Salvation Army shelter because of concerns that the mother was mistreating the daughter. Evidence showed that the child had been seriously neglected. So the court stepped in and sent this child into foster care. By the time this little girl was 16 months old, tragically, she has been in four foster homes.

The natural mother was allowed visiting rights. During one of these visits she abducted the child and took her to the People's Republic of China. In June 1997, Mr. President, the Ohio court permanently terminated the birth mother's rights and awarded legal custody of Mei Mei—this little girl's name—to Mei Mei's foster mother. Since last October, the foster mother, the legal guardian of this child, has been trying, naturally, to get Mei Mei back. She wants to adopt Mei Mei, but her efforts thus far have not been successful.

Mr. President, I urge President Clinton to raise the issue of this little child with the Chinese President when they meet. There is an adoptive family waiting in Ohio for Mei Mei. They love her and they will be able to take good care of her. I hope this problem can be resolved in a positive and expeditious way. Therefore, I urge the President to raise this at the highest level between our countries.

A few minutes ago on the floor I circulated a letter—and a number of my colleagues have already signed it—to send to President Clinton urging him to bring the matter up.

Mr. President, sometimes it is easy, as we debate issues, to lose the personal sense about these horrible cases. Sometimes we hear about statistics and sometimes we hear about stories of bad things occurring, such as I have just related.

To try to bring it home, though, and put a more personal face on it, let me read just one paragraph that was written by the foster mother who wants to adopt Mei Mei. This is what she writes:

We have been applauded for our dedication and uninterrupted love for Mei Mei. I can honestly tell you, however, that it was not difficult. When a child enters your life and needs to be held, you hold them. You teach them to laugh, you teach them that you are there, you teach them to be gentle, you teach them that everything in life is beautiful. And then when they start to see that life is not something to be just tolerated but rather to be enjoyed, they develop a sparkle in their eye, which fuels your love further for them. That's what happened with us and with Mei Mei.

So I urge, again, Mr. President, that our President, President Clinton, bring this matter up with the Chinese. It is a small matter, I suppose. But it is a little girl; it is her life. She has an opportunity for a loving family to raise her. She was snatched away from that op-

portunity by a woman who has clearly demonstrated that she is unfit to take care of this little girl. So I urge the President, as he discusses issues with the Chinese, to raise the issue of Mei Mei.

Mr. President, I yield the floor, and at this point I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

FDA REFORM

Mr. DEWINE. Mr. President, I want to discuss today an important issue involving the FDA. First, let me congratulate my colleague from Arkansas, Senator TIM HUTCHINSON, for his fine work on the legislation that he has just introduced. This bill that Senator HUTCHINSON has introduced would prevent the FDA from implementing a proposed rule that is harmful and unnecessary.

Mr. President, this is the story. Earlier this year, the Food and Drug Administration issued a proposed rule to accelerate the phaseout of metered-dose inhalers that are propelled by chlorofluorocarbon gases, commonly known as "CFC's." Essentially, Mr. President, the FDA has proposed to ban from the market safe and effective medicines that millions of Americans use to help them breathe. For many patients, these medicines mean, quite literally, the difference between life and death.

This FDA proposed ban is not based on concerns of safety, but rather the ban on these inhalers was put forward on the grounds that inhalers that use CFCs deplete the Earth's ozone layer. Now, the fact is, Mr. President, that these inhalers have only a minimal effect on ozone depletion. Asthma inhalers account for only a very small part of this problem. It is estimated that asthma inhalers account for less than 1.5 percent of the total problem.

Perhaps more important, Mr. President, the companies that make these inhalers have already agreed to develop new CFC-free devices by the year 2005—the deadline that was previously set forth in the international Montreal Protocol. These companies are working hard to bring these products to the market quickly and, in fact, they think they will beat the 2005 year deadline.

So I think, Mr. President, it's clear that the FDA's proposed rule to accelerate the phaseout of these products yields no significant benefit to the global environment. What it will do, however, is take away essential medications from Americans who depend on these inhalers to manage serious respiratory illnesses.

Mr. President, over 30 million Americans suffer from some type of respiratory disease, including asthma.

Many of these patients rely on a combination of inhalers to be able to function normally. The FDA's proposed policy would limit their treatment options and force them to switch from proven treatment regimens that have been carefully adjusted to control their symptoms.

Mr. President, asthma is a serious national health problem. The morbidity and mortality rates from asthma continue to increase in the United States, particularly among minority and inner-city children. Mr. President, I think we have to question the FDA's judgment in putting forth a proposal that puts these patients at further risk. I hope others will agree with me as well.

Mr. President, the FDA has already received over 10,000 letters from patients, providers, and health care organizations expressing concern about this issue. In a letter to Health and Human Services Secretary Donna Shalala, Dr. C. Everett Koop, former Surgeon General of this country, wrote the following:

This proposal will adversely impact patient health, while providing negligible environmental benefit.

Dr. Koop went on to state:

Any efforts to limit the medications available to asthma patients and their physicians would be a serious mistake that would lead to severe consequences for American asthmatics.

Mr. President, there is another aspect to this whole issue. Under the proposed guideline, the FDA would remove from the market products that have been tested and labeled for use in children and replace them with CFC-free versions that while containing the same active ingredients have not been tested or approved for use by children. They have not been tested or approved for pediatric use. Mr. President, asthma is the leading cause of chronic illness among children—5 million children suffer from asthma today. How in the world can the FDA remove products from the market which are proven to be safe and effective for children while at the same time the FDA laments the lack of adequately labeled products for children? It just doesn't make sense.

Mr. President, the Food and Drug Administration is charged with protecting the health and well-being of American citizens. It seems incomprehensible to me that it could put forth a proposal that secures really negligible environmental benefits at a potentially steep cost to human lives and health. I urge the FDA to reconsider its proposal. The health of millions of Americans who depend on metered-dose inhalers is too important.

Mr. President, I thank the Chair. I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, what is the question before the Senate and what is the business before the Senate?

The PRESIDING OFFICER. The Senate is conducting morning business with Senators to speak for up to 10 minutes.

Mr. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent that I may speak out of order for as long as I may require.

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

Mr. BYRD. Mr. President, I thank the Chair.

THE LINE-ITEM VETO

Mr. BYRD. Mr. President, I have been intrigued—modestly, if I may say, so as not to exaggerate—at the plethora of complaints that are being in some instances stridently expressed about the President's use of the line-item veto. I suppose what amazes me so much about this matter is that all of this vast panorama of problems that could be expected to occur in the train of passage of the Line-Item Veto Act have been addressed time and time and time again on this Senate floor by me; by my colleague, Senator MOYNIHAN; by my colleague, Senator LEVIN; by my colleague, Senator REID; and many other colleagues on both sides of the aisle, including, of course, former Senator Mark Hatfield. We spoke to the galleries here and across the land repeatedly about what could be expected from the use of a President's line-item veto pen should such legislation be passed. We also spoke of the constitutional ramifications of a line-item veto. At the time, I felt that in all probability our expressions of concern were falling upon deaf ears.

So of late it has been brought home to me very clearly that although one may speak with stentorian voice, as with the combined voices of 50 men or as if his lungs were of brass, there will nonetheless be ears that will not hear, there will be eyes that will not see, and there will apparently be minds that will not think.

So one is left with very little consolation other than to know that what he or she said as a warning in days past was on point, and that history will prove that the point was well taken.

Mr. President, I see my dear friend, Senator MOYNIHAN, who is a great teacher. I wish I would have had the opportunity to sit in his classes—a man who is noted in the Congressional Directory as having received 60 honorary degrees. That will make one sit up and take notice—60 honorary degrees! I have never counted my honorary degrees. But I suppose that if I have been the recipient of ten or a dozen, that would certainly be the limit.

But Senator MOYNIHAN has foreseen the ramifications of this unwise legislative action by the Congress—and it is now coming home to roost—the so-called "Line-Item Veto Act." He has joined with me previously many times in discussing the act here and elsewhere. He has joined with me, as did

Senator LEVIN and former Senator Hatfield and two of our colleagues in the other body, in a court challenge against the Line-Item Veto Act. And he joins with me today in cosponsoring this bill to repeal the line-item veto.

So I am going to yield to him. I have legislation that I have prepared to repeal this act. Senator MOYNIHAN has joined with me in the preparation of the legislation. And I am going to yield to him because, as I understand it, he needs to get to another appointment right away. So I gladly yield to my friend for as long as he wishes. I ask that I be permitted to yield to Senator MOYNIHAN without losing my right to the floor.

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

The Senator from New York.

Mr. MOYNIHAN. Mr. President, it is again an honor and a privilege to join with one of the great constitutionalists in the history of the U.S. Senate, ROBERT C. BYRD, who has written the history of the Senate.

I can so well remember the occasion on which that great volume was introduced. One of our finest American historians was present saying that it is difficult to understand and very hard to forgive that there has been so little scholarly attention given to this body, to the Congress, as against the Presidency, and suggesting that it is not hard to explain. There is only one President, and there are 435 of us—a more complicated subject that comes later in our historymaking.

But I think it may be said that in the history of relations between the Congress and the Presidency there has never been an issue equal in importance to the constitutional challenge we face with the Line-Item Veto Act.

I think of difficulties in the past. There have been clashes between the Executive and the legislative. There are meant to be, sir, I presume to tell you.

Madison and Hamilton, when they explained the Constitution to the people of New York in that series of essays that became the Federalist Papers, said citizens might well ask. At that time people knew the history of classical Greece and Rome, and they knew how turbulent it was. Madison had the solicitous phrase of speaking of the "fugitive existence" of those republics. And they asked: What makes anyone suppose that we will have a better understanding, a better, a more durable existence than those of the past? And the answer was, "We have a new science of politics." That was their phrase, " * * * a new science of politics." Because in the past, theories of government depended on virtue in rulers. We have made up a different arrangement, an arrangement by which the opposing forces, the checks and balances, set off one group against another. And the result is that in the end you have outcomes that make up for—again, a wonderful line of Madison's—"the defect of better motives." And, in that regard the Framers very carefully

defined in article I and article II this distinction.

If I may say, again because it is so important, the framers of the Constitution presumed conflict. They did not assume harmony. They did not assume common interests. They assumed conflict. When they were asked, Why should we expect this Republic to survive given the "fugitive existence" of republics of classical Rome and Greece?, they replied "Because we have a new science of politics." We can have one interest balance another interest. And they devised it because they knew there were conflicting interests.

I believe it would surprise us, Mr. President, to know the extent to which—until the American Constitution came along—political theory assumed virtue and harmony in rulers and in government. We have seen it in our time, sir, in its most notorious form in the dictatorships of the proletariat in the Soviet Union, in the Republic of China, now in North Korea, if you like. The dictatorship of the proletariat is a wonderful way of saying rule by the virtuists, and rule by the virtuists turned out in reality to be rule by tyrants, by monsters. Indeed, Mr. Pol Pot is just now being interviewed by Mr. Thayer in the *Far Eastern Review*, and in the name of virtue, in the name of the people's republic, Mr. Pol Pot murdered perhaps as many as 2 million Cambodians. All in the name of virtue.

Well, this Constitution does not assume virtue. It assumes self-interest. And it carefully balances the power by which one interest will offset another interest and in the outcome make up, again in that wonderful phrase of Madison, "the defect of better motives."

In the judgment of this Senator, shared of course by our revered leader in this regard, nothing could violate that constitutional design more clearly than the Line Item Veto Act. On January 2 of this year, the first business day after the Line Item Veto Act took effect, I joined Senator BYRD, Senator LEVIN, and our never-to-be-forgotten friend from the State of Oregon, the former chairman of the Appropriations Committee, Senator Hatfield, in a lawsuit challenging the constitutionality of that Act on the ground that it violates article I, section 7, clause 2 of the U.S. Constitution, known as the presentment clause.

Mr. President, the issue of this Act's constitutionality has now been commented upon by two Federal judges. In the U.S. District Court for the District of Columbia, Judge Thomas Penfield Jackson took exactly 3 weeks from the date of oral argument to conclude that it is unconstitutional. He wrote in his April 10, 1997 opinion that by passing the Line Item Veto Act, "Congress has turned the constitutional division of responsibilities for legislating on its head."

The Justice Department appealed that decision, and we went to the Supreme Court where, in a manner that I

think is generally understood, the Court is a little shy about getting into arguments between Members of Congress and the President. I could use the image, sir, that the Court likes to see someone before it with a broken arm saying, let me tell you how it happened to me and why. And they held that we did not have standing—seven Justices did. Justice Breyer thought we had standing. But most importantly, sir, Justice Stevens dissented. He said we did have standing, and what is more, that this measure is unconstitutional. He is the one Supreme Court Justice who has commented on the question of this statute's constitutionality. In his opinion he wrote:

The same reason that the respondents have standing provides a sufficient basis for concluding that the statute is unconstitutional.

I quote, Sir, from the case of Franklin D. Raines, Director, Office of Management and Budget, et al., Appellants, versus ROBERT C. BYRD, et al.

Now, this is a constitutional question. There is another more subtle one. It goes directly to the constitutional intention of the separation of powers and the balance of powers, and that is the idea of the shift in power from the Congress to the executive that this legislation makes possible.

In this morning's Washington Post there is an article about the President's recent exercise of this authority. And rather to my distress, if I may say it, a number of Senators on this floor and a number of Members on the House floor have discovered that there is politics being played in the White House. Politics, Mr. President? I am shocked to hear that there are politics in the Presidency. Of course, there are—ever have been. In today's story in the Post a very distinguished scholar, Stanley E. Collender, who is an expert on spending issues, says, "The line-item veto is never going to be a deficit reduction tool and you would think they"—the Congress—"would have realized it when they gave it to the President. It's a raw exercise in power." Mr. President, if you want to shift power from the Congress to the executive, fine. Amend the Constitution. Do not abuse it by statute. And if it came to amending it, I am not sure we would.

I talked earlier about the "Federalist," which was written as essays in New York State newspapers in support of ratification by New York State of the Constitution, which was a very close matter. Rhode Island, as the distinguished sometime President pro tempore knows, was the last to ratify it. It took them years. But they didn't have Madison and Hamilton and Jay to read at the time, and we did.

Now, there has just appeared a wonderful small volume called the *New Federalist Papers*, a twentieth century fund book written by Alan Brinkley, Nelson Polsby and Kathleen Sullivan. They try to make their essays about the length of the original Federalist. Nelson Polsby has a succinct and devastating essay on the line-item veto.

Nelson Polsby, who happens to be a friend of many years, is Professor of Government at the University of California, Berkeley, and his many books include, most importantly in my view, his book "Congress and the Presidency." And he writes here on the line item veto. He says:

The line-item veto would make Congress severely dependent on Presidential good will. A shrewd President would not veto everything but would use the line-item veto selectively, in effect bribing legislators into cooperating. Americans have a stake in preserving the independent judgment of Congress on issues of public policy. This is not the way to do it.

"Americans," I say again, "have a stake in preserving the independent judgment of Congress on issues of public policy. This is not the way to do it."

I should say that Mark Hatfield, our coplaintiff, is using this text in his seminars back in Oregon just now.

Early on in our deliberations—and I hope I will not take any liberty when I say it—a most distinguished and admired colleague, "Mac" Mathias, a Senator from Maryland, who was with us so long, when this first came up commented from his long experience, "The President won't veto any great number of items. He will just let it be known that he can." And the conversation goes as follows: Senator, I know how much this radiation laboratory means to that fine hospital you have worked so hard to develop. I know how much it means to the health of the American people, to science, to medicine. But, you know, Senator, expanding NATO is a very important issue to me. And I hope that if I understand your needs, and I feel your needs, you will understand mine, and surely you will. Can we have that understanding as responsible persons in Government?

Well, that kind of trading goes on and is meant to go on. That's what checks and balances are about. But not with the threat of an unconstitutional act to change a bill passed by this body and the other body and sent to the President, take something out of it, and the bill that in consequence never passed either body becomes law. That violates the Constitution's "single, finely wrought and exhaustively considered procedure," as the Court in *INS versus Chadha* called the presentment clause of article I.

Now if you want to do that, fine. Amend the Constitution. But you cannot amend the Constitution by statute.

I do not want to go on because there are so many distinguished persons in the Chamber, and the Senator from West Virginia, our teacher in these matters, is being very patient. But simply to say, as Mr. Collender says in this morning's Washington Post, this will never save any money. What will happen is, as Mr. Polsby says in his essay, it simply shifts power from the legislative branch to the executive branch. And it does so in a manner that Justice Stevens in the Supreme Court not 4 months ago said is unconstitutional. More I do not know what need

be said. The Congress could do itself a great service by passing Senator BYRD's legislation. Then we would have a real test of political reality. Would that bill be signed or vetoed? We do not know, but one good way to find out is simply to adopt this direct and simple legislation.

Mr. President, I will not go on, but I ask unanimous consent that at this point in my remarks, that there be printed in the RECORD the text of the four pages by Nelson W. Polsby on the line-item veto as published in the New Federalist Papers.

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

[From the "New Federalist Papers"]

ON THE DISTINCTIVENESS OF THE AMERICAN
POLITICAL SYSTEM

(By Nelson W. Polsby)

Americans of a certain age will remember that at the first opportunity after the Allied victory in World War II, the voters, fed up, so it was said, with meat shortages and the privations of war, threw out a large number of incumbent congressmen and elected a new majority. The nation embarked upon a decade or so of jitters focused upon problems of domestic security. The Truman administration, under severe Republican pressure, launched a loyalty/security program. Senator Joseph McCarthy, with his careless charges of communism in government, flourished.

This, evidently, is the way Americans celebrate global victories. Neither the dismantling of the Soviet empire nor the meltdown of the Soviet Union itself seems to have convinced Americans of the possible virtues of their own political system. Rather, complaints about the way the United States is governed have never been louder or more insistent, as "malaise" has given way to "gridlock," and gridlock to "funk" as the most fashionable way to describe a system the chief feature of which is held to be an inability to cope. If presidents and leaders of Congress, Democrats and Republicans, talk this way, never mind advocates of one or more third parties, must they not be right? After all, a key test of the viability of any political system surely must be the willingness of political elites to defend it.

On these grounds alone, the American political system is in plenty of trouble. But a nagging doubt intrudes. One wonders whether the bashing of the political system has been used for narrow partisan purposes and whether, also, it is simply ill-informed.

The American government is not easy to grasp. Most nations are much smaller than the United States, with less space, fewer people. The Western democracies with which the United States is most commonly compared have one-third (Germany) to one-fifth (United Kingdom, France) the population of the United States, and some comparison nations (Sweden, 9 million people; Switzerland, 7 million; Denmark or Israel, 5 million) are even smaller. Only a few of the world's political systems—China, India, Russia, Indonesia, Brazil—have anywhere near the population of the United States, and most of the larger nations—perhaps half our size, like Nigeria, Pakistan, Bangladesh, or Mexico—are governed by tiny groups of bureaucrats, military leaders, families, or cliques of the educated. Thus, even when the political system embraces many people, only a few inhabit the top in the nations as large or larger than the United States. Most democracies of medium size have political classes that are by U.S. standards small.

In the United States, responsibilities for public policy are not concentrated in a few hands but are spread to dozens of different places. Take transportation policy. Roads and their policing are devolved functions of the several states, and the fifty states parcel large chunks of authority out even further to cities, towns, and boroughs within their jurisdictions. To be sure, some transportation policy is made in Washington, for example, the rules governing Amtrak or air traffic control. But the licensing of vehicles, the control of on-street parking, the maintenance of roads and ports, the routing of buses, the building of subways—in short the vast bulk of the gigantic enterprise of American public transportation policy—can be fathomed only by traipsing around the country and looking at the disparate detailed decisions and varied decisionmakers who fix the prices of taxi medallions in New York City and plow the snow off the roads in Minnesota and provide for the coordination of rapid transit routes and schedules in the San Francisco Bay area.

Transportation is only one policy area. There are dozens more, some the responsibility exclusively of national government, some all local, some mixed. These matters are much easier to sort out, and to track, in smaller and less heterogeneous nations, and in nations with unitary constitutions. Federalism, just illustrated in the field of transportation, is embedded in the American Constitution and is one source of the spread of governmental authority, but only one source.

Consider next the separation of powers, a means of organizing government at the center of the political system where power is shared among executive, legislative, and judicial branches, all for some purposes mutually dependent, for other purposes independent of one another. Consider Congress, the world's busiest and most influential national legislature. Proposals go in the door of Congress and regularly emerge transformed by exposure to the complexities of the lawmaking process. Unlike parliamentary bodies that run on the Westminster plan, Congress is an entity independent of the executive branch. Its members are elected state by state, district by district, by voters to whom they are directly responsible. Members are expected to have opinions about public policies, to respond to the concerns of their constituents, and to participate as individuals in the making of laws.

To be sure, Congress has its division of labor; not every member sits on every committee. And who within Congress gets what primary responsibilities is orchestrated by partisan caucuses and party leaders. So the fate of any particular proposal depends greatly on where it is sent—to which subcommittees and committees, superintended by which members. Congress cannot have strong party responsibility without sacrificing some of the advantages of this division of labor, which allows committee specialists to acquire authority over the subject matter in their jurisdictions by learning over time about the substance of public policy. Federalism supports the separation of powers by giving members of Congress roots in their own communities, where local nominating procedures for Congress lie mostly beyond the reach of the president, and of central government.

Beside these two interacting constitutional features—federalism and separation of powers—sits a strong judiciary, fully empowered to review acts of political branches and to reject those acts contradictory to the provisions of the written constitution. The strength of the judiciary evolved as a natural consequence of the existence of enumerated, explicit rights—a Bill of Rights, in

fact—that ordinary citizens possess, mostly phrased as restraints on the government. How can an individual citizen assert these rights except through appeal to the courts? Once courts respond to the piecemeal invocation of the Bill of Rights by citizens, a strong and independent judiciary, and a political system dominated by lawyers, is given a strong evolutionary preference.

Many political systems have one or more of these distinctive features of the American constitutional order: federalism, a separation of powers, a Bill of Rights. All three features, working together in the very large American arena, produce a decentralized party system with its devolved nominations and highly localized public policy preferences, a vibrant, hard to coordinate, independent legislative branch, and lawyers and lawsuits galore.

Giving up any or all of these distinctive features of the American "real-life constitution" is urged mostly in the interests of centralized authority and hierarchical coordination. Most modern democracies, it is pointed out, do without distinctively American constitutional trappings. Why cannot the United States do the same? Perhaps we could if the government of a smaller, more homogeneous nation were at stake. But when the governed are spread far and wide, and are deeply divided by race, religion, and national origin, civil peace may well require political instruments sufficiently decentralized to produce widespread acceptance of national policies and tolerance of national politicians. Although the American system is weak in forward motion, it is strong in its capacity to solicit the marks of legitimacy: acceptance of decisions, willingness to go along, loyalty in time of emergency.

It is, according to this interpretation of the emergent design of the Constitution, thus no accident that the one major period of constitutional breakdown into civil war could be understood as a matter of a failure of center-periphery accommodation. Civil War-era theories of nullification, states' rights, and concurrent majorities were all attempts to fashion an even more developed constitution, one that could contain the enormity of slavery. As this episode teaches, and as observers of events in the modern world from Beirut to Bosnia might attest, obtaining the consent of the governed when the body politic is heterogeneous is no mean feat.

American democracy, on this reading, is more democratic than any of the large, complex nations in the world, and larger and more complex than all of the other democratic nations (save India). Proposals for change that appreciate the size and complexity of the system have a better chance of success than proposals that merely complain that the system is sizable and complicated. Judging from the success of smaller democratic nations, Madison was clearly wrong in arguing that a large, extended republic was necessary to prevent tyranny. But he was undoubtedly right in observing that an extended republic is what the United States would become. In 1787, soon after the Constitution was written, it is recorded that "a lady asked Benjamin Franklin, 'Well, Doctor, what have we got, a republic or a monarchy.' 'A republic,' replied the Doctor, 'if you can keep it.'"

Mr. MOYNIHAN. I thank the Chair. I thank the Senator from West Virginia for yielding me this time.

Mr. BYRD. Mr. President, I thank the distinguished Senator from New York, Mr. MOYNIHAN, our most learned Member, for his eloquent statement in support of the legislation that I am introducing on behalf of myself and the

Senator from New York and the Senator from Michigan. He has never faltered in his opposition to the passage of legislation that would give this President, any President, Democrat or Republican, line-item veto authority. And as he has said so many times, if this is something that is going to be done, it ought to be done as the framers made provision for, and that is by way of a constitutional amendment which will constitute the judgment, hopefully the considered judgment, of the American people from whom all power and authority in this Republic springs. I think Senator MOYNIHAN's reference this morning to the "New Federalist Papers" essays is timely. He was kind enough to give me a copy of that volume which I have not yet had the opportunity to read but which I shall very soon. And he has printed in the RECORD today one of the essays from that volume. I shall look for it in the CONGRESSIONAL RECORD with great interest.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I had a question—

Mr. BYRD. I have the floor.

Mr. CHAFEE. I had a couple questions for the Senator from New York whenever the proper time is.

Mr. BYRD. Mr. President, I will be happy to yield to the distinguished Senator from Rhode Island for the purpose of his propounding those questions, if I may do so without losing my right to the floor.

The PRESIDING OFFICER. Is there objection to the request? If not, the Senator may proceed.

Mr. CHAFEE. Mr. President, I listened carefully to the remarks by the Senator from New York. I am on the other side on this issue. But nonetheless, it was very edifying to hear the comments that the Senator from New York had to make. Several times the Senator from New York said, if I understood correctly, that this measure, this line-item veto, is unconstitutional. My question is, has it been so tested? Or is there anything underway to so test it? In other words, is there a case working its way up through the system to challenge the constitutionality of the line-item veto—which I guess we passed, was it last year? Was it in 1996?

Mr. BYRD. May I respond to that particular question?

Mr. CHAFEE. Surely.

Mr. BYRD. Mr. President, the Senate passed the so-called Line-Item Veto Act on March 23, 1995. The legislation went to conference where it lay dormant for something like a year, and I am told that the standard bearer of the Republican Party in last year's Presidential election prevailed upon the leadership in both Houses to get this matter out of conference and get it passed into law so that, I assume, he, Mr. Dole, would then feel that he would become the first wielder of the pen under this act.

So the leadership went to work and on March 27—these dates are so etched in my gray matter between my two ears that I will never forget the dates. If anything ever happens to my mind and I lose my memory, I daresay this will be one of the last things that will be lost. So, on March 27, 1996, the Senate stabbed itself in the back by adopting that conference report.

I have answered the Senator's question.

Mr. MOYNIHAN. If I might reply to my distinguished friend and chairman who asked, "Who has agreed? If we assert this is unconstitutional, who has agreed?" May I just read a passage from the opinion of the one Justice of the Supreme Court who has commented on the constitutionality question? It was John Paul Stevens, 26 June, 1997. Our complaint had been filed on January 2, the first business day of this year after the act took effect. He says:

The line-item veto purports to establish a procedure for the creation of laws that are truncated versions of bills that have been passed by the Congress and presented to the President for signature. If the procedure were valid, it would deny every Senator and every Representative any opportunity to vote for or against the truncated measure that survives the exercise of the President's cancellation authority. Because the opportunity to cast such votes is a right guaranteed by the text of the Constitution, I think it clear that the persons who are deprived of that right by the act [meaning the plaintiffs] have standing to challenge its constitutionality.

Moreover, because the impairment of that constitutional right has an immediate impact on their official powers, in my judgment they need not wait until after the President has exercised his cancellation authority to bring suit.

Finally, the same reason that the respondents have standing provides a sufficient basis for concluding that the statute is unconstitutional.

Now, on October 16 of this year—this month—the city of New York filed suit with respect to a vetoed item in the Balanced Budget Act of 1997. New York City was joined by the Greater New York Hospital Association and two labor groups that represent hospital workers. I have asked to file an amicus brief. The case is now pending in the district court and we will hear presently from them.

Mr. CHAFEE. I thank the Senator from New York for that description. Because it is interesting. So, now, there is underway an appeal, seeking a court determination.

Mr. MOYNIHAN. By persons I described as standing before the court with a broken arm.

Mr. CHAFEE. I remember when we had the debate on this. I wasn't deeply involved but I supported it. I always have. But I can only believe that there must be a stack of constitutional opinions by learned lawyers, and maybe judges for all I know but certainly many from the legal profession, saying that this, indeed, is constitutional. In other words, the suggestions of the dif-

ficulties and constitutional problems, as outlined by the distinguished Senator from New York and the distinguished Senator from West Virginia, are not new. In other words, they foresaw what was going to happen and raised those points on the floor. So I can only assume that there was all kinds rebuttal information prepared. I will confess I can't remember the debate with that clarity. I certainly remember the Senator from West Virginia was against it right from the word go, that was clear, and spoke eloquently, as did the Senator from New York.

But my question is, there must be a quantity of information or opinion on the other side? I can only assume.

Mr. MOYNIHAN. May I respond to my learned and good friend, there are no judicial pronouncements to the effect that this is constitutional, for the simple reason that it is rather new. It was enacted by Congress for the first time in 1996. But although it has never been adjudicated by the courts, it has been the subject of scholarly commentary. At the time we debated the measure in the Senate, I cited several such scholarly opinions, including those of Lawrence H. Tribe of the Harvard Law School, and Michael J. Gerhardt, then of the Cornell Law School, now dean of Case Western Reserve Law School. I noted that in Professor Tribe's treatise "American Constitutional Law," he writes:

Empowering the President to veto appropriation bills line by line would profoundly alter the Constitution's balance of power. The President would be free, not only to nullify new Congressional spending initiatives and priorities, but to wipe out previously enacted programs that receive their funding through the annual appropriations policy.

He goes on to say:

Congress, which the Constitution makes the master of the purse, would be demoted to the role of giving fiscal advice that the executive would be free to disregard. The framers granted the President no such special veto over appropriations bills, despite their awareness of the insistence of colonial assemblies that their spending bills could not be amended once they passed the lower house had greatly enhanced the growth of legislative power.

As the conference report on the Line Item Veto Act came back to the Senate in 1996, we asked Professor Tribe for his opinion, as Senator BYRD will recall. He read the conference report and telephoned in the morning, and he gave us this statement:

This is a direct attempt to circumvent the constitutional prohibition against legislative vetoes, and its delegation of power to the President clearly fails to meet the requisites of article I, section 7.

I say to my friend once again, if you want to give the President this power, do so in the mode the Constitution provides. That is by constitutional amendment. But you cannot do it by legislation.

Mr. CHAFEE. Thank you very much.

Mr. MOYNIHAN. I thank my friend from Rhode Island. I thank my leader.

(Mr. SMITH of Oregon assumed the chair.)

Mr. BYRD. Mr. President, I thank again my friend, the Senator from New York.

I have been trying to get in touch with Senator LEVIN, but I have been unable to do that today, so I will not add his name at this point until I can be reassured by him that he wishes to be a cosponsor. I have no doubt that he will be. But I shall in due time add his name, and others', if they so wish.

Mr. President, the legislation which I am introducing is very simple. It reads as follows:

The Line Item Veto Act, (Public Law 104-130), and [any] amendments made by that Act [would be] repealed.

The Impoundment Control Act of 1974 shall be applied and administered as if the Line-Item Veto Act had not been enacted.

Mr. President, I hope that we will proceed to have hearings on this legislation that I am introducing on behalf of Mr. MOYNIHAN and myself, and that we can generate some interest on the part of Members to testify on the bill.

Even though there will undoubtedly be more and more cases in the courts resulting from the line-item vetoes that have already occurred, and those that will occur in the future, I think that the legislative branch should proceed to correct the grievous error that it made in passing the act.

In the meantime, I hope that the courts will also proceed. I hope they will not withhold their judicial power and fail to exercise their judicial responsibility simply because Congress, at some point in time, can itself repeal the Line-Item Veto Act.

The point is that, if I am correct in the way I feel about this legislation, our Government is operating under an unconstitutional act with respect to the appropriations process. The President is acting under the presumed authority that he has been given by this nefarious legislation.

But the act itself, I maintain, is unconstitutional. And so, feeling as strongly as I do about the act, I believe that I have a responsibility to offer legislation to repeal it. And that is what I am doing.

In one way or the other, hopefully, the act will be stricken by the Court or repealed by the Congress. And I hope that neither body will wait on the other, that neither department will wait on the other to perform the action that would be necessary.

In offering this legislation, I am attempting to restore the kind of Government, with its separation of powers and checks and balances, that the American people have enjoyed for over 200 years. Never before has Congress enacted legislation that would disturb that separation of powers, those checks and balances.

There has been some talk about it over the years. President Grant first advocated the line-item veto. And the first resolution or the first bill that was ever introduced in the Congress to

provide for a line-item veto was introduced, interestingly enough—or perhaps ironically enough—by a West Virginian—Charles J. Faulkner—a West Virginia Congressman, well over 100 years ago.

And since President Grant's first advocacy, most Presidents, or perhaps all with the exception of President Taft, have advocated the line-item veto.

President Washington, the first President of the United States, indicated unequivocally—unequivocally—that any President, under the Constitution, had to accept legislation in toto. The President had to sign it in toto or veto it in its entirety. He could not pick and choose provisions in a bill.

There have been hundreds of pieces of legislation introduced over the years since the administrations of President Grant that would provide either for a constitutional amendment or provide legislation, such as was the case in this instance, to give the President the line-item veto authority.

I have listened to the arguments over the years. And what I said would happen has come true. There is considerable turbulence now. I said that the outcome of this legislation, if it ever became law, would be that the relations between the executive branch and the legislative branch would be hurt, that it would prove to be bad for the country, that tensions which normally exist and were expected to exist between the branches of Government—expected by the framers to exist—those tensions would be intensified, and they have been.

There has been considerable turbulence on Capitol Hill as a result of the President's having exercised his line-item veto—this new tool, this new and polished, sharp-edged Damocles' sword that now hangs by a slender hair over the head of every legislator on Capitol Hill.

We have given the President a political tool. We have given him a weapon by which he can expect to cower any or all of us and by the threat of the use of that sword which hangs over our collective heads, he will expect to get what he wants, not only on a particular appropriations bill but also in connection with a particular nomination or treaty.

I have said these things time and time and time again. I have said that Senators would rue the day, rue the day that they enacted legislation giving to this President or any President line-item veto authority. The chickens are coming home to roost. Members are already ruing the day on which they voted to give the President this line-item veto. I have said time and time again that the President would use it, that Members would be intimidated by it, and that, to a degree, it would have an impact on our freedom of speech in this body. I am sure that there are Members who will now hesitate in some instances to speak out against the administration because they must

always carry in the back of their minds a remembrance that the President may exact retribution for words spoken in this Chamber or outside the Chamber by Members in criticism of the administration. They will hesitate because they will understand that the President now can wreak some vengeance. He can threaten to cancel this project or to cancel that program that affects a particular constituency or region. It does not have to be one State or one congressional district, it can be an entire region and the veto can be used politically.

I am amazed at the expressions of surprise that the line-item veto is "being used as a political weapon." We need not be surprised that a President will use the item veto as a political weapon. Who is to blame? Not the President. We are to blame. We are supposed to be grown-up men and women. I am amazed, absolutely amazed, that grown-up men and women—who are expected to know something about the Constitution, are expected to have read it at some point in their lives, and who should be expected to retire to it from time to time and read it again or read portions of it—I am amazed that Members who have stood at the desk in front of this Chamber and with upheld right hand, and the left hand on the Bible, literally or figuratively speaking, have sworn an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic, would hand the President such a weapon to be used against themselves.

Then they have turned right around and taken that oath lightly by emasculating the Constitution passing the Line Item Veto Act. Obviously, lightly.

Montesquieu said, when it came to the oath, the ancient Romans were the most religious people in the world. They honored their oath.

The first consul, Lucius Junius Brutus, took office in the year 509 B.C., that being the date when the Roman republic was first established. Lucius Brutus was purported to be a distant ancestor of Marcus Brutus, who was involved in the conspiracy to assassinate Caesar. Lucius Junius Brutus required the people of Rome to swear on oath that never again would they be ruled by a king. Tarquin the Proud had just been vanquished and run out of Rome, and so Lucius Junius Brutus, the first consul—there were two consuls but he was one of the two, and he was most responsible for the driving out of Tarquin the Proud—felt so strongly about the matter that he required an oath on the part of the Roman people that they would never again be ruled by a king.

But it wasn't long until there came to his attention information that his own two sons, Titus and Tiberius, were conspiring to bring back a king, an Etruscan king to rule over Rome.

Upon receiving this information, Brutus called the people to come together in an assembly, and in the midst of the people he had his two sons,

Tiberius and Titus, executed—his own sons—because they had violated their oaths and conspired to reinstitute the monarchy.

The Romans were religiously attached to the oath. They took it seriously. When Marcus Atilius Regulus was sent by the Carthaginians as a prisoner back to the Roman Senate in the year 249 B.C., he went as a prisoner of the Carthaginians. He was a Roman consul and had been taken prisoner by the Carthaginians. In their efforts to secure peace and to have the Romans relinquish Carthaginian prisoners, the Carthaginians sent an envoy to Rome to attempt to work out some arrangements whereby the Carthaginian prisoners would be released and a peace pact could be agreed upon. The Carthaginian Government thought that if they sent this imprisoned Roman consul it would give the delegation more stature and that the Romans would be more likely to come to an agreement.

When Marcus Atilius Regulus reached the Roman Senate he was called upon for his opinion concerning the matter and he told the Roman Senate that in his judgment Rome would not benefit by such a treaty. And he said "I am a chattel of the Carthaginian Government. I am their prisoner and I know that they will hear about what I have stated to the Roman Senate. I know they won't be pleased. Nevertheless, I think it would not benefit my government. I'm with you in spirit. I am a Roman at heart. Even though I am a Carthaginian chattel, I am with you in spirit."

The Roman Senate offered to protect him and proposed that he not return to Carthage, but he said, "I took an oath that I would return. I swore to the Carthaginian Government that I would return." He said, "When I make an oath, even to an enemy, I will keep that oath." He was conscious upon leaving Rome of the tears of his wife and children who clung to him and who begged him not to return to Carthage. Nevertheless, he felt so strongly about keeping his oath that he went back.

As he had predicted, the Carthaginians tortured him. They cut away his eyelids and prepared an enclosure in which there were spikes upon which he was forced to lie, at all times, day and night. With his eyelids cut away, the heat and light from the Sun bore fiercely upon him. He lay upon his back on those spikes, and soon perished. This was an example of a Roman who believed in giving his life rather than break his oath.

I am reminded again of what Montesquieu said: When it came to keeping the oath, the Romans were the most religious people in the world. What about us? How faithful are we in keeping our oath to support and defend the Constitution of the United States? Time and time again I have pondered on this, I have reflected on this, and I have wondered as to how often have Members of the Senate gone back and

reread the Constitution, the charter of our liberties?

Mr. President, we should keep that oath. It is not something to be taken lightly. I think if we take it seriously, we will struggle with our conscience and on matters such as the line-item veto and say to ourselves: How does that fit into this Constitution? Where do I find in this Constitution that the President of the United States has any legislative power? Where is it?

Let me read for the RECORD section 1 of article 1, the very first sentence in the Constitution of the United States, in the operative section. Article 1, section 1: "All legislative powers herein granted * * *"

All legislative powers—not just some, not a few, not most legislative power, but "All legislative powers herein granted." Well, if legislative powers are not "herein granted," they don't exist.

"All legislative powers herein granted shall be vested * * *" Not may be, but "shall be vested in a Congress of the United States." Not in the House of Delegates of West Virginia, but in "a Congress of the United States which shall consist of a Senate and House of Representatives."

There it is. It is not because I said so, but there it is in the Constitution. And yet with English words plainly written and with those words meaning precisely what they say, we nevertheless have ears and cannot hear, eyes that cannot see, and apparently minds that cannot think when we cavalierly give to the President of the United States a line-item veto with its legislative powers.

Now, can we do that? Can we give to the President legislative power? Can we give to the President legislative powers that the Constitution says shall be vested only in one place—the Congress of the United States? Can we, as Members, give away something that is a legislative power? Is it a legislative power? In the Line Item Veto Act, the President is authorized to sign a bill into law, and then, after signing that bill into law, he can "cancel," or repeal, parts of that law.

The Constitution says that the President shall faithfully execute the law. But he has just signed this bill into law and he is allowed, under this nefarious piece of legislation, to go back and pick up the same pen with which he signed an appropriation bill into law and he can strike an item, he can strike two items, or he can strike many items. He can strike away 5 percent of the bill, 10 percent of the bill, 90 percent of the bill. Of course, it is a law by then. He can strike it. He can amend it. He can repeal it.

It is a legislative power to strike an item from an act. When a Senator moves to strike an item from a bill, that is a legislative act. He moves to amend or he moves to strike, and that is a legislative act. That is an action in the legislative process. He is exercising a legislative power. That Senator will

have to have a majority of the Members of the Senate join in support of his motion to strike, else his motion will be lost. "Those in favor of the motion will say aye, those opposed to the motion will say no. In the opinion of the Chair, the ayes have it, the ayes do have it, and the motion is agreed to." If somebody asks for a rollcall or a division, the Chair will proceed accordingly. But a single Member cannot single-handedly strike any item from any bill. He has to go according to the legislative process, which requires a majority of the votes—except in some few instances, which are set forth, in which supermajorities are required. But we are talking here about the normal legislative process.

That Member has not yet succeeded. He can get a headline in the paper, but he has not yet succeeded in striking, or amending, or canceling, or repealing that item.

He has to also have a majority of the other body, and if the other body is in full attendance, as sometimes it is—there are 435 Members there and he has to have 218 Members supporting him in that other body, and 51 in this body, with all 100 Senators present. He has to have a total of 269 votes in both Houses.

That is the legislative process. That is majority rule. And yet to think that grown-up, intelligent, educated, responsible men and women, who are the elected representatives of the people, would come here and cavalierly vote in such a way as to give this President, or any President, Republican, Democrat, Independent, or whatever, the power to unilaterally, with the stroke of a pen, strike out an item in a law; unilaterally, with the stroke of a pen, to amend a law; unilaterally, with the stroke of a pen, to repeal what is in that law that was passed by a majority of the Members of both Houses of Congress—to give all that power to one man, or woman, as the case may be, the President of the United States is beyond all credulity.

It is the acme of ridiculousness to even imagine that an intelligent group of men and women in a civilized body, working under a written Constitution, would even think of doing it. I cannot comprehend what motive may have guided a majority of men and women in these two bodies to prostrate themselves before any President and willingly and voluntarily cede away the power over the purse that has been vested by the Constitution in these two bodies, to the President of the United States.

Men and women have died in past centuries to have that power vested in the hands of the elected representatives of the people. There was the struggle of Englishmen, which extended over centuries of time, against tyrannical monarchs, to wrest the power of the purse away from the kings and entrust it to the elected representatives of the people. And we cavalierly handed it away to the President.

The Roman Senate was not required to yield power to Sulla. The Roman Senate voluntarily handed the power over the purse to Sulla and to Caesar. It made Caesar dictator for 10 years; then it made Caesar dictator for life, with all of the power of the executive and the legislative and the judicial branches in his control. The Roman Senate wasn't required or forced to give Caesar that power; it willingly and voluntarily ceded that power to him. And all of the centuries of time that have come and gone since that fatal act have borne testimony to the unwisdom of the Roman Senate. And history was changed as a result. It had far-reaching consequences when the Roman Senate lost its nerve, lost its vision, lost its way, and willingly and voluntarily ceded over to the dictators, and later to the emperors, the power over the purse. For hundreds of years the Roman Senate had had complete and unchallenged control over the public moneys.

We can also read the history of England—and we will find, as I have already indicated, that Englishmen, for centuries, struggled with monarchs who believed that they ruled by divine right, struggled for the prize—the power over the purse. It was at the point of the sword that Englishmen took from the Kings the power over the purse and vested it in Parliament.

We can see in our own colonial experience the continuing thread of representative government, with the control of the purse being vested in the hands of the elected representatives of the people in the various State assemblies during the colonial period, and later when the colonies became States.

So I am chagrined, I am puzzled, and I am disappointed that Members of Congress would willingly give to any President this power. That is what Congress did.

In looking at the letter I received from the Director of the Office of Management and Budget, Mr. Raines, yesterday, I bemusedly pondered again over these words. I will insert this letter into the RECORD in its entirety.

I ask unanimous consent that the letter be printed in the RECORD at this point.

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

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT
AND BUDGET,

Washington, DC, October 23, 1997.

Hon. ROBERT C. BYRD,
Committee on Appropriations,
U.S. Senate, Washington, DC.

DEAR SENATOR BYRD: I am writing to provide the Administration's views on S. 1292, the bill Disapproving the Cancellations Transmitted by the President on October 6, 1997.

We understand that S. 1292 would disapprove 36 of the 38 projects that the President canceled from the FY 1998 Military Construction Appropriations Act. The Administration strongly opposes this disapproval bill. If the resolution were presented to the President in its current form, the President's

senior advisers would recommend that he veto the bill.

The President carefully reviewed the 145 projects that Congress funded that were not included in the FY 1998 Budget. The President used his responsibility to cancel projects that were not requested in the budget that would not substantially improve the quality of life of military service members and their families, and that would not begin construction in 1998 because the Defense Department reported that no design work had been done on it. The President's action saves \$287 million in budget authority in 1998.

While we strongly oppose S. 1292, we are committed to working with Congress to restore funding for those projects that were canceled as a result of inaccuracies in the data provided by the Department of Defense.

Sincerely,

FRANKLIN D. RAINES,
Director.

Mr. BYRD. We will recall that the President had disapproved various projects that had been included in the Fiscal Year 1998 Military Construction Appropriations Act. The President, under his newly gained authority, had disapproved 38 of the projects. In the letter, Mr. Raines states: "The President used his authority responsibly to cancel projects that were not requested in the budget." He doesn't have any authority that I know of to cancel projects solely on the basis that they were not requested in his budget. He can do it, of course. He has the veto pen. But he is not acting on any "authority" that I know about. It is not in the Constitution. He doesn't get any authority there.

He doesn't get his authority from the Line-Item Veto Act to "cancel projects that were not requested in the budget." That Line Item Veto Act sets forth certain criteria for the guidance of the President in exercising the line-item veto pen. But nowhere in those criteria will there be found a criterion which says that the President may "cancel projects that were not requested in the budget." Yet, Mr. Raines refers to such authority in his letter. "The President used his authority responsibly to cancel projects that were not requested in the budget."

Well, I say, as I have said many times, that the administration—whatever administration is in power—will see that Line Item Veto Act as it wishes to see it. It will read into it whatever it wants to read into it. It will hear whatever it wants to hear from anonymous bureaucrats working in the subterranean tunnels of the White House who will advise the President as to what should be stricken by the veto pen. We can trust them to expand upon the power that has been given them in the act. And they will read into it and interpret the words, and constantly be expanding their power. I predicted that that would be the case.

Mr. President, I hope with this legislation to be able to remove that sword of Damocles that we ourselves helped to suspend over our unlucky and graying heads. But we have nobody to blame except ourselves. I am not going to blame the President if he uses that

authority that we have given to him. We gave it to him without a whimper; no resistance. Resistance? No. We eagerly gave it to him. "Take it, Mr. President. Take it. Take this authority. Take this legislation. Use your veto pen."

President Reagan said we had the line item veto in every State government. "They have it at the State level. Give it to me. If the States can have it, why can't I have it?" I have heard that argument ad nauseam—that if the States have the line item veto power, therefore, why not have it at the Federal level? Why not let the President have the line-item veto? The Governors have it. They balance their budgets. Of course, I argued time and time again that they don't really balance their budgets. They go into debt just as the Federal Government goes into debt. But we were told, "The States have the line item veto. The President should have it."

Mr. President, that kind of an argument signifies and reveals a lack of knowledge on the part of those who use the argument. This is the Constitution of the United States. It is not the constitution of the State of West Virginia or the State of New York or the State of Alabama or the State of Tennessee. It is the Constitution of the United States of America. And this Constitution, while it contains some inhibitions upon certain actions by the States, does not attempt to tell the State governments how they shall legislate. It assures the States of having republican forms of government. But it does not say to any State, "Thou shalt not have the line item veto."

The Constitution, with reference to legislative powers, speaks of the Congress. "All legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives."

There are 50 States. There are 50 State constitutions, and whatever any State wishes to write into its constitution as to a line-item veto power, there is no prohibition in this Federal Constitution against the State's doing it.

The theory and the system of separation of powers and checks and balances are more finely drawn at the Federal level than at the State level. Under our Federal system, we have the separation of powers. We have mixed powers. We have checks and balances. That is at the Federal level.

I heard a Senator say the other day, "Well, I am disappointed that when the President exercised this veto, he didn't do as we are accustomed to seeing done at the State level with the line-item veto." But, Mr. President, that Senator was talking about two entirely different things—apples and oranges, black and white. This is a Federal Constitution that was meant to guide the Congress and the Federal departments and officers of government, and the framers very wisely provided a scheme whereby there would be checks and

there would be balances. There would be the separation of powers, and there would be the interweaving and overlapping of powers between and among the departments. That is at the Federal level.

The State constitutions are different. The State of West Virginia may have the line-item veto. The State of West Virginia has a constitution, and in its legislative branch it is governed by that State constitution until and unless the State takes actions that violate the Federal Constitution. But as to how the State will legislate and as to how the Governor of the State will exercise his veto pen, that is entirely up to the State under its constitution. There can be 50 State line-item vetoes. But those are State constitutions. Those are State governments.

We are talking about the Federal Constitution. Why Senators haven't been able to distinguish between the State and Federal governments. I can't understand. I thought they would have learned that in their civics classes long, long ago. But they should have learned it back in the elementary schools. There are 50 State governments. There is one Federal Government. Each is supreme in its own sphere of actions. But if there is any conflict, the Federal Government—the Federal Constitution—will then prevail. It is that simple. One doesn't have to be a Phi Beta Kappa to know that. Yet, Senators, many of them, and many Members of the other body, in explaining their support for this ill-advised, unwise piece of legislation, took the stand and said, "My own State has it. It works well there. I think that the Federal Government should have it"—thus displaying an amazing lack of knowledge of the Constitution, an amazing lack of knowledge of constitutional history, an amazing lack of knowledge of American history and the history of England.

The Framers of the Constitution were very well aware of the colonial experience and what had happened in England. They knew that a king had had his head severed from his body on January the 30th of 1649. Imagine that. Parliament created the High Court of Justice which concluded that Charles I was a tyrant, a traitor, and an enemy of the good people of England, and that he should have his head severed from his body. That court was created on January 6, 1649, and 24 days later King Charles was dead. He was executed in front of his palace at White Hall before thousands of people. He and his father, James I, had believed that kings ruled by divine might and that they were above Parliament and above the people.

So it is out of that history that the liberties and freedoms of the American people were born. And they are written down and guaranteed in this Constitution.

But I have said these things many times, and, no doubt, if the Lord let's me live and keep my voice, I shall have

the opportunity to say them again on several occasions.

I feel so strongly about this. The Congress of the United States has never, never committed such an act as it committed in enacting the line-item veto. That action flew in the face of the plain English words that are in this Constitution. And Congress did it nonchalantly; cavalierly. Was it being guided by the Constitution? No. Was it being guided by the polls? Apparently. Because it was a popular thing. The American people believed by a tremendous majority that the line-item veto was to be desired.

It won't reduce the national debt. I say to Senators, take a good look at the budget after this year and after next year, if, God forbid, this ill-advised piece of legislation still governs the legislative process. The savings that accrue from the line-item veto will indeed be meager.

I read in the newspapers where the President said he was saving X amount of dollars by these vetoes. Well, he cut out a little item in West Virginia. "Ah, that's why Senator BYRD is against the line-item veto. There it is. He likes his pork. That's why he is opposed to this."

Well, I am not going to ask the President for it back, and if I did, he could not put the vetoed item back. He has cut off its head. He cannot breathe new life into that stiff and cold corpse. After having committed the act of execution, after having wielded the ax, he cannot put it back. I have seen something here and there in the newspapers to the effect that the administration would be willing to negotiate with Senators to restore such vetoed projects. Well, Mr. President, use your pen. Veto the item in West Virginia. There will be other bills coming to you. There will be other items for West Virginia.

The President's advisers may say, perhaps you can get Senator BYRD to negotiate with you if you tell him you won't veto that piece of pork. Perhaps he will vote for your nominee for such and such a position or he will vote for such and such a treaty or he will vote with you on the fast-track bill. Just tell him that you don't want to line-item veto those West Virginia items, that West Virginia pork. Senator BYRD may then come to his senses.

Well, I say go to it. "Lay on, Macduff; and damned be him that first cries 'hold, enough.'" I am not negotiating with any administration over any item for West Virginia.

So much for that. So much for the suggestion that Senator BYRD's pork for West Virginia is why he is against this line-item veto. Well, perish the thought. That has never guided my thinking. I feel more strongly about what the Congress has done in enacting this piece of trash, the line-item veto, than I do about all of the pork that those hollows could possibly hold among the high and majestic mountains of what I consider to be the greatest State in the Union, whose

motto is "Mountaineers are always free."

Mr. President, could the Senate of the United States give away its advice and consent power? No. Could the Senate of the United States give away its power to try impeachments? No. There are other powers in the Constitution that this Senate and the Congress, as the case may be, cannot give away. And I maintain that the same is true with the legislative power that is set forth in the first sentence of the Constitution.

There are those who would be willing to sit down with the White House, with the representatives of the President, on items that he may threaten to veto. There are Senators, there are Members of the House, who may be willing to sit down and negotiate with the White House, to come to terms, as it were, to yield to the administration on this matter or that matter, or some aspect of the appropriation which he has threatened to veto. There will be those who may very well be lured by the siren call of negotiation in order to save the project of a particular Member of the Senate or House of Representatives.

I say to my colleagues, don't negotiate, because when an item has reached the stage of conference, I think that we have reached a stage when it is too late to negotiate.

Some subcommittees spend weeks and months in studying appropriations bills that come under their jurisdiction. The people who sit on a particular subcommittee that has jurisdiction over a particular appropriation bill are, for the most part, experts in the subject matter of that appropriations bill. Some have had experience for years and years, perhaps even decades, in dealing with that particular appropriation. They know the subject matter well. They have worked over it. They have had their staffs work on it. They have received the budgets that have been submitted by the President. They already know what the wishes of the administration are. And from time to time they receive further guidance as to the wishes of the administration with respect to a particular project or program, or with respect to all of the items in the President's budget that are within the jurisdiction of that subcommittee. They have had all that guidance all along and it has been good. And we welcome that guidance.

But once the subcommittees go through all of these months of labor, and with their staffs working hard on legislation, it is too late when, at the last minute, the White House sends its representatives up to Capitol Hill and says, "This is veto bait. That item is veto bait. That project is veto bait. The White House will not accept it. The White House wants thus and so. That wasn't in the President's budget."

Where in the Constitution are we told that the Congress may only consider items that are in the President's budget? Is that inscribed in any law,

that Congress may only consider items that are in the President's budget; that Members of Congress can't add items of their own, based on the needs of their own constituents, needs which they, the elected representatives, know best? Where is it written that Congress has to be confined only to the items that are in the President's budget? Where is that set down in stone? I have never seen it in stone or in bronze, or inscribed upon any piece of granite. It just isn't there.

I am not willing at that point, then, to sit down and be jerked around by any administration, Republican or Democrat. They are all the same, as far as I am concerned, when it comes to this matter that we are discussing.

I was chairman of the Appropriations Committee for 6 years. I said, "There will be no politics in here, no partisanship." When Senator Hatfield was chairman of the committee there was no partisanship. When Senator Stennis was chairman of the committee we didn't have politics in the committee. As far as I am concerned, there are no Democrats and no Republicans on the Appropriations Committee. We are all Members of the Senate and there is no partisanship. If they want to argue over politics they can do it on the floor, but we don't do it in that committee.

And I feel that Members have just as much right under the Constitution and laws of this land, its customs, traditions and regulations—just as much right as any administration has to request appropriations for projects and programs that are deemed to be in the interests of the constituencies of the elected representatives.

So I will not hear—I have ears, but will not hear those who exhort, "That little item you have in West Virginia is veto bait." I say, "Go ahead, go ahead, veto it. Lay on, Macduff." That's the way I feel about the projects of other Members.

I want to help the President where I can help him. I want to help the administration where I can help it. There have been times when I have helped Republican administrations and Republican Presidents. But this is one Senator who will not be persuaded or swayed by threats that, "That item is veto bait. You'll have to modify it, you'll have to do it our way or the President will veto it."

So, Senators, don't negotiate. In so doing we legitimize what I consider to be an illegitimate end run around the Constitution of the United States. We legitimize it. That's where the administration wants us. That's where they would like to have us—under their thumb. "Oh, we've got them now, they are negotiating."

Finally, just a word more about the letter that I received yesterday from Director Raines, the Executive Office of the President. It says in the last paragraph, "While we strongly oppose S. 1292"—we? Who is "we"? I wish the President would have signed the letter

himself. But I understand he can't sign all the mail that goes out of his office. I know who is purportedly the author of the letter. But, nevertheless it says:

While we strongly oppose S. 1292, we are committed to working with Congress to restore funding for those projects that were canceled as a result of inaccuracies in the data provided to the Department of Defense.

Now, in saying that, the President, through his surrogate, admits that some of the projects were canceled based on errors, based on inaccuracies, based on data that were inaccurate and provided by the Department of Defense. The administration was mistaken in exercising the veto pen, and they admit it there.

I would like for any Senator within the range of my voice, or anybody else, to tell me how Mr. Raines, or the President, or anybody in the administration, expects to, "restore funding for those projects that were canceled as a result of inaccuracies in the data provided by the Department of Defense." Mr. Raines says that we—I assume that he means by "we," the personal pronoun "we," I assume he means the President and the administration, "we"—"While we strongly oppose [this disapproval resolution] * * * we are committed to working with Congress to restore funding for those projects that were canceled. * * *"

Now, how is the funding going to be restored? Those projects are dead. The head has been severed, the corpse has been laid out on a piece of cold marble and every drop of blood has been drained from the veins of those projects. How, then, do they propose to restore funding? How is it going to be done? The item has been canceled. The President has unilaterally exercised a legislative act and unilaterally repealed that legislation. It is dead. That project is dead. The line-item veto does not give the President the authority to restore it. It may have been an item that he canceled 5 minutes after he had signed the bill into law. He may have slept on it a while and then overnight thought, "Well, I think it might be a good idea to cancel a few more of those items," and he cancels a few more. And the third day after the bill has become law, some of his aides come to him and say, "Mr. President, we think we have found some more. We didn't find it written in the four corners of the appropriations bill, we found it in a table. We found it in a committee report."

These aides will say to the President, "You know what? We have been working 36 hours and we find projects on these tables that are not in the bill. Don't look in there, Mr. President. But there are tables that were used in some hearings, or used during markup. And in those tables we have found some more items that we think you ought to consider vetoing," and the President goes back and he vetoes them. Then along comes the 5th day, the 23rd hour and the 59th minute, and the President thinks, "Ah, that BOB BYRD, he said one day, he wouldn't negotiate. Can

you find another item for me? I want to strike one of his projects. I'll make him rue the day he said those words."

In any event, those items are gone. The President cannot go back and restore them, no matter how sorry he may be. He finds from the Department of Defense data that he was mistaken; the data were wrong. It is too late.

So how does Mr. Raines intend to work with Congress to restore funding for those projects that were cancelled? Tell me how? How do they intend to restore funding? They can't be restored by inoculation, by the use of a needle. How do they intend to restore funding?

As I was saying earlier, they claimed that they saved x millions of dollars through these cancellations, but Senators should watch. That project that they struck out of that bill for West Virginia this year, I intend to try to put it back next year, because it can be justified. It is important to the defense of this country. It is in the 5-year plan of the Department of Defense. I intend to put it back in.

That may be a year away. So, have they saved money? How much does one subtract from the figures that they say they save through their actions, through the President's actions in line-item vetoing these projects? As we look back a year from now, how much will they have saved when some or most of the items will have been put back into the bills we pass next year?

Many of the projects will be put back, so the President's veto of projects really won't constitute savings after all. What it will result in is perhaps increased costs because of inflation or other reasons; the items will cost more when they are put back.

Therefore, while it warms the cockles of my heart to see in the letter from Mr. Raines that "the administration is committed to working with Congress to restore the funding for those projects that were canceled," I shall go home wondering what is meant by that, how they will work with Congress to restore the funding. How will they do it?

Mr. President, I hope that by introducing legislation today to restore the legislative branch to the standing and the stature that it has had for over 200 years, I hope to contribute to the welfare of my country, the well-being of our people, the perpetuation of the dream of America and the dream of a system that has its roots, not just in Philadelphia in the year 1787, but also in the colonial experience, and the history of England, roots that extend back, yes, as Montesquieu thought, even to the ancient Romans.

I hope that we will restore the system which was given to us by our forebears and which they expected us to hand on to our sons and daughters.

Who saves his country saves all things, saves himself and all things saved do bless him.

Who let's his country die let's all things die, dies himself ignobly, and all things dying curse him.

Mr. President, let us act and let us work to save our country!

I ask unanimous consent that an article in the Washington Post titled "Line-Item Veto Tips Traditional Balance of Power" 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, Oct. 24, 1997]

LINE-ITEM VETO TIPS TRADITIONAL BALANCE OF POWER—CAPITOL HILL PLOTS STRATEGY TO COUNTER PRESIDENT'S PEN

(By Guy Gugliotta and Eric Pianin)

On Oct. 6, Sen. Conrad Burns (R-Mont.) invited President Clinton to lunch at Montana's Malmstrom Air Force Base's dining hall, a broken-down wreck whose "serving areas," he said later, "would be borderline" on a health inspection.

Clinton had just used his new line-item veto power to strike the dining hall's proposed \$4.5 million rehab from one of the annual spending bills, and Burns, a senior member of the Senate Appropriations Committee with enormous responsibility for military construction projects, told Clinton he was "disappointed" by the decision. He wanted to discuss it "and other important projects" at "your convenience."

The advent of the line-item veto has shaken the 200-year-old power relationships in the federal government. While presidents have always paid close attention to their own priorities, the veto has given them an unprecedented ability to micromanage the appropriations process.

White House sources say the line-item veto has provoked a blizzard of letters and phone calls from Congress to Clinton, touting the merits of tiny projects that until this year were tucked so deeply into appropriations bills that they scarcely merited a presidential glance.

Thus Burns, chairman of the Senate's military construction subcommittee, lost his own project in his own bill. Burns shrugged off the snub, but said, "We haven't given up on this." The Malmstrom rehab, he said, is included in legislation to override the veto that the Appropriations Committee approved yesterday.

Micromanaging projects may be the most obvious evidence of the new executive presence in Congress's business, but many experts and lawmakers believe it may be only the tip of the iceberg. Both Republicans and Democrats worry presidents may use the veto to extract promises of support on unrelated legislation, exact revenge against political enemies or to make policy, leaning on individual lawmakers where they are most vulnerable—tending to their home town affairs.

"It's not lost on me that this has political overtones, but that's fine, it comes with the territory," said Sen. Rick Santorum (R-Pa.), a conservative, who, like Burns, lost a military construction project to the veto pen. "If you're a big boy, you take your lumps and go after them next year."

But many lawmakers have decided not to sit still, and budget mavens on Capitol Hill are brainstorming ways to counter or cope with the veto. Some appropriators are talking about legislative mechanisms to immunize particular items; others are suggesting that obvious veto bait be jettisoned from the final versions of bills.

Others see the veto as a precedent-setting escape mechanism that could be used to break deadlock on controversial appropriations bills. They say the president could veto provisions he opposes, but let the rest stand,

thus averting the danger of a government shutdown or the need for an interim spending measure based on the previous year's expenditures. Congress has yet to clear six of the 13 annual spending bills, three weeks after the start of the fiscal year.

Still, cautioned House Appropriations Committee Chairman Bob Livingston (R-La.), it is too early to predict what will happen. "When the president signed the line-item veto legislation we were all shooting in the dark as far as how it would work. We are still groping."

One thing on which almost everyone interviewed could agree, however, was that the line-item veto would not serve as a significant brake on federal spending, even for parochial "pork-barrel" projects. Of the five appropriations bills signed so far, only \$458 million in projects has been lined out by Clinton, or less than a percentage point of the \$291.3 billion in the bills.

"The line-item veto is never going to be a deficit reduction tool, and you think they [Congress] would have realized it when they gave it to the president," said Stanley E. Collender, an expert on federal spending issues. "It's a raw exercise in power."

The line-item veto, a pillar of the House Republicans' "Contract With America," passed both houses of Congress overwhelmingly and was signed into law in early 1996.

It took effect during the budget year that began Oct. 1.

The law has been challenged in court for radically altering the balance of power within the federal government without the enactment of a constitutional amendment. Many experts believe the law will be struck down, but until it is, the president for the first time in history may delete individual spending items from appropriations bills without vetoing the entire bill.

Clinton first used the authority in August to veto three provisions from the five-year omnibus budget agreement, but it was not until Oct. 6, when he struck 38 projects worth \$287 million from Burns's military construction appropriations bill, that he caught Congress's attention.

"He had to convince everybody he was willing to use it," Collender said.

Lawmakers were convinced. The vetoes touched off an uproar among congressional leaders who had not been consulted in advance. "We're dealing with a raw abuse of political power by a president who doesn't have to run again," thundered Senate Appropriations Committee Chairman Ted Stevens (R-Alaska).

But since the military construction vetoes, Clinton has used the authority sparingly on three other appropriations bills, prompting speculation in some quarters that he had become gun shy after the initial upheaval.

Just yesterday, Office of Management and Budget Director Franklin D. Raines acknowledged that several projects were mistakenly crossed out of the military construction bill. In a letter to Stevens, Raines said, "We are committed to working with Congress to restore funding for those projects that were canceled as a result of inaccuracies in the data provided by the Department of Defense."

"This is clearly evolving," said Senate Budget Committee staff director G. William Hoagland. "Maybe like the kid in the candy store, his eyes were bigger than his stomach, and now he sees he has to be careful not to jeopardize the power."

But OMB spokesman Lawrence J. Haas said there was no "pattern" of political manipulation. The president, he said, was trying to use the veto "because of the substance before him, not because of the politics."

A crucial test may come next week when Clinton will examine the Veterans Affairs-

Housing and Urban Development and independent agencies appropriations bill. Lawmakers acknowledge it is full of special projects, and one White House source described the bill as "one of the most project-based in years."

Despite uncertainty about how Clinton will next use the veto, it is clear that Congress is wary and mistrustful. "I've never seen a vote taken where more people wanted their vote back," said House Appropriations Committee member Rep. Jose E. Serrano (D-N.Y.), who opposed the line-item veto.

Indeed, hundreds of lawmakers have been contacting the White House since the military construction bill. Burns and Santorum wrote to complain about vetoes already exercised and to warn of adverse consequences to military readiness.

Florida Sens. Bob Graham (D) and Connie Mack (R), by contrast, wrote a joint letter stressing the need for \$1 million to establish a Central Florida High Intensity Drug Trafficking Area. "We would request that you keep in mind the importance of the Central Florida HIDTA to the national war on drugs and to us personally as you consider the Fiscal Year 1998 Treasury Appropriation," the letter said. The line item survived.

Among those who lost favored projects, Rep. Jerry Lewis (R-Calif.) was still steamed a week after Clinton vetoed his district's \$4 million breast cancer research grant. And he spoke of exacting a penalty—suggesting he might oppose Clinton in his efforts to obtain "fast-track" authority to negotiate trade agreements. "I don't like to link things," he said, but "there is a two-way street here."

Collender cautioned that in the revenge game, "the president holds all the cards." A member may withhold one vote, but he will lose on another bill or be embarrassed on another line-item, Collender said. "The president may lose a battle, but he will win the war."

Most lawmakers, however, agreed with former Congressional Budget Office director Robert D. Reischauer, who described veto gamesmanship as "a two-edged sword. The more influence the president tries to exert, the more of a backlash he will see. We have already seen it."

Sen. Bob Kerrey (D-Neb.) used the line-item veto as his state's governor, but voted against the federal line-item veto. He said it gave the president too much power, suggesting he could use it to trade projects for votes. "Now the president is going to say, 'I want X,' would you help me? And the answer will be, 'Yes, but what are you going to do for me this year?'"

This is one way the president can make policy with the line-item veto. Another way is to veto items that effectively eliminate entire programs. Clinton has already done this by striking our \$39 million for the SR-71 Blackbird spy plane, said Sen. John McCain (R-Ariz.). "They never wanted to keep it."

McCain, a dedicated cost-cutter who has criticized Clinton for not being aggressive enough with the veto, nevertheless cautions against "politicizing" the process and permanently poisoning relations between the two branches of government.

As for those who complain about the veto, McCain noted that many lawmakers spent years fighting for it when a Democratic Congress remained adamantly opposed. "To my Republican colleagues, I say, 'Be careful what you ask for. You may get it.'"

Mr. BYRD. Mr. President, I send to the desk the bill to which I have referred, and I ask unanimous consent that it be printed in the RECORD and that it be appropriately referred.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be received and appropriately referred.

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

S. 1319

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

SECTION 1. REPEAL OF THE LINE ITEM VETO ACT OF 1996.

(a) IN GENERAL.—The Line Item Veto Act (Public Law 104-130) and the amendments made by that Act are repealed.

(b) APPLICABILITY.—The Impoundment Control Act of 1974 shall be applied and administered as if the Line Item Veto Act had not been enacted.

Mr. BYRD. I yield the floor.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

Mr. LOTT. I now ask the Senate resume the highway bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

A bill (S. 1173) to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes.

The Senate continued with the consideration of the bill.

CLOTURE MOTION

Mr. LOTT. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the modified committee amendment to S. 1173, the Intermodal Surface Transportation Efficiency Act:

Trent Lott, John Chafee, John Ashcroft, Larry Craig, Don Nickles, Mike DeWine, Frank Murkowski, Richard Shelby, Gordon Smith, Robert Bennett, Craig Thomas, Pat Roberts, Mitch McConnell, Conrad Burns, Spence Abraham, and Jesse Helms.

Mr. LOTT. For the information of all Senators, I have just filed the last cloture motion to the highway bill. This cloture vote will occur on Tuesday. If cloture is not invoked on Tuesday, I will have to ask the Senate then to move on to other items.

Needless to say, I hope cloture will be invoked on Tuesday. I know there are some Senators who have voted against cloture three times who intend to vote for it if this is going to be the last one. I have, as majority leader, basically given 2 weeks to opening statements and a preliminary discussion about the highway bill while we tried to see if other issues could be resolved. But unless we can get cloture invoked and I can unstack the tree of amendments and allow us to go forward with full de-

bate and amendments on ISTEA, if this matter is going to continue to be held up at the insistence of Senator MCCAIN and Senator FEINGOLD because of the campaign finance reform issue, then I have no alternative but to stop.

I really think that is unfortunate. I think the Senate was showing leadership by moving on to the ISTEA highway bill. The Environment and Public Works Committee came up with a good bill. It was reported unanimously from the committee. I think we would show leadership to pass the 6-year bill whereas the House had only passed a 6-month extension. I think it would be better for the country if we did this bill now. I think it would be better for the Senate if we did it now. I think that next spring or next summer or, heaven forbid, next fall, if we are still working on the highway bill, it will get tougher and tougher and tougher as more problems are developed, more amendments are written and as we get closer to elections. Every State is going to believe it has to have a little bit more, a little bit more for highways and bridges. That is fine. We all need that. But we need some kind of closure on how we deal with the formula and what funds are going to be available to our States.

I think this is very unfortunate. I do not see there is any process now for there even to be a short-term extension. Everything seems to be tied to something on campaign finance reform that we have not been able to develop yet. I want to emphasize to all Senators that yesterday I believed Senator DASCHLE and I had come very, very close to having an agreement worked out whereby we would consider this other, unrelated to the highway bill, campaign finance issue next March, by the end of the first week in March, and that amendments would be in order and that there wasn't going to be an effort to fill up the tree and that Senators could offer amendments, first degree, second degree, and motions to table would be in order. Everything would basically go the regular order. But for some reason, at the last minute, interested Senators could not agree to that, but a very good-faith effort was made by Senators on both sides of the aisle and on both sides of the issue, and it did not come about.

I am willing to have the Senate have this issue before it and have one more cloture vote, but then we will have to move on.

I also want to emphasize that next Monday we do intend to take up some important issues, including the Interior appropriations conference report we have finally completed action on. If we have to, we are going to call for a vote on the Federal Reserve nominees that the President has sent to the Senate and the Senate committee has now reported to the full Senate for action. And we are going to have to take up legislation dealing with the threatened Amtrak strike.

So we will have a full plate of things to do Monday and Tuesday, and we

hope other appropriations bills will be ready in short order next week. In fact, we had meetings this morning on two of them, the Labor, HHS appropriations bill—we think maybe some good progress was made there, I say to the Senator from West Virginia—and we are getting closer, I believe, on the foreign operations appropriations bill. So we have other business that we need to do and must do, and we cannot give the balance of our time to the delay of the ISTEA bill based on the campaign finance reform issue.

MORNING BUSINESS

Mr. LOTT. Mr. President, I now ask unanimous consent that the Senate resume morning business with Senators permitted to speak up to 5 minutes each.

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

UNITED STATES-CHINA RELATIONS

Mr. ASHCROFT. Mr. President, I rise today to address the state of United States-China relations as the summit with Chinese President Jiang Zemin approaches. President Clinton is expected to give a speech this afternoon on United States-China relations, a speech that will, no doubt, continue to defend the administration's policy of so-called "constructive engagement" with China. The policy generally posits that there is no alternative for the United States but to accommodate China in virtually any behavior in hope of establishing a good relationship with Beijing.

I want to be clear that I certainly do hope that a stable and positive relationship can be established between our two countries, but the administration's China policy of engagement gives little regard to the behavior of China and is putting the prospect of a strong relationship with Beijing at risk. Rather than constructively engage Beijing, this administration's China policy has been advanced at the expense of discarded American principles and lost United States credibility in the international arena. For instance, China has a weapons proliferation record that is unrivaled in the world, distributing weapons of mass destruction in spite of previous nonproliferation commitments. Beijing also maintains trade barriers which continue to block United States goods and United States companies from being involved in the kind of free and open commerce we should have with China. And in the last several years, Beijing has had a human rights record that has resulted in the most intense religious persecution in several decades, and in the silencing of all active political dissidents.

The latest State Department report on human rights noted that all Chinese political dissidents had been detained and imprisoned. We have to remind

ourselves that there are 1.3 billion people in China and to be without any political dissent in a country that large is indeed a troubling matter.

In spite of these distressing areas in our relationship with China, there is near unanimity in the administration that China must be embraced, that it must be accommodated, that it somehow must be honored. Betraying our country's history of leadership in defense of freedom and a stable international environment is not a way to enhance our relationship with China.

I believe a strong relationship would be based on mutual respect and trust, but when we constantly compromise, when we constantly accommodate, and when we constantly ignore violations by the Chinese of their responsibilities in the international community and their responsibilities to respect human rights, I believe we don't provide a foundation for a good United States-China relationship.

Nuclear cooperation with China is one of the issues for discussion during the summit, and it is an issue of particular concern to me. If the President allows nuclear cooperation with China to proceed, it may be the clearest illustration yet of the appeasement-at-any-cost approach in our present United States-China policy.

The President is considering giving China advanced United States nuclear technology in spite of the fact that a CIA report identified China as the world's worst proliferator of weapons-of-mass-destruction technology. This CIA report is not a stale document. This report indicates that the Chinese have been the worst proliferators of weapons of mass destruction, and this report came out last June.

The report says:

During the last half of 1996, China was the most significant supplier of weapons-of-mass-destruction-related goods and technology to foreign countries. The Chinese provided a tremendous variety of assistance to both Iran's and Pakistan's ballistic missile programs. China was also the primary source of nuclear-related equipment and technology to Pakistan and a key supplier to Iran during this reporting period.

The period the CIA report covers is the last half of 1996. In May 1996, just before the period for the CIA report was to commence, the Chinese made a commitment to stop their proliferation activities.

In the face of one of their rather notable assurances that they were going to act differently, they continued to persist in their active nuclear technology proliferation and the proliferation of other weapons of mass destruction technologies. Of course, the definition of weapons of mass destruction includes nuclear, chemical and biological weapons. If there is any doubt as to what kind of nuclear-related equipment was provided, the CIA report goes on to state:

Pakistan was very aggressive in seeking out equipment, material and technology for its nuclear weapons program with China as its principal supplier.

The administration says China has honored its nonproliferation pledge of May 1996. But let me again make clear that the CIA report covers the last half of 1996, the period after China made its so-called nuclear nonproliferation commitment. How the administration can expect to be a credible actor in the international community by saying that the nonproliferation commitment of May 1996 was honored, when the CIA says that after May, China was the principal supplier to Pakistan of equipment, material and technology for a nuclear weapons program—how the administration can say that is consistent with the nonproliferation commitment is beyond me.

Since 1985, no President has been able to certify that China's proliferation activities meet the legal requirements that would allow us to start designating them as a nuclear cooperator and to extend to them nuclear exports from the United States. I certainly don't believe China's recent activities warrant such certification now, not in the face of our own Government's report that they were the worst proliferators of components, equipment, and technology related to weapons of mass destruction, particularly nuclear weapons of mass destruction.

I might point out that Ken Adelman, President Reagan's Director of the Arms Control and Disarmament Agency and a key official involved in the formulation of the original 1985 agreement, also does not believe that China's recent activities warrant the certification for nuclear cooperation to proceed.

China has made several nonproliferation promises in recent weeks to reassure the administration. While these commitments have the potential to improve China's proliferation record, China has made and broken nonproliferation commitments for a decade. I think we should first ask that China at least keep its word for some interval of time rather than blindly accept China's most recent nonproliferation promises even though the previous ones have been broken.

We all know the potential for this nuclear technology to be used in a variety of settings and ways. I believe China must establish its commitment to nonproliferation in deeds, not just words. Chinese credibility should be established before nuclear-related trade takes place between the United States and China.

The administration does not want Chinese President Jiang Zemin to return to Beijing emptyhanded. I think that is kind and generous and warm hearted, but I question the need to give China nuclear technology just to make President Jiang happy.

Have we forgotten the summit itself is a major gift to President Jiang, and why are we so anxious to make concessions to China? I hope the President of the United States understands that at stake in the nuclear cooperation debate is the credibility of the United

States in combatting the global spread of weapons of mass destruction. Rather than forcefully address this critical national security threat, our administration apparently is downsizing our counterproliferation apparatus and making life uncomfortable for key personnel who have dedicated their lives to protect our country from the spread of weapons of mass destruction.

The recent announcement of the retirement of Gordon Oehler from the Central Intelligence Agency is, according to an article in the Washington Post, driven by the administration's disapproval of Mr. Oehler's candor and his honesty in informing Congress of the weapons proliferation activity, not only of China but of other nations.

Is our administration so infatuated with charming China at any price that we are willing to ignore the facts presented by our intelligence personnel, and when the facts are troublesome to us, that we make these intelligence officers so uncomfortable that they resign?

Government personnel like Gordon Oehler should be praised and thanked for helping defend our country and keeping Congress informed of rising threats to our national security.

Mr. President, China potentially has broken every major commitment that it has made concerning the production or proliferation of weapons of mass destruction or the missile delivery systems to deliver such weapons. In light of China's behavior, it is difficult to understand why President Clinton is so eager to accept placebos and questionable promises in exchange for the transfer of valuable and potentially dangerous nuclear technology. The United States needs to be sober and vigilant in dealing with China.

A stable and truly constructive relationship with Beijing will be established only when our national security interests are defended and when our commitment to the principles of liberty and freedom is preserved.

There is something substantially different between our commitment to freedom and liberty and what is occurring in China. President Jiang's remarks recently indicate that he does not believe that freedom is for all individuals, that freedom is something that is negotiable. He said, "The theory of relativity worked out by Mr. Einstein which is in the domain of natural science, I believe, can be applied to the political field."

We in the United States believe in God-given rights that are not relative, and our policy with regard to China should be a policy which is based on credibility and integrity. Appeasement or engagement without integrity is nothing more than a surrender of American principles.

Mr. President, I ask unanimous consent that the Washington Post article to which I referred earlier be printed in the RECORD.

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

THE AGING MAOISTS OF BEIJING

(By Michael Kelly)

It has been 12 years since the leader of the People's Republic of China has honored the United States with a visit, and in the meantime relations between us have become—as they say—strained. It has seemed at times almost as if the aging Maoists of Beijing were trying to flaunt their disdain for American values and American interests. There was the ever-ending campaign of torture and imprisonment against advocates of political and religious liberty. There was, despite Richard Gore, the continued occupation and subjugation of Tibet. There was the unpleasantness at Tiananmen Square. There were the arms sales and the nuclear assistance to nations unfriendly to the United States. There was the missile-rattling off the cost of Taiwan. There was the finely calculated humiliation of Warren Christopher. There was the cool, unblushing dismantling of democracy's infrastructure in Hong Kong. Finally, it appears, there was the attempt to subvert our very own democratic system by illegally funneling PRC cash into the 1996 elections.

Now comes Jiang Zemin, president of China, unapologetically. On the eve of his week-long American journey, Jiang gave careful interviews to *The Washington Post* and *Time* magazine. He told the reporters that the slaughter of democracy's hopefuls at Tiananmen had been necessary for China's economic boom (you can't make an omelet without rolling a tank over a few hundred eggs); that Taiwan must accept "the principle that there is only one China," which is to say rule by Beijing; that Chinese democratic activists such as Wei Jingsheng and Wang Dan were languishing in prison "not because they are so-called political dissidents but because they violated China's criminal law"; that the good-hands people of Beijing would continue to hold Tibet in their cossetting grasp; and that the United States must accept that China has its own standards of what constitutes a proper respect for democracy and human rights. "The theory of relativity worked out by Mr. Einstein, which is in the domain of natural science," the old despot lectured, "I believe can also be applied to the political field."

Quite so, say the Einsteinists in the Clinton administration who are driving the China policy they call "engagement." Under the rules of this engagement, the United States has during the past five years answered China's slights and slurs with shows of affection. The Commerce Department has had its way in maintaining trading status for China as a most-favored nation. The State Department has kept its complaints about the oppression of democrats and Christians to a discreet murmur. The president himself has most graciously entertained the friends of Mr. Johnny Chung and Mr. John Huang. The approval for an official visit by Jiang Zemin was the greatest engagement gift yet. The trip, which will begin with Ziang laying a wreath for the slain of 1941 in Pearl Harbor, is planned as an elaborate exercise in propaganda, and it is intended to serve both to ratify China's post-Tiananmen diplomatic rehabilitation and to solidify Ziang's domestic political status.

And yet, the nervous suitors at the White House fret, there must be something more we can do, something really grand. Indeed, it develops, there is. Jiang's government would like to buy some of the new-generation nuclear reactors that have been jointly developed by the American nuclear industry and the government in an \$870 million research project. The moribund nuclear industry is desperate to sell to China, and it has lobbied the administration heavily. The nuclear industry has, of course, large sums at its dis-

posal, and this president is always willing to grant potential or actual big-money donors what he has called "a respectful hearing," so there is naturally a desire at the White House to see the sales go forward.

But there is a problem: China's impressive record in spreading the advance of the bomb—a record that includes the export of nuclear technology and materiel to Iran, Iraq, Pakistan and India. In 1985, as Washington prepared for the last Sino-American summit, the Chinese were found, in violation of recent promises, to be assisting the Pakistani nuclear program. As a result, Congress passed a law barring implementation of the Nuclear Cooperation Agreement signed by president Reagan and the then-Chinese President Li Xiannian, to permit nuclear trade with China until the President certified that China had stopped aiding the spread of the bomb.

Such certification has never been given because China has never changed its behavior. Gordon Oehler, the CIA's senior official responsible for monitoring mass-weapons proliferation, has testified to Congress that China has provided Iran with large numbers of anti-ship missiles that are considered a direct threat to U.S. naval forces in the Persian Gulf. Oehler, by the way, resigned this week amid reports that he had been under pressure from administration policymakers over his unwelcome assessments.

The administration insists that China has—just in the nick of time for a gift grand enough for a summit—changed its ways. It points to two promises: one in 1996 to stop aiding Pakistan's nuclear program; the other last week not to sell any more anti-ship missiles to Iran. So, that's that, the White House argues, it's time to certify China as a respectable member of the nuclear club at last and get on with the business of the United States, which is business. As for human rights—if everything goes to their satisfaction next week, the Chinese hint they might be willing to let Wang Dan out of jail for a while.

This is policy so wrongheaded that it isn't even interesting. It is possible that the Chinese are suddenly serious about nonproliferation. And it would be nice to provide some foreign business for the nuclear industry, so it doesn't die from a lack of business at home. But the Chinese have broken or bent most of their previous promises on issues of nuclear exports, and their new promises are untested.

We are engaged for the moment. A responsible president must not attempt to certify what he cannot know to be so; a responsible Congress must stop, by a veto-proof two-thirds majority, a president who puts the interests of Beijing and Westinghouse ahead of national security. Let's verify before we trust. And let's get something in return a little less pathetic than the release of one well-beaten man from his prison cell.

Mr. HAGEL assumed the chair.

Mr. ASHCROFT. I thank the Chair, and I yield the floor.

GLOBAL WARMING

Mr. MURKOWSKI. Mr. President, I noted that the White House recently released a strategy for climate change talks. The President said the United States would not assume binding obligations until developing countries agree to participate meaningfully in the climate-change issue. White House officials said they expect requirements for developing countries would be fleshed out in negotiations.

This is what concerns me, Mr. President, "fleshed out in negotiations." The senior Senator from West Virginia and the occupant of the chair, Senator HAGEL, authored a resolution that has been supported in this body by an overwhelming vote of 95 to 0. The Byrd-Hagel resolution said developing nations must have targets and timetables in the same timeframe as the United States.

Mr. President, it is my contention that the President is glossing over the issue of developing-country participation.

The Berlin Mandate says "no new commitments for developing nations." Has the President repudiated the Berlin Mandate? Otherwise, how in the world can President Clinton simply state that this is something that can be taken care of in negotiations when the Berlin Mandate clearly says no new commitments for developing nations? Our President only says "meaningful commitments for developing nations." I wonder what meaningful really means.

At this time, we are somewhat at the mercy of our negotiators on this matter. We have seen comments in the RECORD from various members of the Senate praising the President's plan, stating that they are encouraged by the policy announcements and pleased with the White House plan. Another member said that the President's position should satisfy demands of the Byrd-Hagel resolution as expressed in this body.

Those demands are not met, Mr. President, because Byrd-Hagel says developing nations must have targets and timetables in the same timeframe as the United States. That is the test.

Another Senator indicates this is a green light that speaks to our Nation's commitment to reducing greenhouse gases. I am a bottom line person, a nuts and bolts kind of guy. How are we going to get there from here? How will we reach the goal the President expressed, which is to go back to emissions levels of 1990 by the years 2008 to 2012?

Let's do the math.

Fifty-five percent of our U.S. energy production is coal. What is happening to coal? If a new climate treaty is signed, there will be reductions in coal use. EPA's new air quality standards on ozone and particulate matter are likely to decrease coal use. EPA's tightened air quality standards on oxides of sulfur and nitrogen will put more emphasis on coal reduction. EPA's proposed regional haze rule will put more pressure on coal as will any new EPA mercury emission rules.

So there is going to be more pressure to reduce use of the resource supplying 55 percent of our electricity.

What about nuclear?

Well, the President threatens to veto our nuclear waste bill. There have been no new orders for new plants in the United States since 1975. There is the potential inability to recover stranded

costs of nuclear plants in electric restructuring, so nuclear use is likely to fall.

Nuclear is the largest carbon-free generator of power. The President didn't even mention it in his plan.

Let us go to our next contributor—10 percent of our energy comes from hydroelectric. Yet, there are considerations in the administration to tear down dams. An example that has been discussed is the Glen Canyon Dam. If we tear down Glen Canyon, we would drain Lake Powell—252 square miles. That is a lake that provides the water for Los Angeles, Phoenix, and Las Vegas. It would eliminate sources of carbon-free electricity for 4 million consumers in the Southwest. We would scuttle a \$500 million tourist industry.

What about gas that supplies 10 percent of our power? Gas also emits carbons, but not as much. Demand would increase, prices would increase, and shortages might result.

Some people say we will pick up the slack with wind and solar. I like wind and solar, but you can't always count on it. It is kind of interesting to see the Sierra's Club announcement the other day opposing wind farms. They refer to them as "Cuisinarts for birds." So they are opposed to that.

So the point is, Mr. President, how do you get there from here if the administration does not consider nuclear or hydroelectric? In his speech, the President specifically excludes hydro from renewable energy.

What about the rest of the world? Let me tell you what one of our witnesses said at a hearing yesterday. Mr. Bill Martin, former Deputy Secretary of Energy, said the world is likely to increase its dependence on coal primarily due to energy demand in China. This dependence is likely to result in the doubling of sulfur dioxides in Asia and at least a 30-percent increase in global CO₂, in 1990 levels, by the year 2000. To reach a sustainable energy with respect to carbon, the world will have to triple natural gas production, increase coal efficiencies through clean coal technology, triple renewables, triple nuclear power to a worldwide total of 1,000 gigawatts and increase energy efficiency by at least 25 percent.

Mr. President, these are the real terms and conditions in the world that we are living in. Nuclear energy, renewables and energy efficiency emerge as the only viable source to date that are emissions-free and offer some energy independence to nations which adopt them.

The point I want to make here, Mr. President, is that nuclear and hydro, a big part of the solution, are not addressed in the administration's proposal on how to reduce emissions to the 1990 level by the year 2008 to 2012.

The witnesses at the hearings we held yesterday said you cannot get there from here. You cannot physically do it unless you triple nuclear and the renewables, including hydro.

Let me conclude with one other thing. The President says we can do

this without a carbon tax. The Department of Energy says you need a carbon permit price of \$50/ton. There is no difference. There are no free rides. Somebody has to pay it. If it is a carbon tax, it is \$50 a ton, and it goes to the consumer. If we set up some kind of a market in emissions, somebody like the Board of Trade starts trading permits, they are estimated to equate to \$50 a ton. Somebody is going to have to pay for that, and that is the U.S. consumer.

Let me conclude with just one observation as we address China, as we address the question of whether we should sell nuclear reactors and technology to China.

China has the availability of nuclear power reactors from France. They have it from other nations. Canada is selling; Russia is selling. And certainly they are a nuclear power.

Do we want China to burn more coal? We already have a prohibition against assisting China in the development of the world's largest hydroelectric project. It is called the Three Gorges Dam. The Eximbank will not assist.

Let me tell you how big Three Gorges is. That plant would produce 18,000 megawatts, equal to 36 500-megawatt coal plants. So that is how China will address some of its energy demands from carbon-free hydropower. But we are prohibited from participating. And we are prohibited from participating in their nuclear power program.

So I think, Mr. President, we have to be realistic. As the administration comes down with its plan, again, I suggest to you that the President has glossed over the issue of the developing countries' participation.

I suggest and remind my colleagues of the Byrd-Hagel vote that was 95 to 0. It said developing nations must have targets and timetables in the same timeframe as the United States. And the Berlin Mandate says, no new commitments for developing nations.

So I conclude by saying the President only says "meaningful commitments for developing nations." And I say "meaningful" means what?

Mr. President, I thank the Chair.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Thursday, October 23, 1997, the Federal debt stood at \$5,424,897,442,383.46. (Five trillion, four hundred twenty-four billion, eight hundred ninety-seven million, four hundred forty-two thousand, three hundred eighty-three dollars and forty-six cents)

One year ago, October 23, 1996, the Federal debt stood at \$5,229,624,000,000. (Five trillion, two hundred twenty-nine billion, six hundred twenty-four million)

Five years ago, October 23, 1992, the Federal debt stood at \$4,061,912,000,000. (Four trillion, sixty-one billion, nine hundred twelve million)

Ten years ago, October 23, 1987, the Federal debt stood at \$2,384,077,000,000

(Two trillion, three hundred eighty-four billion, seventy-seven million) which reflects a debt increase of more than \$3 trillion—\$3,040,820,442,383.46 (Three trillion, forty billion, eight hundred twenty million, four hundred forty-two thousand, three hundred eighty-three dollars and forty-six cents) during the past 10 years.

AN EMMY FOR KEVIN WALLEVAND: LAND MINE DOCUMENTARY

Mr. DORGAN. Mr. President. A bright young reporter, Kevin Wallevand, who covers news in Fargo, ND for WDAY television, has made my State, and me, awfully proud. Kevin's documentary, "The Quilt: Hope from the Heartland," has been awarded an Emmy, television's highest award.

In North Dakota, we have always known that Kevin is a talented reporter, writer, and producer. Now, his documentary about the dark side of human nature that allows exploding land mines to do the work of war; and the bright side of human kind, the compassion people show toward one another in the aftermath of war's tragedies, has earned him national acclaim.

Kevin Wallevand has produced a moving story about a rural community where women create by hand a beautiful, colorful quilt in the hope that it will warm and cheer someone less fortunate than themselves. The resulting quilt begins its travels near the North Dakota border on the Buffalo River, and ends its journey along a river in Angola, Africa where a homeless family—bodies ravaged by exploding land mines—clutches the quilt for warmth and safety.

Sadly, we learn that the family's story is not an isolated one. Kevin takes us into the hospital beds of other villagers who have fallen victim to landmines—who are displaced and anticipating the help and the arrival of thousands of quilts, blankets and other donated items from American volunteers.

Hundreds of churches, like the one in Kevin's story, and other humanitarian groups have taken it upon themselves to give a little comfort and a little hope to landmine victims. Now we, as a country, owe it to them to prevent this instrument of war, which targets innocent people long after the peace agreement has been signed, from ever being used again.

Like Kevin, I have seen first hand the tragic human costs of landmines. While serving in the House of Representatives, I visited a clinic in Central America where landmine victims who had lost hope, along with a leg or an arm, were fitted for artificial limbs. I witnessed how important it was to support this program which could turn their lives around. When I returned, I worked to get funding so that other landmine victims might be able to get prosthetic limbs and I'm proud to say I helped get it done. Kevin must have

the same kind of satisfaction—because by showing others the horrors of this war against the innocent, he has struck a blow against the worldwide scourge of land mines. But more must be done.

I commend Kevin Wallevand, and the others who worked on this story at WDAY, for bringing this tragedy to the attention of others. Landmines are a worldwide problem, but with a very simple solution. We must rid the world of landmines and promise future generations that this weapon of destruction will never be used again for warfare. In sharing this Emmy winning story, Kevin's work heightens our awareness of the problem and brings us a step closer to that ultimate goal. Congratulations to Kevin Wallevand. You make North Dakotans very proud.

RURAL SATELLITE SUBSCRIBERS

Mr. HATCH. Mr. President, I rise today to raise an issue that my colleagues may have heard about, the recent decision by an arbitration panel convened under the auspices of the Copyright Office in the Library of Congress regarding the rates satellite carriers will pay under the satellite copyright compulsory license. The panel, in attempting to set a fair market value of the retransmission of broadcast signals, has decided to raise those rates and has made the new rate effective July 1, 1997. The arbitration panel's decision is currently on appeal to the Librarian of Congress who is empowered to review the decision. The standard of review is limited to one of arbitrariness or contrariness to law. The Librarian's decision will be announced next Tuesday, October 28. At that point, the Librarian's decision is subject to appeal to the Court of Appeals for the District of Columbia. The decision to raise the rates and especially its retroactive effective date has raised objections by the satellite carriers. Obviously, copyright owners disagree with the satellite carriers. My colleagues may be contacted by one side or the other of this dispute in the coming weeks or months.

My colleagues should know that as chairman of the Senate Judiciary Committee, the committee of jurisdiction over copyright matters generally, and the Satellite Home Viewers Act in particular, I have begun a review of the satellite and cable licenses. Earlier this year I asked the Copyright Office to conduct in depth public hearings and make a comprehensive report to the Judiciary Committee on the licenses, together with recommendations for reforms. The Judiciary Committee is now reviewing these recommendations.

As we make our review of the compulsory licenses, I believe we need to keep in mind the needs of rural families. The Satellite Home Viewers Act was originally intended in 1988 to ensure that households that could not get television in any other way, such as traditional broadcast or cable, would

be able to get television signals via satellite.

The market has changed substantially since 1988, and those changes have led to many of the controversies that currently surround the act. Many are looking to satellite carriers to compete directly with cable companies for viewership. But as we consider reforms to make the license work better in the current marketplace, we need to consider carefully the impact on the original beneficiaries, rural folks who are otherwise beyond the reach of traditional television signals.

I come from a state that has a fine broadcast industry that invests its energy and capital in trying to reach as many viewers as it can in our mountainous State of Utah. But there are some Utahans, or others in similar rural States, who appear to be simply beyond the reach of broadcast transmitters and translators, despite the best efforts of our broadcasters. As the chairman of the Judiciary Committee, I hope to find a fair way of helping the greatest number of Utahans have the greatest amount of choice in television entertainment. Obviously this means balancing a number of interests, since consumer choice will be curtailed if any segment of the industry is disadvantaged too much to support the other segments. We need to try to get a system that will be consumer-friendly, fair to creators and copyright holders to encourage them to continue to produce quality entertainment, and that makes for a competitive environment that will lower prices and increase choices. As we do this, we need to remember the original purpose of the satellite license, which is to make television available to those who cannot otherwise get it.

I believe many of my colleagues on the committee and in the Senate share my views, particularly my good friend, the ranking member of the Judiciary Committee, Senator LEAHY. Mr. President, I would ask the distinguished ranking member if he shares my concerns about rural satellite viewers, as well as the other affected interests in this industry?

Mr. LEAHY. I thank Senator HATCH for his comments. I am also very concerned about rural areas in my home State of Vermont and about the needs of rural satellite viewers throughout the country.

Mr. HATCH. I thank my colleague. Mr. President, I would ask my colleague from Vermont if he will work with me and the other members of the Judiciary Committee to help ensure that we keep the needs of rural satellite viewers in mind as we consider reforms to the compulsory licenses?

Mr. LEAHY. I look forward to working with you and the rest of the committee on these important issues.

Mr. HATCH. I thank my colleague, and I invite my colleagues in the Senate to work with me and with the ranking member of the Judiciary Committee as we review the compulsory li-

censes to ensure the best situation for all our constituents.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a withdrawal and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:25 a.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 bill, in which it requests the concurrence of the Senate:

H.R. 2646. An act to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes.

A message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2107) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

MEASURE READ THE FIRST TIME

The following bill was read the first time:

H.R. 2646. An act to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes.

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. LUGAR:

S. 1313. A bill to provide market transition assistance to quota owners, tobacco producers, and communities that are dependent on tobacco production, to phase out Federal programs that support tobacco production, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. HUTCHISON (for herself and Mr. FAIRCLOTH):

S. 1314. A bill to amend the Internal Revenue Code of 1986 to provide that married couples may file a combined return under which

each spouse is taxed using the rates applicable to unmarried individuals; to the Committee on Finance.

By Mr. FAIRCLOTH:

S. 1315. A bill to establish an Office of National Security within the Securities and Exchange Commission, provide for the monitoring of the extent of foreign involvement in United States securities markets, financial institutions, and pension funds, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ABRAHAM (for himself, Mr. BROWNBACK, Mr. KYL, Mr. HAGEL, Mr. ALLARD, Mr. FAIRCLOTH, Mr. NICKLES, and Mr. GRAMM):

S. 1316. A bill to dismantle the Department of Commerce; to the Committee on Governmental Affairs.

By Mr. LAUTENBERG (for himself and Mr. BAUCUS):

S. 1317. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to expand the opportunity for health protection for citizens affected by hazardous waste sites; to the Committee on Environment and Public Works.

By Mr. ABRAHAM (for himself and Ms. LANDRIEU):

S. 1318. A bill to establish an adoption awareness program, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BYRD (for himself and Mr. MOYNIHAN):

S. 1319. A bill to repeal the Line Item Veto Act of 1996; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, as modified by the order of April 11, 1986, with instructions that if one committee reports, the other committee have 30 days to report or be discharged.

By Mr. ROCKEFELLER (for himself, Mr. DASCHLE, Mr. AKAKA, Mr. WELLSTONE, and Mrs. MURRAY):

S. 1320. A bill to provide a scientific basis for the Secretary of Veterans Affairs to assess the nature of the association between illnesses and exposure to toxic agents and environmental or other wartime hazards as a result of service in the Persian Gulf during the Persian Gulf war for purposes of determining a service connection relating to such illnesses, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. JEFFORDS:

S.J. Res. 37. A joint resolution to provide for the extension of a temporary prohibition of strikes or lockout and to provide for binding arbitration with respect to the labor dispute between Amtrak and certain of its employees; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. HELMS (for himself, Mr. LOTT, Mr. FAIRCLOTH, Mr. BREAU, Mr. HOLLINGS, Mr. BINGAMAN, Mr. BROWNBACK, and Mr. INOUE):

S. Res. 140. A resolution expressing the sense of the Senate in support of the President's action to eliminate discriminatory trade practices by Japan relating to international shipping; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FAIRCLOTH:

S. 1313. A bill to establish an Office of National Security within the Securities and Exchange Commission, provide for the monitoring of the extent of foreign involvement in U.S. securities markets, financial institutions, and pension funds, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE U.S. MARKET SECURITY ACT OF 1997

Mr. FAIRCLOTH. Mr. President, on October 28 the President of the People's Republic of China will begin an official state visit to this country. Jiang Zemin is coming. It is reported, as a gift to him, the Clinton administration will applaud China's policy on weapons proliferation.

As a reward for China's responsible behavior, President Clinton and Vice President GORE plan to willingly, without reservation, share our most sensitive nuclear technology with China.

There is something very suspicious about this drastic shift in U.S. foreign policy. I cannot understand why the administration would negotiate this kind of deal?

Hasn't the CIA told us that China serves as the weapons clearinghouse of the world? Why in the world would President Clinton seek to abandon a longstanding Federal law that has prohibited American corporations from selling nuclear technology to Communist China.

It appears this is payback time.

Senator THOMPSON and the Governmental Affairs Committee have spent the last few months searching for why China would funnel illegal contributions into American political campaigns. Perhaps the pieces of the puzzle are starting to come together.

Clearly, the Chinese Government wants the best American technology for both military and commercial use. China wants both nuclear weapons and nuclear powerplants.

Apparently, President Clinton and Vice President GORE are convinced that the best American nuclear technology is none too good for Beijing.

Now I understand that there are some very good American companies which stand to make billions from this deal. Certainly the foreign policy establishment is excited about all of the new lobbying and consulting possibilities. But aren't there some far more important factors to be considered?

Let me remind the Clinton administration that its own Central Intelligence Agency concluded in July that the People's Republic of China had become the most significant supplier of nuclear and chemical weapons technology to foreign countries.

Let me remind the Clinton administration that the People's Republic of China sold chemical weapons materials to Iran and missiles and ring magnets used to process uranium to Pakistan.

Let me remind the Clinton administration that the People's Republic of China has a long history of misrepresenting the use of American technology it buys and then reselling it to

other nations, often terrorist countries like Iran.

Mr. President, selling nuclear technology to the Chinese is a terrible idea. Even worse, however, is the thought that Americans are paying for it too.

Since 1989, the Peoples Republic of China and various businesses connected to the Chinese Government have issued nearly \$7 billion in bonds denominated in United States dollars.

China itself has issued some \$2.7 billion in such bonds.

The Chinese International Trading and Investment Co., Chaired by Wang Jung, reportedly connected to the Chinese Army, has issued \$800 million in bonds in the United States during the past few years.

If Mr. Jung's name sounds familiar—its because he was at the White House having coffee with the President on February 6, 1996. What a delightful man for a tea party.

It was also discovered that Mr. Jung's other company, Poly Technologies, was responsible for smuggling AK-47's to Los Angeles gangs.

This is the man that was at the tea party.

The Bank of China has also issued some \$80 million in dollar denominated bonds in the United States. This is the same bank that wired money to Charlie Trie on a regular basis.

Mr. President, my greatest concern is that American mutual funds and pension funds will end up owning these bonds. Where else is there for them to go except to mutual funds and pension funds? To say that these bonds are risky is putting a nice face on them. If these companies default, they will stick the American taxpayer with the bill on the Chinese bonds.

Today, I am introducing legislation that will require the SEC to establish an office of national security that will routinely report to the Congress on security offerings by foreign governments and companies. This will also require the Pension Benefit Guaranty Corporation to annually review America's pension funds and report on the number of foreign securities being held.

It is time that Congress and the American public start paying attention to this quiet financial invasion. We need to pay attention to what is in America's retirement funds because we know who will pick up the deficit.

Already, it has been reported that the Arkansas State Teachers' Retirement Fund is holding roughly 40 percent of its assets in Pacific rim entities, several of which are Chinese.

If so, this is a tragedy for people who worked all their lives and are counting on that pension for their retirement peace of mind, when in reality it might not happen.

Mr. President, maybe this administration thinks the American people don't care about China's activities. Maybe I'm wrong, but I believe the American people do care. They know the Chinese people are oppressed by a

Communist government that uses capitalism when it is convenient to further their death grip on political power.

They know that China engages in unfair trading practices which result in a \$50 billion trade deficit with the American people on an annual basis. They know that China oppresses their people and flagrantly violates human rights. They know China uses slave labor to make products for sale. They know that China sells the internal organs of executed prisoners on the black market. They know China infringes patents by selling pirated copies of American products. They know the People's Liberation Army is buying businesses in the United States as fronts for their secretive dealings. They know China persecutes Christians and religious believers.

I say to President Clinton and Vice President GORE that the American people do care. And remember that while the People's Republic of China may have supported their reelection campaigns, they do not support the freedom campaign of their own people.

Selling highly sensitive nuclear technology to China is a bad idea with extremely dangerous consequences. Permitting the invasion of our capital markets is another bad idea with worse potential consequences.

I also believe that allowing China to own ports on both ends of the Panama Canal is another bad idea, from whence they could dominate the canal and will bring dangerous consequences to our national security.

The Clinton administration and this Congress will face a difficult decision between two very strong competing forces—money and morality. I hope they decide to do what is in the best interests of the American people, not their foreign campaign donors that have all fled the country.

By Mr. FAIRCLOTH:

S. 1315. A bill to establish an Office of National Security within the Securities and Exchange Commission, provide for the monitoring of the extent of foreign involvement in United States securities markets, financial institutions, and pension funds, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE TOBACCO TRANSITION ACT

Mr. LUGAR. Mr. President, I rise today to introduce legislation to reform the federal tobacco quota and price support programs. This legislation would provide economic assistance to tobacco quota owners, tobacco producers, and tobacco-dependent communities as they make the transition to the free market.

Nearly every American is aware of the global tobacco settlement between 40 States' attorneys general and cigarette companies. Tobacco farmers and their communities were conspicuously omitted from these negotiations. Yet the settlement offers Congress a unique opportunity to provide economic as-

sistance to tobacco farmers while ending the federal government's support for tobacco production.

My legislation would buy out tobacco marketing quotas, provide transition payments to tobacco producers, phase out the price support program, and provide economic assistance to tobacco-dependent communities. The cost of these reforms would be approximately \$15 billion and would be paid for with funds from the tobacco settlement. Because farmers were not considered in the negotiations that led to this settlement, this amount would be added to the current \$368.5 billion.

Under my legislation, the tobacco quota program would end in 1999 and, beginning that year, the price support program would be phased out over three years. In 1999, price supports would decline by 25 percent, then by an additional 10 percent in each of 2000 and 2001, and would end thereafter.

Quota owners would receive \$8 for every pound of quota they own. They could elect to receive either first, a lumpsum payment in 1999 if they agree to cease tobacco production altogether, or second, three equal annual payments beginning in 1999 if they choose to continue to produce tobacco.

Tobacco producers would receive transition payments of 40 cents per pound over 3 consecutive years for tobacco quota that they lease or rent on a cash-rent or crop-share basis. Transition payments would be based on the average of at least 3 years of production over the 1993-97 period. Producers who both own and lease quota would receive transition payments based on their leased quota and a buyout based on the quota they own.

Under this legislation, producers would be able to grow whatever amounts of tobacco they choose—free of Government control. Most other farm programs went through a similar change just last year when Congress passed the freedom-to farm legislation. The global tobacco settlement would provide the funds to assist tobacco farmers as they join other farmers in the free market.

Communities that are economically dependent on tobacco production would receive \$300 million in economic assistance. Eligible States would receive block grants to facilitate the development of alternative crops, industries, and infrastructure. Recipient States would then determine the areas most in need of assistance.

Mr. President, with or without a settlement, the forces to reform the tobacco program have been converging for some time now and they can no longer be ignored. High-domestic price supports have hurt the competitiveness of U.S.-grown tobacco. Exports of tobacco have fallen, while imports have grown. Congress has already ended Government control over nearly every other farm commodity. And, most importantly, Congress cannot ask Americans to accept Federal support for tobacco production when we are consid-

ering legislation to settle claims that stem directly from tobacco use.

Clearly, the tobacco program may not be sustainable for much longer. With that reality facing all tobacco producers, we should not pass up this opportunity to provide economic assistance to farmers and their communities.

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

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

S. 1315

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 "Tobacco Transition Act".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

Sec. 3. Definitions.

TITLE I—TOBACCO PRODUCTION TRANSITION

Subtitle A—Tobacco Transition Contracts

Sec. 101. Tobacco Transition Account.

Sec. 102. Offer and terms of tobacco transition contracts.

Sec. 103. Elements of contracts.

Sec. 104. Buyout payments to owners.

Sec. 105. Transition payments to producers.

Subtitle B—Rural Economic Assistance Block Grants

Sec. 111. Rural economic assistance block grants.

TITLE II—TOBACCO PRICE SUPPORT AND PRODUCTION ADJUSTMENT PROGRAMS

Subtitle A—Tobacco Price Support Program

Sec. 201. Interim reform of tobacco price support program.

Sec. 202. Termination of tobacco price support program.

Subtitle B—Tobacco Production Adjustment Programs

Sec. 211. Termination of tobacco production adjustment programs.

TITLE III—FUNDING

Sec. 301. Trust Fund.

Sec. 302. Commodity Credit Corporation.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to authorize the use of binding contracts between the United States and tobacco quota owners and tobacco producers to compensate them for the termination of Federal programs that support the production of tobacco in the United States;

(2) to make available to States funds for economic assistance initiatives in counties of States that are dependent on the production of tobacco; and

(3) to terminate Federal programs that support the production of tobacco in the United States.

SEC. 3. DEFINITIONS.

In this Act:

(1) ASSOCIATION.—The term "association" means a producer-owned cooperative marketing association that has entered into a loan agreement with the Commodity Credit Corporation to make price support available to producers.

(2) BUYOUT PAYMENT.—The term "buyout payment" means a payment made to a quota owner under section 104 in 1 or more installments in accordance with section 102(c)(1).

(3) **CONTRACT.**—The term “contract” or “tobacco transition contract” means a contract entered into under section 102.

(4) **GOVERNOR.**—The term “Governor” means the chief executive officer of a State.

(5) **LEASE.**—The term “lease” means a rental of quota on either a cash rent or crop share basis.

(6) **MARKETING YEAR.**—The term “marketing year” means—

(A) in the case of Flue-cured tobacco, the period beginning July 1 and ending the following June 30; and

(B) in the case of each other kind of tobacco, the period beginning October 1 and ending the following September 30.

(7) **OWNER.**—The term “owner” means a person who, at the time of entering into a tobacco transition contract, owns quota provided by the Secretary.

(8) **PHASEOUT PERIOD.**—The term “phaseout period” means the 3-year period consisting of the 1999 through 2001 marketing years.

(9) **PRICE SUPPORT.**—The term “price support” means a nonrecourse loan provided by the Commodity Credit Corporation through an association for the kind of tobacco involved.

(10) **PRODUCER.**—The term “producer” means a person who during at least 3 of the 1993 through 1997 crops of tobacco (as determined by the Secretary) that were subject to quota—

(A) leased quota;

(B) shared in the risk of producing a crop of tobacco; and

(C) marketed the tobacco subject to quota.

(11) **QUOTA.**—The term “quota” means the quantity of tobacco produced in the United States, and marketed during a marketing year, that will be used in, or exported from, the United States during the marketing year (including an adjustment for stocks), as estimated by the Secretary.

(12) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

(13) **STATE.**—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(14) **TOBACCO.**—The term “tobacco” means any kind of tobacco for which a marketing quota is in effect or for which a marketing quota is not disapproved by producers.

(15) **TOBACCO TRANSITION ACCOUNT.**—The term “Tobacco Transition Account” means the Tobacco Transition Account established by section 101(a).

(16) **TRANSITION PAYMENT.**—The term “transition payment” means a payment made to a producer under section 105 for each of the 1999 through 2001 marketing years.

(17) **TRUST FUND.**—The term “Trust Fund” means the National Tobacco Settlement Trust Fund established in the Treasury of the United States consisting of amounts that are appropriated or credited to the Trust Fund from the tobacco settlement approved by Congress.

(18) **UNITED STATES.**—The term “United States”, when used in a geographical sense, means all of the States.

TITLE I—TOBACCO PRODUCTION TRANSITION

Subtitle A—Tobacco Transition Contracts

SEC. 101. TOBACCO TRANSITION ACCOUNT.

(a) **ESTABLISHMENT.**—There is established in the Trust Fund a Tobacco Transition Account.

(b) **USE.**—Funds appropriated or credited to the Tobacco Transition Account shall be available for providing buyout payments and transition payments authorized under this subtitle.

(c) **TERMINATION.**—The Tobacco Transition Account terminates effective September 30, 2001.

SEC. 102. OFFER AND TERMS OF TOBACCO TRANSITION CONTRACTS.

(a) **OFFER.**—The Secretary shall offer to enter into a tobacco transition contract with each owner and producer of tobacco.

(b) **TERMS.**—Under the terms of a contract, the owner or producer shall agree, in exchange for a payment made pursuant to section 104 or 105, as applicable, to relinquish the value of quota that is owned or leased.

(c) **RIGHTS OF OWNERS AND PRODUCERS.**—

(1) **OWNERS.**—An owner shall elect to receive a buyout payment in—

(A) 1 installment for the kind of tobacco involved, in exchange for permanently foregoing production of tobacco; or

(B) 3 equal installments, 1 installment for each of the 1999 through 2001 crops of tobacco, in which case the owner shall have the right to continue production of each of those crops.

(2) **PRODUCERS.**—In the case of each of the 1999 through 2001 crops for the kind of tobacco involved, a producer who is not an owner during the 1998 marketing year for the kind of tobacco involved shall not be subject to any restrictions on the quantity of tobacco produced or marketed.

SEC. 103. ELEMENTS OF CONTRACTS.

(a) **DEADLINES FOR CONTRACTING.**—

(1) **COMMENCEMENT.**—To the maximum extent practicable, the Secretary shall commence entering into contracts under this subtitle not later than 90 days after the date of enactment of this Act.

(2) **DEADLINE.**—The Secretary may not enter into a contract under this subtitle after June 31, 1999.

(b) **DURATION OF CONTRACT.**—

(1) **BEGINNING DATE.**—The term of a contract shall begin on the date that is the beginning of the 1999 marketing year for the kind of tobacco involved.

(2) **TERMINATION DATE.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term of a contract shall terminate on the date that is the end of the 2001 marketing year for the kind of tobacco involved.

(B) **EXCEPTION.**—In the case of an owner who enters into a contract and elects to receive a buyout payment in 1 installment under section 102(c)(1)(A), the contract shall be permanent.

(c) **TIME FOR PAYMENT.**—

(1) **IN GENERAL.**—A buyout payment or transition payment shall be made not later than the date that is the beginning of the marketing year for the kind of tobacco involved for each year of the term of a tobacco transition contract of an owner or producer of tobacco.

(2) **APPLICABILITY.**—This subsection shall be applicable to all payments covered by section 102(c).

SEC. 104. BUYOUT PAYMENTS TO OWNERS.

(a) **IN GENERAL.**—During the phaseout period, the Secretary shall make buyout payments to owners in accordance with section 102(c)(1).

(b) **COMPENSATION FOR LOST VALUE.**—The payment shall constitute compensation for the lost value to the owner of the quota.

(c) **PAYMENT CALCULATION.**—Under this section, the total amount of the buyout payment made to an owner shall be determined by multiplying—

(1) \$8.00; by

(2) the average annual quantity of quota owned by the owner during the 1995 through 1997 crop years.

SEC. 105. TRANSITION PAYMENTS TO PRODUCERS.

(a) **IN GENERAL.**—The Secretary shall make transition payments during each of the 1999

through 2001 marketing years for a kind of tobacco that was subject to a quota to a producer who—

(1) produced the kind of tobacco during at least 3 of the 1993 through 1997 crop years; and

(2) entered into a tobacco transition contract.

(b) **TRANSITION PAYMENTS LIMITED TO LEASED QUOTA.**—A producer shall be eligible for transition payments only for the portion of the production of the producer that is subject to quota that is leased during the 3 crop years described in subsection (a)(1).

(c) **COMPENSATION FOR LOST REVENUE.**—The payments shall constitute compensation for the lost revenue incurred by a tobacco producer during each of the 1999 through 2001 marketing years for the kind of tobacco involved.

(d) **ELECTION BY PRODUCER; PRODUCTION.**—

(1) **ELECTION.**—The producer may elect which 3 of the 1993 through 1997 crop years shall be used for the calculation under subsection (e).

(2) **PRODUCTION.**—The producer shall have the burden of demonstrating to the Secretary the production of tobacco for each year of the election.

(e) **PAYMENT CALCULATION.**—Under this section, each of the 3 transition payments made to a producer for the kind of tobacco involved shall be determined by multiplying—

(1) 40 cents; by

(2) the average quantity of the kind of tobacco produced by the producer during the 3 crop years elected by the producer under subsection (d).

Subtitle B—Rural Economic Assistance Block Grants

SEC. 111. RURAL ECONOMIC ASSISTANCE BLOCK GRANTS.

(a) **IN GENERAL.**—For each of fiscal years 1999 through 2001, the Secretary shall use funds in the Tobacco Transition Account to provide block grants to tobacco-growing States to assist areas of such a State that are economically dependent on the production of tobacco.

(b) **FUNDING.**—To carry out this section, there shall be credited to the Tobacco Transition Account, from the Trust Fund, \$100,000,000 for each of fiscal years 1999 through 2001.

(c) **PAYMENTS BY SECRETARY TO TOBACCO-GROWING STATES.**—

(1) **IN GENERAL.**—The Secretary shall use the amount available for a fiscal year under subsection (b) to make block grant payments to the Governors of tobacco-growing States.

(2) **AMOUNT.**—The amount of a block grant paid to a tobacco-growing State shall be based on—

(A) the number of counties in the State in which tobacco production is a significant part of the county's economy; and

(B) the level of economic dependence of the county on tobacco production.

(d) **GRANTS BY STATES TO ASSIST TOBACCO-GROWING AREAS.**—

(1) **IN GENERAL.**—A Governor of a tobacco-growing State shall use the amount of the block grant to the State under subsection (c) to make grants to counties or other public or private entities in the State to assist areas that are dependent on the production of tobacco, as determined by the Governor.

(2) **AMOUNT.**—The amount of a grant paid to a county or other entity to assist an area shall be based on (as determined by the Secretary)—

(A) the ratio of gross tobacco sales receipts in the area to the total farm income in the area; and

(B) the ratio of all tobacco related receipts in the area to the total income in the area.

(3) USE OF GRANTS.—A county or other entity that receives a grant under this subsection shall use the grant in a manner determined appropriate by the county or entity (with the approval of the State) to assist producers and other persons who are economically dependent on the production of tobacco, including use for—

(A) on-farm diversification and alternatives to the production of tobacco and risk management; and

(B) off-farm activities such as development of non-tobacco related jobs.

(e) TERMINATION OF AUTHORITY.—The authority provided by this section terminates October 1, 2001.

TITLE II—TOBACCO PRICE SUPPORT AND PRODUCTION ADJUSTMENT PROGRAMS
Subtitle A—Tobacco Price Support Program
SEC. 201. INTERIM REFORM OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PRICE SUPPORT RATES.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) IN GENERAL.—The price support rate for each kind of tobacco for which quotas have been approved shall be reduced by—

“(1) for the 1999 crop, 25 percent from the 1998 support rate for the kind of tobacco involved;

“(2) for the 2000 crop, 10 percent from the 1999 support rate for the kind of tobacco involved; and

“(3) for the 2001 crop, 10 percent from the 2000 support rate for the kind of tobacco involved.”;

(2) by striking subsections (b) and (f); and (3) by redesignating subsection (c), (d), and (g) as subsections (b), (c), and (d), respectively.

(b) BUDGET DEFICIT ASSESSMENT.—Section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) (as amended by subsection (a)(3)) is amended by striking subsection (d) and inserting the following:

“(d) TOBACCO TRANSITION PAYMENT.—Effective only for the 1998 crop of tobacco, the Secretary of the Treasury shall transfer from the Tobacco Transition Account of the National Tobacco Settlement Trust Fund an amount equal to the product obtained by multiplying—

“(1) the amount per pound equal to 2 percent of the national price support level for each kind of tobacco for which price support is made available under this Act; and

“(2) the total quantity of the kind of tobacco that is produced or purchased in, or imported into, the United States.”.

(c) NO NET COST TOBACCO FUND AND ACCOUNT.—

(1) NO NET COST TOBACCO FUND.—Section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445-1) is amended to read as follows:

“SEC. 106A. NO NET COST TOBACCO FUND.

“(a) DEFINITIONS.—In this section:

“(1) ASSOCIATION.—The term ‘association’ means a producer-owned cooperative marketing association that has entered into a loan agreement with the Corporation to make price support available to producers of a kind of tobacco.

“(2) CORPORATION.—The term ‘Corporation’ means the Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture through which the Secretary makes price support available to producers.

“(3) NET GAINS.—The term ‘net gains’ means the amount by which the total proceeds obtained from the sale by an association of a crop of quota tobacco pledged to the Corporation for a price support loan exceeds the principal amount of the price support loan made by the Corporation to the associa-

tion on the crop, plus interest, charges, and costs of administering the price support program.

“(4) NO NET COST TOBACCO FUND.—The term ‘No Net Cost Tobacco Fund’ means the capital account established within each association under this section.

“(5) PURCHASER.—The term ‘purchaser’ means any person who purchases in the United States, either directly or indirectly for the account of the person or another person, flue-cured or burley quota tobacco.

“(6) QUOTA TOBACCO.—The term ‘quota tobacco’ means any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.

“(7) TRUST FUND.—The term ‘Trust Fund’ means the National Tobacco Settlement Trust Fund established in the Treasury of the United States consisting of amounts that are appropriated or credited to the Trust Fund from the tobacco settlement approved by Congress.

“(b) PRICE SUPPORT PROGRAM; LOANS.—The Secretary—

“(1) may carry out the tobacco price support program through the Corporation; and

“(2) shall, except as otherwise provided by this section, continue to make price support available to producers through loans to associations that, under agreements with the Corporation, agree to make loan advances to producers.

“(c) ESTABLISHMENT OF FUND.—

“(1) IN GENERAL.—Each association shall establish within the association a No Net Cost Tobacco Fund.

“(2) AMOUNT.—There shall be transferred from the Trust Fund to each No Net Cost Tobacco Fund such amount as the Secretary determines will be adequate to reimburse the Corporation for any net losses that the Corporation may sustain under its loan agreements with the association, based on—

“(A) reasonable estimates of the amounts that the Corporation has lent or will lend to the association for price support for the 1982 and subsequent crops of quota tobacco, except that for the 1986 and subsequent crops of burley quota tobacco, the Secretary shall determine the amount of assessments without regard to any net losses that the Corporation may sustain under the loan agreements of the Corporation with the association for the 1983 crop of burley quota tobacco;

“(B) the cost of administering the tobacco price support program (as determined by the Secretary); and

“(C) the proceeds that will be realized from the sales of tobacco that are pledged to the Corporation by the association as security for loans.

“(d) ADMINISTRATION.—The Secretary shall—

“(1) require that the No Net Cost Tobacco Fund established by each association be kept and maintained separately from all other accounts of the association and be used exclusively, as prescribed by the Secretary, for the purpose of ensuring, insofar as practicable, that the Corporation, under its loan agreements with the association with respect to 1982 and subsequent crops of quota tobacco, will suffer no net losses (including recovery of the amount of loans extended to cover the overhead costs of the association), after any net gains are applied to net losses of the Corporation under paragraph (3), except that, notwithstanding any other provision of law, the association may, with the approval of the Secretary, use funds in the No Net Cost Tobacco Fund, including interest and other earnings, for—

“(A) the purposes of reducing the association’s outstanding indebtedness to the Corporation associated with 1982 and subsequent

crops of quota tobacco and making loan advances to producers as authorized; and

“(B) any other purposes that will be mutually beneficial to producers and purchasers and to the Corporation;

“(2) permit an association to invest the funds in the No Net Cost Tobacco Fund in such manner as the Secretary may approve, and require that the interest or other earnings on the investment shall become a part of the No Net Cost Tobacco Fund;

“(3) require that loan agreements between the Corporation and the association provide that the Corporation shall retain the net gains from each of the 1982 and subsequent crops of tobacco pledged by the association as security for price support loans, and that the net gains will be used for the purpose of—

“(A) offsetting any losses sustained by the Corporation under its loan agreements with the association for any of the 1982 and subsequent crops of tobacco; or

“(B) reducing the outstanding balance of any price support loan made by the Corporation to the association under the loan agreements for 1982 and subsequent crops of tobacco; and

“(4) effective for the 1986 and subsequent crops of quota tobacco, if the Secretary determines that the amount in the No Net Cost Tobacco Fund or the net gains referred to in paragraph (3) exceeds the total amount necessary for the purposes specified in this section, suspend the transfer of amounts from the Trust Fund to the No Net Cost Tobacco Fund under this section.

“(e) NONCOMPLIANCE.—

“(1) IN GENERAL.—If any association that has entered into a loan agreement with the Corporation with respect to any of the 1982 or subsequent crops of quota tobacco fails or refuses to comply with this section (including regulations promulgated under this section) or the terms of the agreement, the Secretary may terminate the agreement or provide that no additional loan funds may be made available under the agreement to the association.

“(2) PRICE SUPPORT.—If the Secretary takes action under paragraph (1), the Secretary shall make price support available to producers of the kind or kinds of tobacco, the price of which had been supported through loans to the association, through such other means as are authorized by this Act or the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.).

“(f) TERMINATION OF AGREEMENT OR ASSOCIATION.—If, under subsection (e), a loan agreement with an association is terminated, or if an association having a loan agreement with the Corporation is dissolved, merges with another association, or otherwise ceases to operate, the No Net Cost Tobacco Fund or the net gains referred to in subsection (d)(3) shall be applied or disposed of in such manner as the Secretary may approve or prescribe, except that the net gains shall, to the extent necessary, first be applied or used for the purposes specified in this section.

“(g) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this section.”.

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-2) is amended to read as follows:

“SEC. 106B. NO NET COST TOBACCO ACCOUNT.

“(a) DEFINITIONS.—In this section:

“(1) AREA.—The term ‘area’, when used in connection with an association, means the general geographical area in which farms of the producer-members of the association are located, as determined by the Secretary.

“(2) ASSOCIATION.—The term ‘association’ has the meaning given the term in section 106A(a)(1).

“(3) CORPORATION.—The term ‘Corporation’ has the meaning given the term in section 106A(a)(2).”

“(4) NET GAINS.—The term ‘net gains’ has the meaning given the term in section 106A(a)(3).”

“(5) NO NET COST TOBACCO ACCOUNT.—The term ‘No Net Cost Tobacco Account’ means an account established by and in the Corporation for an association under this section.”

“(6) PURCHASER.—The term ‘purchaser’ has the meaning given the term in section 106A(a)(5).”

“(7) TOBACCO.—The term ‘tobacco’ means any kind of tobacco (as defined in section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b))) for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.”

“(8) TRUST FUND.—The term ‘Trust Fund’ has the meaning given the term in section 106A(a)(7).”

“(b) PRICE SUPPORT PROGRAM; LOANS.—Notwithstanding section 106A, the Secretary shall, on the request of any association, and may, if the Secretary determines, after consultation with the association, that the accumulation of the No Net Cost Tobacco Fund for the association under section 106A is, and is likely to remain, inadequate to reimburse the Corporation for net losses that the Corporation sustains under its loan agreements with the association—

“(1) continue to make price support available to producers through the association in accordance with loan agreements entered into between the Corporation and the association; and

“(2) establish and maintain in accordance with this section a No Net Cost Tobacco Account for the association in lieu of the No Net Cost Tobacco Fund established within the association under section 106A.

“(c) ESTABLISHMENT OF ACCOUNT.—

“(1) IN GENERAL.—A No Net Cost Tobacco Account established for an association under subsection (b)(2) shall be established within the Corporation.

“(2) AMOUNT.—There shall be transferred from the Trust Fund to each No Net Cost Tobacco Account such amount as the Secretary determines will be adequate to reimburse the Corporation for any net losses that the Corporation may sustain under its loan agreements with the association, based on—

“(A) reasonable estimates of the amounts that the Corporation has lent or will lend to the association for price support for the 1982 and subsequent crops of quota tobacco, except that for the 1986 and subsequent crops of burley quota tobacco, the Secretary shall determine the amount of assessments without regard to any net losses that the Corporation may sustain under the loan agreements of the Corporation with the association for the 1983 crop of burley quota tobacco;

“(B) the cost of administering the tobacco price support program (as determined by the Secretary); and

“(C) the proceeds that will be realized from the sales of the kind of tobacco involved that are pledged to the Corporation by the association as security for loans.

“(3) ADMINISTRATION.—On the establishment of a No Net Cost Tobacco Account for an association, any amount in the No Net Cost Tobacco Fund established within the association under section 106A shall be applied or disposed of in such manner as the Secretary may approve or prescribe, except that the amount shall, to the extent necessary, first be applied or used for the purposes specified in that section.

“(d) USE.—Amounts deposited in a No Net Cost Tobacco Account established for an association shall be used by the Secretary for the purpose of ensuring, insofar as prac-

ticable, that the Corporation under its loan agreements with the association will suffer, with respect to the crop involved, no net losses (including recovery of the amount of loans extended to cover the overhead costs of the association), after any net gains are applied to net losses of the Corporation under subsection (g).

“(e) EXCESS AMOUNTS.—If the Secretary determines that the amount in the No Net Cost Tobacco Account or the net gains referred to in subsection (g) exceed the total amount necessary to carry out this section, the Secretary shall suspend the transfer of amounts from the Trust Fund to the No Net Cost Tobacco Account under this section.

“(f) TERMINATION OF AGREEMENT OR ASSOCIATION.—In the case of an association for which a No Net Cost Tobacco Account is established under subsection (b)(2), if a loan agreement between the Corporation and the association is terminated, if the association is dissolved or merges with another association that has entered into a loan agreement with the Corporation to make price support available to producers of the kind of tobacco involved, or if the No Net Cost Tobacco Account terminates by operation of law, amounts in the No Net Cost Tobacco Account and the net gains referred to in subsection (g) shall be applied to or disposed of in such manner as the Secretary may prescribe, except that the net gains shall, to the extent necessary, first be applied to or used for the purposes specified in this section.

“(g) NET GAINS.—The provisions of section 106A(d)(3) relating to net gains shall apply to any loan agreement between an association and the Corporation entered into on or after the establishment of a No Net Cost Tobacco Account for the association under subsection (b)(2).

“(h) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this section.”

(3) CONFORMING AMENDMENTS.—

(A) Section 314(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314(a)) is amended in the first sentence—

(i) by striking “(1)”; and

(ii) by striking “, or (2)” and all that follows through “106B(d)(1) of that Act”.

(B) Section 320B(c)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h(c)(1)) is amended by inserting after “1445-2)” the following: “(as in effect before the effective date of the amendments made by section 201(c) of the Tobacco Transition Act)”.

(d) ADMINISTRATIVE COSTS.—Section 1109 of the Agriculture and Food Act of 1981 (Public Law 97-98; 7 U.S.C. 1445 note) is repealed.

(e) CROPS.—This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

SEC. 202. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking “tobacco (except as otherwise provided herein), corn,” and inserting “corn”;

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking “, except tobacco,”; and

(B) by striking “and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers,”; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445-1, 1445-2) are repealed.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking “tobacco,”.

(d) REVIEW OF BURLEY TOBACCO IMPORTS.—Section 3 of Public Law 98-59 (7 U.S.C. 625) is repealed.

(e) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting “(other than tobacco)” after “agricultural commodities” each place it appears.

(f) TRANSITION PROVISIONS.—

(1) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date of this section.

(2) TOBACCO STOCKS AND LOANS.—The Secretary shall issue regulations that require—

(A) the orderly disposition of tobacco stocks; and

(B) the repayment of all tobacco price support loans by not later than 1 year after the effective date of this section.

(g) CROPS.—This section and the amendments made by this section shall apply with respect to the 2002 and subsequent crops of the kind of tobacco involved.

Subtitle B—Tobacco Production Adjustment Programs

SEC. 211. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking “tobacco,”.

(b) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking “tobacco,”;

(3) in paragraph (7), by striking the following:

“tobacco (flue-cured), July 1—June 30;

“tobacco (other than flue-cured), October 1—September 30;”;

(4) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(5) in paragraph (11)(B), by striking “and tobacco”;

(6) in paragraph (12), by striking “tobacco,”;

(7) in paragraph (14)—

(A) in subparagraph (A), by striking “(A)”; and

(B) by striking subparagraphs (B), (C), and (D);

(8) by striking paragraph (15);

(9) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B); and

(10) by redesignating paragraphs (16) and (17) as paragraphs (15) and (16), respectively.

(c) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking “rice, or tobacco,” and inserting “or rice,”.

(d) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(e) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking “tobacco,”.

(f) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking "peanuts, or tobacco" and inserting "or peanuts"; and

(2) in the first sentence of subsection (b), by striking "peanuts or tobacco" and inserting "or peanuts".

(g) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking "peanuts, or tobacco" each place it appears in subsections (a) and (b) and inserting "or peanuts"; and

(2) in subsection (a)—

(A) in the first sentence, by striking "all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,"; and

(B) in the last sentence, by striking "\$500;" and all that follows through the period at the end of the sentence and inserting "\$500.".

(h) REGULATIONS.—Section 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is amended by striking "peanuts, or tobacco" and inserting "or peanuts".

(i) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking "cotton, tobacco, and peanuts" and inserting "cotton and peanuts"; and

(2) by striking subsections (d), (e), and (f).

(j) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking "(a)"; and

(B) in paragraph (6), by striking " ", but this clause (6) shall not be applicable in the case of burley tobacco"; and

(2) by striking subsections (b) and (c).

(k) ACREAGE-POUNDRAGE QUOTAS.—Section 4 of the Act entitled "An Act to amend the Agricultural Adjustment Act of 1938, as amended, to provide for acreage-poudrage marketing quotas for tobacco, to amend the tobacco price support provisions of the Agricultural Act of 1949, as amended, and for other purposes", approved April 16, 1965 (Public Law 89-12; 7 U.S.C. 1314c note), is repealed.

(l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act entitled "An Act relating to burley tobacco farm acreage allotments under the Agricultural Adjustment Act of 1938, as amended", approved July 12, 1952 (7 U.S.C. 1315), is repealed.

(m) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(n) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c-1(a)(2)(B)) is amended by striking "tobacco and".

(o) TOBACCO FIELD MEASUREMENT.—Section 112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) is amended by striking subsection (c).

(p) LIABILITY.—The amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the effective date under subsection (q).

(q) CROPS.—This section and the amendments made by this section shall apply with respect to the 1999 and subsequent crops of the kind of tobacco involved.

TITLE III—FUNDING

SEC. 301. TRUST FUND.

(a) REQUEST.—The Secretary of Agriculture shall request the Secretary of the Treasury to transfer, from the Tobacco Transition Account in the Trust Fund, amounts authorized under sections 104, 105, and 111, and the amendments made by section 201, to the account of the Commodity Credit Corporation.

(b) TRANSFER.—On receipt of such a request, the Secretary of the Treasury shall transfer amounts requested under subsection (a).

(c) USE.—The Secretary of Agriculture shall use the amounts transferred under subsection (b) to carry out the activities described in subsection (a).

(d) TERMINATION OF AUTHORITY.—The authority provided under this section shall expire on September 30, 2001.

SEC. 302. COMMODITY CREDIT CORPORATION.

The Secretary may use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this Act and the amendments made by this Act.

By Mr. LAUTENBERG (for himself and Mr. BAUCUS):

S. 1317. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to expand the opportunity for health protection for citizens affected by hazardous waste sites; to the Committee on Environment and Public Works.

THE ENVIRONMENTAL HEALTH PROTECTION ACT

Mr. LAUTENBERG. Mr. President, all across America toxic time bombs lurk beneath the soil. Many of our families find their futures poisoned by a long-gone industrial past.

And sadly we've made our families—especially our children—the canaries in the coal mine. Only after they've been stricken, do we move on the danger.

We need to change our emphasis.

Mr. President, we should help local communities meet the health treats bubbling up from toxic waste sites. That is why I am today introducing the Environmental Health Protection Act—legislation to require the Agency for Toxic Substances and Disease Registry [ASTDR] to actively work with local community health and safety leaders both to design and train local health authorities to better manage a potential toxic hazard and to design site-specific remedies and monitoring systems.

Today, the ranking member of the Environmental and Public works Committee, Senator BAUCUS, is joining with me in introducing legislation to significantly boost the role that public health considerations play in Superfund decisions.

Mr. President, the potential health hazard posed from toxic waste dumps is great and growing.

According to a recent study of 136 Superfund toxic waste sites by the Agency for Toxic Substance and Disease Registry [ASTDR], more than half the sites they examined represent serious, ongoing public health hazards. ATSDR placed an additional 23 percent of toxic waste sites in an indeterminate hazard category because they potentially pose a long-term risk to human life.

Communities and community leaders must have the tools and resources to meet these potential disaster—just like we prepare communities to meet potential natural disasters.

ATSDR recently determined that 11 million Americans reside within 1 mile

of the 1,309 Superfund National Priority List [NPL] sites. These families are at particular risk from the hazardous substances wafting through the air they breath or oozing into water they drink.

The problems that communities face from toxic waste dumps are immense and complicated by the need for specialized knowledge, training and skills to address toxic waste problems. Dr. Barry Johnson of the ATSDR recently testified before the Superfund Subcommittee of the Senate Environment and Public Works Committee about the kinds of health problems communities face. He told the committee that:

ATSDR health investigations at hazardous waste sites across the country found that nearby residents were exposed to increased health risk from a wide variety of maladies including: birth defects; nerve damage; skin disorders; leukemia; cardiovascular abnormalities; respiratory problems, and immune disorders.

Two sets of studies in my home State of New Jersey—one carried out by the Environmental Protection Agency [EPA] and the other by the New Jersey School of Medicine and Dentistry—showed an increase in cancer cases in counties surrounding hazardous waste sites. The New Jersey Medicine study by Dr. G. Najem found that age-adjusted gastrointestinal cancer mortality rates were higher in 20 of New Jersey's 21 counties than national rates.

An ATSDR 1995 study of residents of Forest City and Glover, MO, who live near Superfund sites, showed an increase in reports of breathing disorders and decreased pulmonary function; especially among nonsmoking women.

Compilation of studies in California report the occurrence of an increased risk of birth defects in the children of women living near the State's 700 hazardous waste sites.

The results of another recent study funded by ATSDR and performed by the New Jersey Department of Health, are particularly disturbing and, understandably, have frightened many of my constituents in the town of Maywood, NJ. The study reviewed data gathered on 15,000 residents living near Superfund sites and found the incidence of brain cancers running at 50 percent above the expected level. In addition, the study found cancer clusters—areas with unusually high rates of certain forms of cancer—existing in Ocean County and distressing 50 percent increase in various kinds of childhood cancers.

In short, ATSDR research demonstrates how important it is to the health of Americans living near Superfund sites to clean up those sites as quickly as possible. And this is no small task.

Communities struggling to come to grips with the potential health hazards of a toxic waste dump are too often left to fend for themselves. No one agency is specifically charged with coordinating the various health-relief efforts these families need.

Currently, EPA uses a risk assessment process to write plans for dealing with the problems posed by toxic sites. As a result, the selection of containment as a remedy rather than removing the toxins from a site has grown to 30 percent of the EPA remedy decisions. If containment is to work for the communities surrounding Superfund and other toxic sites, we must increase health monitoring and provide other health care assistance, advice, and tools to those living with near these sites.

Congress established ATSDR specifically to address possible health problems arising from Superfund sites. Now is the time to use what we have learned and to actively involve local communities in their efforts to meet the health challenges posed by the hazardous waste sites. This bill requires ATSDR to do just that.

First, my bill both allows ATSDR to study any location where there is concern that hazardous wastes threatens public health and requires that ATSDR work closely with State and local health officials in making its assessment. Presently, Mr. President, State and local health and environmental officials are only required to be involved at sites listed on the Environmental Protection Agency's national list of priority sites—the National Priority List [NPL]. By mandating that ATSDR work with the State and local officials from the get-go at any potential site, we will be insuring the understanding, cooperation, and consultation necessary to effective environmental cleanup exists in a community.

Second, critics frequently complain that ATSDR's health assessments are completed too late in the process to be of any real use to the local officials struggling to manage the health impact of a hazardous waste site on a community. This bill changes the way EPA and the health authorities do their job. It requires EPA to notify local and State health officials early in the process that an investigation is commencing and to better coordinate its activities with local authorities so that EPA's proposed remedy better reflects local conditions and needs.

Third, this bill requires EPA to directly involve State and local health officials in decisions concerning analysis and sampling methods used at hazardous sites. State and local health officials are often the frontline experts. They have important first-hand information on how a toxic waste dump affects their community. Working with EPA, they can better determine and analyze possible health problems patterns in a community and whether that arises from a toxic waste dump. With this information, EPA can zero-in on those areas for additional sampling and further studies and design a site appropriate remedy that meets the special circumstances of the affected community.

Fourth—and this is critically important—better training and up-to-date

information are essential to helping communities deal with hazardous waste sites. This legislation will ensure that State and local health officials receive the training and technical information they need to diagnose and treat environmental health problems, and it will also empower local authorities to help EPA make appropriate, site-specific decisions about clean up remedies.

Fifth, this bill requires that when EPA selects to leave toxic wastes in place, then EPA must work with local health officials to design a site specific health monitoring program. This will be paid for by the parties responsible for the hazard, and those requirements will become an enforceable part of any clean up agreement. It will no longer be adequate for a polluter to simply build a fence around a toxic waste site and hope the toxins stay in and community residents stay out. EPA's remedy must now ensure that the health of the residents in the line of fire is protected first, foremost, and always. And, when EPA revisits a site to evaluate whether the clean up is working, EPA will now specifically have to consider the recommendations of local health officials on the effectiveness and appropriateness of the solution.

Since the Superfund amendments of 1986, the communities near hazardous waste sites have appealed to us to strengthen the public health requirements of the law. A major focus of our efforts in cleaning up toxic waste must be the health of our people. This bill will put community health and safety back at the top of the Superfund agenda. It will increase the information available to the public and cooperation between public health officials at all levels of government. It will result in health considerations being made a central part of any discussions of clean up strategies and effective long-term monitoring of toxic waste sites. This bill will ensure that the remedy chosen by EPA better protects the millions of Americans who live around our nation's hazardous waste sites.

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. 1317

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 "Environmental Health Protection Act of 1997".

SEC. 2. DEFINITIONS.

(a) GENERAL DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

“(39) ATSDR.—The term ‘ATSDR’ means the Agency for Toxic Substances and Disease Registry.”

(b) DEFINITIONS IN THE PUBLIC PARTICIPATION SECTION.—

(1) IN GENERAL.—Section 117 of the Comprehensive Environmental Response, Com-

pensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended—

(A) by redesignating subsections (a) through (e) as subsections (b) through (f), respectively; and

(B) by inserting after the section heading the following:

“(a) DEFINITIONS.—In this section:

“(1) AFFECTED COMMUNITY.—The term ‘affected community’ means a group of 2 or more individuals who may be affected by the release or threatened release of a hazardous substance, pollutant, or contaminant from a covered facility.

“(2) COVERED FACILITY.—The term ‘covered facility’ means a facility—

“(A) that has been listed or proposed for listing on the National Priorities List;

“(B) at which the Administrator is undertaking a removal action that it is anticipated will exceed—

“(i) in duration, 1 year; or

“(ii) in cost, the funding limit under section 104(i)(6)(B); or

“(C) with respect to which the Administrator of ATSDR has approved a petition requesting a health assessment or other related health activity under section 104(i)(6)(B).

“(3) WASTE SITE INFORMATION OFFICE.—The term ‘waste site information office’ means a waste site information office established under subsection (j).”

(2) CONFORMING AMENDMENTS.—

(A) Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is amended—

(i) in section 111(a)(5) (42 U.S.C. 9611), by striking “117(e)” and inserting “117(f)”;

(ii) in section 113(k)(2)(B) (42 U.S.C. 9613)—

(I) in clause (iii), by striking “117(a)(2)” and inserting “117(b)(2)”; and

(II) in the third sentence, by striking “117(d)” and inserting “117(e)”.

(B) Section 2705(e) of title 10, United States Code, is amended—

(i) by striking “117(e)” and inserting “117(f)”;

(ii) by striking “(42 U.S.C. 9617(e))” and inserting “(42 U.S.C. 9617(f))”.

SEC. 3. AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.

(a) NOTICE TO HEALTH AUTHORITIES.—Section 104(b) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(b)) is amended by adding at the end the following:

“(3) NOTICE TO HEALTH AUTHORITIES.—The President shall notify State, local, and tribal public health authorities whenever a release or a hazardous substance, pollutant, or contaminant has occurred, is occurring, or is about to occur, or there is a threat of such a release, and the release or threatened release is under investigation pursuant to this section.”

(b) AMENDMENTS RELATING TO ATSDR.—Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(i)) is amended—

(1) in paragraph (1)—

(A) in the second sentence, by striking “and appropriate State and local health officials” and inserting “the Indian Health Service, and appropriate State, tribal, and local health officials”;

(B) in subparagraphs (A) and (C), by inserting “and Indian tribes” after “States”; and

(C) by striking the last sentence and inserting the following flush sentence: “In a public health emergency, exposed persons shall be eligible for referral to licensed or accredited health care providers.”;

(2) in paragraph (3)—

(A) in the matter following subparagraph (C)—

(i) by striking the sentence beginning “The profiles required”;

(ii) in the sentence beginning "The profiles prepared", by inserting before the period at the end the following: "and of substances not on the list, but that have been detected at covered facilities (within the meaning of section 117) and are determined by the Administrator of ATSDR to pose a significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances at such facilities.";

(iii) in the sentence beginning "Profiles required under", by striking "but no less often" and all that follows through the period at the end and inserting "if the Administrator of ATSDR determines that there is significant new information.";

(iv) in the last sentence, by inserting "and Indian tribes" after "States"; and

(B) by inserting after subparagraph (C) the following:

"(D) Evaluations of the cumulative effects (including synergistic effects) of other chemicals.";

(3) in paragraph (4)—

(A) in the first sentence, by striking "State officials" and inserting "State, tribal,"; and

(B) in the second sentence, by inserting "or Indian tribes" after "States";

(4) in paragraph (5)(A)—

(A) in the first sentence, by inserting "and the Indian Health Service" after "Public Health Service";

(B) in the second sentence, by inserting after "program of research" the following: "conducted directly or by such means as cooperative agreements and grants with appropriate public and nonprofit institutions. The program shall be"; and

(C) in the last sentence—

(i) in clause (iii), by striking "and" at the end;

(ii) by redesignating clause (iv) as clause (vi); and

(iii) by inserting after clause (iii) the following:

"(iv) laboratory and other studies that can lead to the development of innovative techniques for predicting organ-specific, tissue-specific, and system-specific acute and chronic toxicity associated with a covered facility; and

"(v) laboratory and other studies to determine the health effects of substances commonly found in combination with other substances, and the short, intermediate, and long-term cumulative health effects (including from synergistic impacts).";

(5) in paragraph (6)—

(A) by striking "(6)(A) The Administrator" and all that follows through the end of subparagraph (A) and inserting the following:

"(6) HEALTH ASSESSMENTS AND RELATED HEALTH ACTIVITIES.—

"(A) REQUIREMENTS.—The Administrator of ATSDR shall perform a health assessment or related health activity (including, as appropriate, biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers or any other health activity authorized in this subsection) for each covered facility (as defined in section 117(a)).";

(B) in subparagraph (B)—

(i) in the first sentence, by inserting "or other health related activity" after "health assessments";

(ii) in the second sentence, by inserting "or other health related activity" after "health assessment"; and

(iii) in the third sentence—

(I) by inserting "or other health related activity" after "health assessment" the first place it appears; and

(II) by striking "a health assessment" the second place it appears and inserting "the requested activity";

(C) in subparagraph (C)—

(i) in the first sentence—

(I) by inserting "or other health related activity" after "health assessments"; and

(II) by striking "existing health assessment data" and inserting "data from existing health assessments or related activity"; and

(ii) in the second sentence, by inserting "or other health related activity" after "health assessments";

(D) in subparagraph (D), by adding at the end the following: "The President and the Administrator of ATSDR shall obtain and exchange facility characterization data and other information necessary to make a public health determination sufficiently before the completion of a remedial investigation and feasibility study to allow full consideration of the public health implications of a release, but in no circumstance shall the President delay the progress of a remedial action pending completion of a health assessment or other health related activity. When appropriate, the Administrator of ATSDR shall, in cooperation with State and local health officials, provide to the President recommendations for sampling environmental media. To the extent practicable, the President shall incorporate the recommendations into facility characterization activities.";

(E) in the first sentence of subparagraph (E), by striking "or political subdivision carrying out a health assessment" and inserting "Indian tribe, or political subdivision of a State carrying out a health assessment or related health activity";

(F) in subparagraph (F)—

(i) by striking "(F) For the purpose of health assessments" and inserting the following:

"(F) DEFINITION OF HEALTH ASSESSMENTS.—(i) IN GENERAL.—For the purpose of health assessments or related activity";

(ii) in the first sentence—

(I) by inserting "(including children and other highly susceptible or highly exposed populations)" after "human health";

(II) by striking "existence of potential" and inserting "past, present, or future potential";

(III) by striking "and the comparison" and inserting "the comparison"; and

(IV) by striking the period at the end and inserting "and the cumulative effects (including synergistic effects) of chemicals."; and

(iii) by striking the second sentence and inserting the following:

"(ii) PROVISION OF DATA.—The Administrator shall consider information provided by State, Indian tribe, and local health officials and the affected community (including a community advisory group, if 1 has been established under subsection (g)) as is necessary to perform a health assessment or other related health activity.";

(G) in the last sentence of subparagraph (G)—

(i) by striking "In using" and all that follows through "to be taken" and inserting "In performing health assessments"; and

(ii) by inserting before the period at the end the following: "and shall give special consideration, where appropriate, to any practices of the affected community that may result in increased exposure to hazardous substances, pollutants, or contaminants, such as subsistence hunting, fishing, and gathering"; and

(H) in subparagraph (H)—

(i) in the first sentence—

(I) by inserting "or other health related activity" after "health assessment"; and

(II) by striking "each affected State" and inserting "appropriate State, Indian tribe, and local health officials and community ad-

visory groups and waste site information of offices; and

(ii) in the second sentence, by inserting "or other health related activity" after "health assessment";

(7) in paragraph (7)—

(A) by striking "pilot" each place it appears;

(B) by inserting "or other related health activity" after "health assessment" each place it appears; and

(C) in subparagraph (A), by inserting "covered facilities" after the "individuals";

(8) in paragraph (10)—

(A) by striking "two years" and all that follows through "thereafter" and inserting "Every 2 years";

(B) by striking "and" at the end of subparagraph (D);

(C) in subparagraph (E), by striking the period at the end and inserting "and"; and

(D) by adding at the end the following:

"(F) the health impacts on Indian tribes of hazardous substances, pollutants, and contaminants from covered facilities.";

(9) in paragraph (14)—

(A) by striking "distribute to the States, and upon request to medical colleges, physicians, and" and inserting the following: "distribute—

"(A) to the States and local health officials, and upon request to medical colleges, medical centers, physicians, nursing institutions, nurses, and";

(B) by striking "methods of diagnosis and treatment" and inserting "methods of prevention, diagnosis, and treatment";

(C) by striking the period at the end and inserting "and"; and

(D) by adding at the end the following:

"(B) to the community potentially affected by a facility appropriate educational materials, facility-specific information, and other information on human health effects of hazardous substances using available community information networks, including, if appropriate, a community advisory group or a waste site information office established under section 117.";

(10) in the last sentence of paragraph (15), by striking "through cooperative" and all that follows through "which the Administrator" and inserting the following: "through grants to, or cooperative agreements or contracts with, States (or political subdivisions of States) or other appropriate public authorities or private nonprofit entities, public or private institutions, colleges or universities (including historically black colleges and universities), or professional associations that the Administrator"; and

(11) by adding at the end the following:

"(19) COMMUNITY HEALTH PROGRAMS.—When appropriate, using existing health clinics and health care delivery systems, the Administrator of ATSDR shall facilitate the provision of environmental health services (including testing, diagnosis, counseling, and community health education) in communities that—

"(A) may have been, or may be, subject to exposure to a hazardous substance, pollutant, or contaminant from a covered facility; and

"(B) have a medically underserved population (as defined in section 330(b) of the Public Health Service Act (42 U.S.C. 254b(b))) or lack sufficient expertise in environmental health.

"(20) PUBLIC HEALTH EDUCATION.—

"(A) IN GENERAL.—If the Administrator of ATSDR considers it appropriate, the Administrator of ATSDR, in cooperation with State, Indian tribe, and other interested Federal and local officials, shall conduct health education activities to make a community near a covered facility aware of the steps the community may take to mitigate or prevent

exposure to hazardous substances and the health effects of hazardous substances.

“(B) ENVIRONMENTAL MEDICAL EXPERTS.—The health education activities may include providing access and referrals to environmental health experts.

“(C) DISSEMINATION.—In disseminating public health information under this paragraph relating to a covered facility, the Administrator of ATSDR shall use community health centers, area health education centers, or other community information networks, including a community advisory group, a technical assistance grant recipient, or a waste site information office established under section 117.”

(b) PUBLIC HEALTH RECOMMENDATIONS IN REMEDIAL ACTIONS.—Section 121(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(c)) is amended in the first sentence by inserting after “such remedial action” the second place it appears the following: “, including public health recommendations and decisions resulting from activities under section 104(i).”

(c) STUDY OF MULTIPLE SOURCES OF RISK.—

(1) IN GENERAL.—The Administrator of the Agency for Toxic Substances and Disease Registry (referred to in this subsection as “ATSDR”), in consultation with the Administrator of the Environmental Protection Agency, shall conduct a study relating to the identification, assessment, and management of, and response to, multiple sources of exposure affecting or potentially affecting a community.

(2) COMPONENTS.—In conducting the study, the Administrator of ATSDR may—

(A) examine various approaches to protect communities affected or potentially affected by multiple sources of exposure to hazardous substances; and

(B) include recommendations that the President may consider in developing an implementation plan to address the effects or potential effects of exposure at covered facilities (as defined in Section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617(a))).

By Mr. ABRAHAM (for himself and Ms. LANDRIEU):

S. 1318. A bill to establish an adoption awareness program, and for other purposes; to the Committee on Labor and Human Resources.

THE ADOPTION PROMOTION AWARENESS ACT

Mr. ABRAHAM. Mr. President, I rise to urge my colleagues' support for the Adoption Promotion Awareness Act. This legislation will provide the means necessary to keep women fully informed concerning all their options regarding any unexpected pregnancy.

Mr. President, each year more than a million couples eagerly await the opportunity to adopt a child. Unfortunately, only 50,000 domestic, non-related adoptions occur each year. That means that only 5 percent of American couples willing and able to open their hearts and homes to a child who needs them are able to do so.

As a result, Mr. President, would-be parents often must wait several years for the opportunity to adopt a healthy child. For the anxious parents, the waiting seems to last an eternity. And their waiting is made even more tragic by the fact that only 4 percent of women in America choose adoption as an option for an unplanned pregnancy.

We have hundreds of thousands of empty homes, waiting to welcome children who are never born.

There are many reasons for the sharp disparity between the relatively limited number of children available for adoption and the growing number of families anxiously waiting to adopt a child. Crucial is the fact that many women are not provided adequate information about adoption when they are making the crucial decision of how to deal with an unexpected pregnancy. Too few women are fully informed concerning the adoption option. If we could get the news out to these women that couples are waiting with open arms to welcome their children into a loving home, more would choose to have their babies and release them for adoption.

This is not mere speculation, Mr. President, it is supported by the facts. Michigan's private adoption agencies, for instance, report that 21 percent of the women seen for services decide to release their children for adoption. Studies have shown that women are more likely to choose adoption when clear, positive information is provided concerning that option.

We know that providing information to women on adoption as a choice can increase the number of adoptions that occur each year and decrease the number of abortions. I believe that this is an important goal. For this reason, I have introduced, along with my colleague, Senator LANDRIEU, legislation that authorizes an Adoption Awareness Promotion Program. This program will provide \$25 million in grants to be used for adoption promotion activity. It will also require recipients to contribute \$25 million of in-kind donations. The total amount going to adoption promotion will, therefore, be \$50 million. This amount will allow for a thorough information campaign to take place—reaching women all over the country.

The legislation provides for grants to be used for public service announcements on prints, radio, TV, and billboards. Grants will also be provided for the development and distribution of brochures regarding adoption through federally funded title X clinics. These provisions will enable women to have accurate and clear information on adoption as an alternative when at a crucial point in their pregnancies. Further, the campaign will help to raise the level of awareness around the country about the importance of adoption.

Mr. President, I believe that each and every one of us, whether pro-life or pro-choice, should be working to reduce the number of abortions that occur each year. Indeed, I have often heard on this floor that abortion should be “safe, legal and rare.” I take my colleagues at their word and urge them to join me in this voluntary information program; a program designed to inform women of all their choices regarding any unexpected pregnancy.

Too many women in America feel abandoned and helpless in the face of

an unexpected pregnancy. The father of the child may have left, the woman's family and friends even may desert her. Even those who stay with her may simply pressure her to end an embarrassing and troublesome situation.

Too often, then, our women, in a vulnerable state, are left without full, unbiased information and guidance concerning their options. I think it is crucial in these circumstances that we keep these women fully informed of all their options—including the option of releasing their child into the arms of a welcoming couple, anxious to become loving parents.

If we truly are committed to making every child a wanted child, Mr. President, I believe it is our duty to see to it that pregnant women know that there are couples out there who would love to care for their children. It is time for us, as a nation, to make clear our commitment to truly full information for expectant mothers, information that includes the availability of safe, loving homes for their children.

By Mr. ROCKEFELLER (for himself, Mr. DASCHLE, Mr. AKAKA, Mr. WELLSTONE, and Mrs. MURRAY):

S. 1320. A bill to provide a scientific basis for the Secretary of Veterans Affairs to assess the nature of the association between illnesses and exposure to toxic agents and environmental or other wartime hazards as a result of service in the Persian Gulf during the Persian Gulf War for purposes of determining a service connection relating to such illnesses, and for other purposes; to the Committee on Veterans' Affairs.

THE PERSIAN GULF VETERANS ACT OF 1997

Mr. ROCKEFELLER. Mr. President, I am proud to introduce today the Persian Gulf War Veterans Act of 1997, legislation which establishes a clear framework for the compensation and health care needs of Persian Gulf war veterans. This bill implements the recommendation of the Presidential Advisory Committee on Gulf War Veterans' Illnesses to create a permanent statutory authority for the compensation of ill gulf war veterans. It builds upon the system of scientific review and determinations for presumptive compensation that currently exists for veterans exposed to agent orange during the Vietnam war.

As ranking member of the Committee on Veterans' Affairs, I have witnessed firsthand the struggles of many of our Nation's gulf war veterans. The Persian Gulf war will undoubtedly go down in history as one of our country's most decisive military victories. Despite our fears of potentially huge troop injuries and losses, the careful planning and strategy of our military leaders paid off. The ground war lasted only four days, and the casualties we experienced, while deeply regrettable, were fortunately few. But as with any war, the human costs of the gulf war have been high, and the casualties have continued long after the battle was over.

Many of the men and women who served in the gulf have suffered chronic, debilitating health problems. Unnecessarily compounding their pain has been their difficulty in getting the government they served to acknowledge their problems and provide the appropriate care and benefits they deserve. This legislation will go a long way to address some of these concerns. We can't wait the 20 years we waited after the Vietnam war to assess the effects of agent orange, or the 40 years we waited after World War II to concede the problems of radiation-exposed veterans. We must learn from the lessons of the past and act now. We have already waited too long.

For the past 6 years, we have looked to the leaders of the Department of Defense and the Department of Veterans Affairs for a resolution of these difficult issues. While they have made some progress, I think we can all agree there is much more to be done. This legislation will require VA to enlist the National Academy of Sciences—an independent, nonprofit, scientific organization—to review and evaluate the research regarding links between illnesses and exposure to toxic agents and wartime hazards. Based on the findings of the NAS, VA will then determine whether a diagnosed or undiagnosed illness found to be associated with gulf war service warrants a presumption of service connection for compensation purposes. This will provide an ongoing scientific basis and nonpolitical framework for the VA to use in compensating Persian Gulf war veterans.

SUMMARY OF PROVISIONS

Mr. President, I will now highlight some of the provisions contained in this legislation.

First, this legislation calls for the Secretary of the Department of Veterans Affairs to contract with the National Academy of Sciences [NAS] to provide a scientific basis for determining the association between illnesses and exposures to environmental or wartime hazards as a result of service in the Persian Gulf. The NAS will review the scientific literature to assess health exposures during the gulf war and health problems among veterans, and report to Congress and the VA.

Second, this legislation authorizes VA to presume that diagnosed or undiagnosed illnesses that have a positive association with exposures to environmental or wartime hazards were incurred in or aggravated by service even if there was no evidence of the illness during service. Having that authority, VA will determine whether there is a sound medical and scientific basis to warrant a presumption of service connection for compensation for diagnosed or undiagnosed illnesses, based on NAS' report. Within 60 days of that determination, VA will publish proposed regulations to presumptively service connect these illnesses.

Third, this bill requires NAS to provide recommendations for additional

research that should be conducted to better understand the possible adverse health effects of exposures to toxic agents or environmental or wartime hazards associated with gulf war service. The VA, in conjunction with the Department of Defense (DOD) and the Department of Health and Human Services [HHS], will review and act upon the recommendations for additional research and future studies.

Fourth, this legislation tasks NAS with assessing potential treatment models for the chronic undiagnosed illnesses that have affected so many of our gulf war veterans. They will make recommendations for additional studies to determine the most appropriate and scientifically sound treatments. VA and DOD will review this information and submit a report to Congress describing whether they will implement these treatment models and their rationale for their decisions.

Fifth, this legislation calls for the establishment of a system to monitor the health status of Persian Gulf war veterans. VA, in collaboration with DOD, will develop a plan to establish and operate a computerized information data set to collect information on the illnesses and health problems of gulf war veterans. This data base will also track the treatment provided to veterans with chronic undiagnosed illnesses to determine whether these veterans are getting sicker or better over time. VA and DOD will submit this plan for review and comment by NAS. After this review, VA and DOD will implement the agreed-upon plan and provide annual reports to Congress on the health status of Persian Gulf war veterans.

Finally, this legislation requires that VA, in consultation with DOD and HHS, carry out an ongoing outreach program to provide information to gulf war veterans. This information will include health risks, if any, from exposures during service in the gulf war theater of operations, and any services or benefits that are available.

DISCUSSION

After the war, DOD and VA acknowledged that they couldn't define what health problems were affecting Persian Gulf war veterans. Nonetheless, we did not want to make these veterans wait for the science to catch up before we could provide health care and compensation for their service-related conditions.

That is why, back in 1993, we provided Persian Gulf war veterans with priority health care at VA facilities for conditions related to their exposure to environmental hazards. Congress went on to pass legislation in 1994 that confirmed that VA could provide compensation to Persian Gulf war veterans who suffered from chronic undiagnosed illnesses. Prior to this authority, VA asserted that it could not compensate veterans whose health problems could not be diagnosed.

However, some gulf war veterans are falling between the cracks and still cannot receive compensation under

current law. These veterans have been diagnosed with a condition several years after leaving service, such as chronic fatigue syndrome or migraines. Therefore, they are not eligible for compensation under VA's undiagnosed illness authority, nor are they eligible under the guidelines for diagnosed illnesses because the diagnosis was not made within the proscribed period following service. At the same time, these illnesses are due to unknown causes which could, someday, be tied to their gulf service. We cannot require veterans to wait for that day to arrive. This legislation will address this unfortunate catch-22 unwittingly created through previous legislation.

We will continue to retrace the steps and decisions that were made in deploying almost 697,000 men and women to the Persian Gulf in 1990. Hopefully, we will learn from the lessons of this war to prevent some of these same health problems in future deployments where our troops will again face the threat of an everchanging and increasingly toxic combat environment. But we also must address what our ill gulf war veterans need now. We need to provide a permanent statutory authority to compensate them. We need to be able to answer the questions of How many veterans are ill? and Are our ill veterans getting sicker over time?

Mr. President, this legislation targets these important issues. As Veterans' Day approaches, we prepare to honor those who offered to make the ultimate sacrifice for our country. Many of us will be called upon to make speeches in support of these brave men and women. I ask my colleagues in the Senate to join me now in supporting this legislation. Let us honor our gulf war veterans through our deeds—and not just our words—this Veterans' Day.

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. 1320

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 "Persian Gulf War Veterans Act of 1997".

SEC. 2. PRESUMPTION OF SERVICE CONNECTION FOR ILLNESSES ASSOCIATED WITH SERVICE IN THE PERSIAN GULF DURING THE PERSIAN GULF WAR.

(a) IN GENERAL.—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by adding at the end the following:

“§ 1118. Presumptions of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War

“(a)(1) For purposes of section 1110 of this title, and subject to section 1113 of this title, each illness (if any) described in paragraph (2) shall be considered to have been incurred in or aggravated by service referred to in that paragraph, notwithstanding that there is no record of evidence of such illness during the period of such service.

“(2) An illness referred to in paragraph (1) is any diagnosed or undiagnosed illness that—

“(A) the Secretary determines in regulations prescribed under this section to warrant a presumption of service connection by reason of having a positive association with exposure to a biological, chemical, or other toxic agent or environmental or wartime hazard known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War; and

“(B) becomes manifest within the period (if any) prescribed in such regulations in a veteran who served on active duty in that theater of operations during that war and by reason of such service was exposed to such agent or hazard.

“(3) For purposes of this subsection, a veteran who served on active duty in the Southwest Asia theater of operations during the Persian Gulf War and has an illness described in paragraph (2) shall be presumed to have been exposed by reason of such service to the agent or hazard associated with the illness in the regulations prescribed under this section unless there is conclusive evidence to establish that the veteran was not exposed to the agent or hazard by reason of such service.

“(b)(1)(A) Whenever the Secretary makes a determination described in subparagraph (B), the Secretary shall prescribe regulations providing that a presumption of service connection is warranted for the illness covered by that determination for purposes of this section.

“(B) A determination referred to in subparagraph (A) is a determination based on sound medical and scientific evidence that a positive association exists between—

“(i) the exposure of humans to a biological, chemical, or other toxic agent or environmental or wartime hazard known or presumed to be associated with service in the Southwest Asia theater of operations during the Persian Gulf War; and

“(ii) the occurrence of a diagnosed or undiagnosed illness in humans.

“(2)(A) In making determinations for purposes of paragraph (1), the Secretary shall take into account—

“(i) the reports submitted to the Secretary by the National Academy of Sciences under section 3 of the Persian Gulf War Veterans Act of 1997; and

“(ii) all other sound medical and scientific information and analyses available to the Secretary.

“(B) In evaluating any report, information, or analysis for purposes of making such determinations, the Secretary shall take into consideration whether the results are statistically significant, are capable of replication, and withstand peer review.

“(3) An association between the occurrence of an illness in humans and exposure to an agent or hazard shall be considered to be positive for purposes of this subsection if the credible evidence for the association is equal to or outweighs the credible evidence against the association.

“(c)(1)(A) Not later than 60 days after the date on which the Secretary receives a report from the National Academy of Sciences under section 3 of the Persian Gulf War Veterans Act of 1997, the Secretary shall determine whether or not a presumption of service connection is warranted for each illness (if any) covered by the report.

“(B) If the Secretary determines that a presumption of service connection is warranted, the Secretary shall, not later than 60 days after making the determination, issue proposed regulations setting forth the Secretary's determination.

“(C)(i) If the Secretary determines that a presumption of service connection is not warranted, the Secretary shall, not later than 60 days after making the determina-

tion, publish in the Federal Register a notice of the determination. The notice shall include an explanation of the scientific basis for the determination.

“(ii) If an illness already presumed to be service connected under this section is subject to a determination under clause (i), the Secretary shall, not later than 60 days after publication of the notice under that clause, issue proposed regulations removing the presumption of service connection for the illness.

“(2) Not later than 90 days after the date on which the Secretary issues any proposed regulations under paragraph (1), the Secretary shall issue final regulations. Such regulations shall be effective on the date of issuance.

“(d) Whenever the presumption of service connection for an illness under this section is removed under subsection (c)—

“(1) a veteran who was awarded compensation for the illness on the basis of the presumption before the effective date of the removal of the presumption shall continue to be entitled to receive compensation on that basis; and

“(2) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the illness on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.

“(e) Subsections (b) through (d) shall cease to be effective 10 years after the first day of the fiscal year in which the National Academy of Sciences submits to the Secretary the first report under section 3 of the Persian Gulf War Veterans Act of 1997.”

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1117 the following new item:

“1118. Presumptions of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War.”

(b) CONFORMING AMENDMENTS.—Section 1113 of title 38, United States Code, is amended—

(1) by striking out “or 1117” each place it appears and inserting in lieu thereof “1117, or 1118”; and

(2) in subsection (a), by striking out “or 1116” and inserting in lieu thereof “, 1116, or 1118”.

(c) COMPENSATION FOR UNDIAGNOSED GULF WAR ILLNESSES.—Section 1117 of title 38, United States Code, is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

“(c)(1) Whenever the Secretary determines as a result of a determination under section 1118(c) of this title that a presumption of service connection for an undiagnosed illness (or combination of undiagnosed illnesses) is no longer warranted under this section—

“(A) a veteran who was awarded compensation under this section for such illness (or combination of illnesses) on the basis of the presumption shall continue to be entitled to receive compensation under this section on that basis; and

“(B) a survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from the disease on the basis of the presumption before that date shall continue to be entitled to receive dependency and indemnity compensation on that basis.

“(2) This subsection shall cease to be effective 10 years after the first day of the fiscal year in which the National Academy of

Sciences submits to the Secretary the first report under section 3 of the Persian Gulf War Veterans Act of 1997.”

SEC. 3. AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES.

(a) PURPOSE.—The purpose of this section is to provide for the National Academy of Sciences, an independent nonprofit scientific organization with appropriate expertise, to review and evaluate the available scientific evidence regarding associations between illnesses and exposure to toxic agents or environmental or wartime hazards associated with Gulf War service.

(b) AGREEMENT.—The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences for the Academy to perform the services covered by this section and sections 4(a)(6) and 5(d). The Secretary shall seek to enter into the agreement not later than two months after the date of enactment of this Act.

(c) IDENTIFICATION OF AGENTS AND ILLNESSES.—(1) Under the agreement under subsection (b), the National Academy of Sciences shall—

(A) identify the biological, chemical, or other toxic agents or environmental or wartime hazards to which members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf War may have been exposed by reason of such service; and

(B) identify the illnesses (including diagnosed illnesses and undiagnosed illnesses) that are manifest in such members.

(2) In identifying illnesses under paragraph (1)(B), the Academy shall review and summarize the relevant scientific evidence regarding illnesses among the members described in paragraph (1)(B) and among other appropriate populations of individuals, including mortality, symptoms, and adverse reproductive health outcomes among such members and individuals.

(d) DETERMINATIONS OF ASSOCIATIONS BETWEEN AGENTS AND ILLNESSES.—(1) For each agent or hazard and illness identified under subsection (c), the National Academy of Sciences shall determine, to the extent that available scientific data permit meaningful determinations—

(A) whether a statistical association exists between exposure to the agent or hazard and the illness, taking into account the strength of the scientific evidence and the appropriateness of the scientific methodology used to detect the association;

(B) the increased risk of the illness among human populations exposed to the agent or hazard; and

(C) whether a plausible biological mechanism or other evidence of a causal relationship exists between exposure to the agent or hazard and the illness.

(2) The Academy shall include in its reports under subsection (h) a full discussion of the scientific evidence and reasoning that led to its conclusions under this subsection.

(e) REVIEW OF POTENTIAL TREATMENT MODELS FOR CERTAIN ILLNESSES.—Under the agreement under subsection (b), the National Academy of Sciences shall separately review, for each chronic undiagnosed illness identified under subsection (c)(1)(B) and for any chronic illness that the Academy determines to warrant the review, the available scientific data in order to identify empirically valid models of treatment for such illnesses which employ successful treatment modalities for populations with similar symptoms.

(f) RECOMMENDATIONS FOR ADDITIONAL SCIENTIFIC STUDIES.—(1) Under the agreement under subsection (b), the National Academy of Sciences shall make any recommendations that it considers appropriate for additional scientific studies (including studies relating to treatment models) to resolve

areas of continuing scientific uncertainty relating to the health consequences of exposure to toxic agents or environmental or wartime hazards associated with Gulf War service.

(2) In making recommendations for additional studies, the Academy shall consider the available scientific data, the value and relevance of the information that could result from such studies, and the cost and feasibility of carrying out such studies.

(g) **SUBSEQUENT REVIEWS.**—(1) Under the agreement under subsection (b), the National Academy of Sciences shall conduct on a periodic and ongoing basis additional reviews of the evidence and data relating to its activities under this section.

(2) As part of each review under this subsection, the Academy shall—

(A) conduct as comprehensive a review as is practicable of the evidence referred to in subsection (c) and the data referred to in subsections (d), (e), and (f) that became available since the last review of such evidence and data under this section; and

(B) make its determinations on the basis of the results of such review and all other reviews conducted for the purposes of this section.

(h) **REPORTS.**—(1) Under the agreement under subsection (b), the National Academy of Sciences shall submit to the committees and officials referred to in paragraph (4) periodic written reports regarding the Academy's activities under the agreement.

(2) The first report under paragraph (1) shall be transmitted not later than 18 months after the date of enactment of this Act. That report shall include—

(A) the determinations and discussion referred to in subsection (d);

(B) the results of the review of models of treatment under subsection (e); and

(C) any recommendations of the Academy under subsection (f).

(3)(A) Reports shall be submitted under this subsection at least once every two years, as measured from the date of the report under paragraph (2).

(B) In any report under this subsection (other than the report under paragraph (2)), the Academy may specify an absence of meaningful developments in the scientific or medical community with respect to the activities of the Academy under this section during the 2-year period preceding the date of such report.

(4) Reports under this subsection shall be submitted to the following:

(A) The designated congressional committees.

(B) The Secretary of Veterans Affairs.

(C) The Secretary of Defense.

(i) **SUNSET.**—This section shall cease to be effective 10 years after the last day of the fiscal year in which the National Academy of Sciences submits the first report under subsection (h).

(j) **ALTERNATIVE CONTRACT SCIENTIFIC ORGANIZATION.**—(1) If the Secretary is unable within the time period set forth in subsection (b) to enter into an agreement with the National Academy of Sciences for the purposes of this section on terms acceptable to the Secretary, the Secretary shall seek to enter into an agreement for the purposes of this section with another appropriate scientific organization that is not part of the Government and operates as a not-for-profit entity and that has expertise and objectivity comparable to that of the National Academy of Sciences.

(2) If the Secretary enters into such an agreement with another organization, any reference in this section and in section 1118 of title 38, United States Code (as added by section 2), to the National Academy of Sciences shall be treated as a reference to the other organization.

SEC. 4. MONITORING OF HEALTH STATUS AND TREATMENT OF PERSIAN GULF WAR VETERANS.

(a) **INFORMATION DATA BASE.**—(1) The Secretary of Veterans Affairs shall, in consultation with the Secretary of Defense, develop a plan for the establishment and operation of a single computerized information data base for the collection, storage, and analysis of information on—

(A) the diagnosed and undiagnosed illnesses suffered by current and former members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf War; and

(B) the treatment provided such members for—

(i) any chronic undiagnosed illnesses; and

(ii) any chronic illnesses for which the National Academy of Sciences has identified a valid model of treatment pursuant to its review under section 3(e).

(2) The plan shall provide for the commencement of the operation of the data base not later than 18 months after the date of enactment of this Act.

(3) The Secretary shall ensure in the plan that the data base provides the capability of monitoring and analyzing information on—

(A) the illnesses covered by paragraph (1)(A);

(B) the treatments covered by paragraph (1)(B); and

(C) the efficacy of such treatments.

(4) In order to meet the requirement under paragraph (3), the plan shall ensure that the data base includes the following:

(i) Information in the Persian Gulf War Veterans Health Registry established under section 702 of the Persian Gulf War Veterans' Health Status Act (title VII of Public Law 102-585; 38 U.S.C. 527 note).

(ii) Information in the Comprehensive Clinical Evaluation Program for Veterans established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 1074 note).

(iii) Information derived from other examinations and treatment provided veterans who served in the Southwest Asia theater of operations during the Persian Gulf War.

(iv) Information derived from other examinations and treatment provided current members of the Armed Forces (including members on active duty and members of the reserve components) who served in that theater of operations during that war.

(v) Such other information as the Secretary of Veterans Affairs and the Secretary of Defense consider appropriate.

(5) Not later than one year after the date of enactment of this Act, the Secretary shall submit the plan developed under paragraph (1) to the following:

(A) The designated congressional committees.

(B) The Secretary of Veterans Affairs.

(C) The Secretary of Defense.

(D) The National Academy of Sciences.

(6)(A) The agreement under section 3 shall require the evaluation of the plan developed under paragraph (1) by the National Academy of Sciences. The Academy shall complete the evaluation of the plan not later than 90 days after the date of its submittal to the Academy under paragraph (5).

(B) Upon completion of the evaluation, the Academy shall submit a report on the evaluation to the committees and individuals referred to in subparagraphs (A) through (D) of paragraph (5).

(7) Not later than 90 days after receipt of the report under paragraph (6), the Secretary shall—

(A) modify the plan in light of the evaluation of the Academy in the report; and

(B) commence implementation of the plan as so modified.

(b) **COMPILATION AND ANALYSIS OF INFORMATION IN DATABASE.**—(1) The Secretary of Veterans Affairs shall compile and analyze, on an ongoing basis, all clinical data in the data base under subsection (a) that is likely to be scientifically useful in determining the association, if any, between the illnesses (including diagnosed illnesses and undiagnosed illnesses) of veterans covered by such data and exposure to toxic agents or environmental or wartime hazards associated with Gulf War service.

(2) The Secretary of Defense shall compile and analyze, on an ongoing basis, all clinical data in the data base that is likely to be scientifically useful in determining the association, if any, between the illnesses (including diagnosed illnesses and undiagnosed illnesses) of current members of the Armed Forces (including members on active duty and members of the reserve components) and exposure to such agents or hazards.

(c) **ANNUAL REPORT.**—Not later than April 1 of each year after a year in which the Secretary of Veterans Affairs and the Secretary of Defense carry out activities under subsection (b), the Secretaries shall jointly submit to the designated congressional committees a report containing—

(1) with respect to the data compiled in accordance with subsection (b) during the preceding year—

(A) an analysis of the data;

(B) a discussion of the types, incidences, and prevalence of the disabilities and illnesses identified through such data;

(C) an explanation for the incidence and prevalence of such disabilities and illnesses;

(D) other reasonable explanations for the incidence and prevalence of such disabilities and illnesses; and

(E) an analysis of the scientific validity of drawing conclusions from the incidence and prevalence of such disabilities and illnesses, as evidenced by such data, about any association between such disabilities and illnesses, as the case may be, and exposure to a toxic agent or environmental or wartime hazard associated with Gulf War service; and

(2) with respect to the most current information received under section 3(h) regarding treatment models reviewed under section 3(e)—

(A) an analysis of the information;

(B) the results of any consultation between such Secretaries regarding the implementation of such treatment models in the health care systems of the Department of Veterans Affairs and the Department of Defense; and

(C) in the event either such Secretary determines not to implement such treatment models, an explanation for such determination.

SEC. 5. SCIENTIFIC RESEARCH FEASIBILITY STUDIES PROGRAM.

(a) **ESTABLISHMENT OF PROGRAM.**—The Secretary of Veterans Affairs, the Secretary of Defense, and the Secretary of Health and Human Services shall jointly carry out a program to provide for the conduct of studies of the feasibility of conducting additional scientific research on health hazards resulting from exposure to toxic agents or environmental or wartime hazards associated with Gulf War service.

(b) **PROGRAM REQUIREMENTS.**—(1) Under the program under subsection (a), the Secretaries shall, pursuant to criteria prescribed pursuant to paragraph (2), jointly award contracts or furnish financial assistance to non-Government entities for the conduct of studies referred to in subsection (a).

(2) The Secretaries shall jointly prescribe criteria for—

(A) the selection of entities to be awarded contracts or to receive financial assistance under the program; and

(B) the approval of studies to be conducted under such contracts or with such financial assistance.

(C) REPORT.—The Secretaries shall jointly report the results of studies conducted under the program to the designated congressional committees.

(D) CONSULTATION WITH NATIONAL ACADEMY OF SCIENCES.—(1) To the extent provided under the agreement entered into by the Secretary of Veterans Affairs and the National Academy of Sciences under section 3—

(A) the Secretary shall consult with the Academy regarding the establishment and administration of the program under subsection (a); and

(B) the Academy shall review the studies conducted under contracts awarded pursuant to the program and the studies conducted with financial assistance furnished pursuant to the program.

(2) The agreement shall require the Academy to submit any recommendations that the Academy considers appropriate regarding any studies reviewed for purposes of this subsection to the following:

(A) The designated congressional committees.

(B) The Secretary of Veterans Affairs.

(C) The Secretary of Defense.

(D) The Secretary of Health and Human Services.

SEC. 6. OUTREACH.

(a) OUTREACH BY SECRETARY OF VETERANS AFFAIRS.—The Secretary of Veterans Affairs shall, in consultation with the Secretary of Defense and the Secretary of Health and Human Services, carry out an ongoing program to provide veterans who served in the Southwest Asia theater of operations during the Persian Gulf War the information described in subsection (c).

(b) OUTREACH BY SECRETARY OF DEFENSE.—The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, carry out an ongoing program to provide current members of the Armed Forces (including members on active duty and members of the reserve components) who served in that theater of operations during that war the information described in subsection (c).

(c) COVERED INFORMATION.—Information under this subsection is information relating to—

(1) the health risks, if any, resulting from exposure to toxic agents or environmental or wartime hazards associated with Gulf War service; and

(2) any services or benefits available with respect to such health risks.

SEC. 7. DEFINITIONS.

In this Act:

(1) The term “toxic agent or environmental or wartime hazard associated with Gulf War service” means a biological, chemical, or other toxic agent or environmental or wartime hazard that is known or presumed to be associated with service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

(2) The term “designated congressional committees” means the following:

(A) The Committees on Veterans' Affairs and Armed Services of the Senate.

(B) The Committees on Veterans' Affairs and National Security of the House of Representatives.

Mr. DASCHLE. Mr. President, several years ago, I authored legislation that today allows Vietnam veterans to receive disability compensation for their exposure to Agent Orange and other toxic herbicides. This legislation, known as the Agent Orange Act of 1991,

called for the National Academy of Sciences to review scientific and medical information related to the health effects of exposure to Agent Orange. In addition, it provided permanent presumptions of service connection for soft-tissue sarcoma, non-Hodgkin's lymphoma, chloracne, and any additional diseases the Secretary of Veterans Affairs, based on the Academy review and other relevant information, may determine to be associated with such exposure.

For more than a decade, many in Congress and the Department of Veterans Affairs [VA] debated whether there was a connection between exposure to Agent Orange and other toxic herbicides and the illnesses suffered by Vietnam veterans. There were allegations of bureaucratic attempts to thwart scientific investigations of the issue and alter, bury, or delay Government reports that did exist. Ultimately, independent scientific evidence and a long-term effort to uncover Government information convinced Congress to pass the Agent Orange Act of 1991.

With the help and guidance of Senator ROCKEFELLER and many others who cosponsored this legislation in the House and Senate, Vietnam veterans exposed to Agent Orange and other herbicides are beginning to receive the treatment and compensation they deserve. And, with the passage of additional legislation last year, approximately 2,800 children of Vietnam veterans whose exposure to Agent Orange has been linked to their children's diagnosis of spina bifida, a congenital defect in the spine, are now eligible for health care and related services from the VA.

Although we have made great strides to determine the cause of illnesses suffered by Vietnam veterans and their children and agreed to provide them with just compensation, we have yet to do the same for those men and women who served in the Persian Gulf War. When the first reports of Gulf War illness emerged, several of us warned that we needed to be sure that we did not repeat the mistakes that were made with respect to Agent Orange. We needed to act quickly to ask all the appropriate questions and secure timely answers. Whatever our investigation might reveal, we needed to uncover the truth and act accordingly. Our Nation's veterans deserve no less.

Unfortunately, the effort to get to the truth has been undermined by actions painfully reminiscent of the Agent Orange experience. I am hopeful, though, that those actions are behind us and that we are now moving ahead with a single-minded commitment to the truth.

Countless studies have been conducted to determine whether there is a connection between a wide range of toxins as well as environmental and wartime hazards and the illnesses suffered by Persian Gulf War veterans and their families. Despite these efforts,

the actual causes of Persian Gulf War illnesses remain unknown, and many veterans and their families continue to suffer.

Mr. President, it is time for Congress, the VA, the Department of Defense [DOD] and the Department of Health and Human Services [HHS] to step up their efforts to find the causes of Persian Gulf War illnesses. More importantly, we must provide veterans and their families with proper medical care and compensation regardless of whether we know the particular causes of their illnesses.

That is why I am proud to join my friend and colleague from West Virginia, Senator ROCKEFELLER, in introducing the Persian Gulf War Veterans Act of 1991. As ranking member of the Senate Veterans' Affairs Committee, Senator ROCKEFELLER has been a tireless advocate for all veterans. His commitment and dedication to improving the lives of veterans and their families is well known, and he and his staff on the Veterans' Affairs Committee deserve to be commended for their work in drafting this important legislation.

Since the Persian Gulf War ended in 1991, many veterans have been suffering from a variety of symptoms, including extreme fatigue, joint and muscle pain, short-term memory loss, diarrhea, unexplained rashes, night sweats, headaches, and bleeding gums. Many believe that these illnesses may be caused by exposure to a wide range of toxins as well as environmental and wartime hazards. Among the potentially hazardous substances to which United States servicemembers may have been exposed are smoke from oil-well fires set by retreating Iraqi soldiers; pesticides and repellents; depleted uranium used in munitions; infectious diseases; petroleum products; and vaccines to protect against chemical warfare agents.

U.S. servicemembers may have also been exposed to chemical warfare agents. For 5 years, the Pentagon had steadfastly insisted that no United States soldiers had been exposed to chemical weapons in Iraq. In June of last year, however, the Pentagon revealed that chemical munitions had been unknowingly destroyed near an ammunition dump at Khamisiyah in southern Iraq and that 20,000 United States troops may have been exposed. In July of this year, the Pentagon changed its assessment again and announced that nearly 100,000 U.S. servicemembers may have actually been exposed to trace levels of poisonous sarin gas.

Much like the Agent Orange Act of 1991, the Persian Gulf War Veterans Act of 1997 calls for the Department of Veterans Affairs to contract with the National Academy of Sciences to evaluate the available scientific evidence regarding associations between illnesses suffered by Persian Gulf War veterans and their exposure to toxins or environmental or wartime hazards. Specifically, the Academy would identify the biological, chemical, or other

toxic agents or environmental or wartime hazards to which U.S. service members may have been exposed during the Persian Gulf war.

The National Academy of Sciences would be required to identify those diagnosed and undiagnosed illnesses among Persian Gulf war veterans. In addition, it would be responsible for reviewing potential treatment for chronic undiagnosed illnesses. As it did under the Agent Orange legislation, the Academy would also be authorized to make recommendations for additional scientific studies regarding the exposure that Persian Gulf war veterans may have had to toxic agents or environmental or wartime hazards.

Based upon the assessments of the National Academy of Sciences and any other relevant scientific and medical information, the Secretary of Veterans Affairs would then determine whether a presumption of service connection is warranted for various diagnosed or undiagnosed illnesses. The Secretary would provide compensation when there is a positive association between the illness and exposure to one or more toxic agents or environmental or wartime hazards during the Persian Gulf war. A positive association is regarded as one where credible evidence for the association is equal to or outweighs credible evidence against the association. Like the Agent Orange Act, this legislation provides for ongoing Academy reviews and puts a mechanism in place whereby the Secretary may provide compensation for additional illnesses as the scientific evidence warrants.

The bill Senator ROCKEFELLER and I are introducing today also requires the VA to collaborate with the Pentagon to operate a computerized database for the collection, storage, and analysis of information on the diagnosed and undiagnosed illnesses suffered by Persian Gulf war veterans. I should point out that the database would also include information on the treatment veterans receive for chronic undiagnosed illnesses. The VA would be required to continuously compile and analyze the information in this database that is likely to determine the association between the diagnosed and undiagnosed illnesses suffered by veterans and their exposure to toxic agents or environmental or wartime hazards during the Persian Gulf war.

In June, the General Accounting Office issued a report stating that, "although efforts have been made to diagnose veterans' problems and care had been provided to many eligible veterans, neither DOD nor VA has systematically attempted to determine whether ill Gulf War veterans are any better or worse today than when they were first examined." The database we are proposing would correct that deficiency. It would permit VA and DOD to determine whether Persian Gulf war veterans are getting better over time and whether they are responding to the treatment they are receiving.

The bill we are introducing today also calls for enhanced outreach to those who served in the Persian Gulf war. Specifically, it would require the VA to consult with DOD and HHS to create an ongoing program to provide information to veterans and their families. For example, they would receive information pertaining to the possible health risks to Persian Gulf war veterans who were exposed to toxic agents or environmental or wartime hazards. In addition, veterans would receive valuable information on any services or benefits available to them.

Mr. President, as I mentioned previously, we have made great strides to determine the cause of illnesses suffered by Vietnam veterans and their children and agreed to provide them with just compensation. We must now enhance our efforts to help those who served our country during the Persian Gulf war. Passage of this legislation is essential to providing answers to the many questions we have about the causes of Persian Gulf war illnesses. More importantly, it will ensure that our veterans are receiving proper medical care and the compensation they have earned. I again thank Senator ROCKEFELLER for his leadership on this issue and hope my colleagues will support this important legislation.

SENATE RESOLUTION 140—RELATIVE TO INTERNATIONAL SHIPPING

Mr. HELMS (for himself, Mr. LOTT, Mr. FAIRCLOTH, Mr. BREAUX, Mr. HOLLINGS, Mr. BINGAMAN, Mr. BROWNBACK, and Mr. Inouye) submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation.

S. RES. 140

Whereas restrictive and discriminatory Japanese port practices have been a significant source of international concern for many years, have increased the cost of transporting goods to and from Japan for American consumers, and all ocean carriers and their customers, and have restricted United States carriers' operations in Japan while Japanese carriers have not faced similar restrictions in the United States.

Whereas for many years the Federal Maritime Commission, and the United States Departments of State and Transportation, have investigated and monitored these practices and urged the Japanese Government to remedy the problems caused by these restrictions; and

Whereas recent actions by the Federal Maritime Commission and negotiations conducted by the Departments of State and Transportation with the Government of Japan have reportedly produced agreements which would, when implemented, reform the Japanese port practices and remedy these problems: Now, therefore, be it Resolved, That the Senate express strong support for—

(1) the efforts of the President and executive branch to achieve removal of Japanese port restrictions, and

(2) vigilant, continued monitoring and enforcement by the Federal Maritime Commission of changes in port practices promised by the Japanese Government that will benefit international trade.

Mr. HELMS. Mr. President, I, Senator FAIRCLOTH, Senator LOTT, Senator BREAUX, Senator HOLLINGS, Senator BINGAMAN, Senator BROWNBACK, and Senator INOUE are submitting today a sense-of-the-Senate resolution which commends the administration for its actions in attempting to end the Japanese blockade of American ships who wish to use Japanese port facilities. We are also urging the administration to remain firm and stand behind the Federal Maritime Commission in these negotiations with the Government of Japan.

This issue is a no brainer. The Japanese are simply throwing up a blockade against American ships, who seek to dock at Japanese ports.

Mr. President, this protectionist stand has increased cost of shipping for the American consumer and all American ocean carriers and their customers. We simply will not tolerate that kind of treatment from Japan or any other trading partner.

The Federal Maritime Commission is to be commended for taking a tough line toward the Japanese port authorities. We encourage the administration to stand squarely behind the Commission's efforts to achieve fairness for American ships, especially because we allow the Japanese open access to our ports.

There is the Biblical saying of "Do unto others as you would have them do unto you." The Japanese version is the complete reverse of that.

We accommodate Japanese shipping and we should expect no less of them.

Mr. President, I urge the Senate to swiftly adopt this resolution.

ADDITIONAL COSPONSORS

S. 61

At the request of Mr. LOTT, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 61, a bill to amend title 46, United States Code, to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 412

At the request of Mr. LAUTENBERG, the name of the Senator from Hawaii [Mr. INOUE] was added as a cosponsor of S. 412, a bill to provide for a national standard to prohibit the operation of motor vehicles by intoxicated individuals.

S. 943

At the request of Mr. SPECTER, the name of the Senator from California [Mrs. FEINSTEIN] was added as a cosponsor of S. 943, a bill to amend title 49, United States Code, to clarify the application of the Act popularly known as the "Death on the High Seas Act" to aviation accidents.

S. 1096

At the request of Mr. GRASSLEY, the name of the Senator from Maine [Ms. COLLINS] was added as a cosponsor of S.

1096, a bill to restructure the Internal Revenue Service, and for other purposes.

S. 1251

At the request of Mr. D'AMATO, the names of the Senator from Alabama [Mr. SHELBY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from South Dakota [Mr. JOHNSON], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1252

At the request of Mr. D'AMATO, the names of the Senator from Alabama [Mr. SHELBY], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from South Dakota [Mr. JOHNSON], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1297

At the request of Mr. COVERDELL, the name of the Senator from Colorado [Mr. ALLARD] was added as a cosponsor of S. 1297, a bill to redesignate Washington National Airport as "Ronald Reagan Washington National Airport."

S. 1299

At the request of Mr. HUTCHINSON, the names of the Senator from Ohio [Mr. DEWINE], the Senator from Missouri [Mr. BOND], the Senator from Alabama [Mr. SHELBY], the Senator from Alabama [Mr. SESSIONS], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of S. 1299, a bill to limit the authority of the Administrator of the Environmental Protection Agency and the Food and Drug Administration to ban metered-dose inhalers.

S. 1306

At the request of Mr. INHOFE, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 1306, a bill to prohibit the conveyance of real property at Long Beach Naval Station, California, to China Ocean Shipping Company.

AMENDMENTS SUBMITTED

THE ECONOMIC GROWTH DIVIDEND PROTECTION ACT OF 1997

ABRAHAM AMENDMENT NO. 1524

(Ordered referred jointly to the Committee on the Budget and to the Committee on Governmental Affairs.)

Mr. ABRAHAM submitted an amendment intended to be proposed by him to the bill (S. 800) to create a tax cut reserve fund to protect revenues generated by economic growth; as follows:

On page 2, strike lines 6 through 13 and insert the following:

"(1) ESTIMATE.—OMB shall, for any amount by which revenues for a budget year and any outyears through fiscal year 2002 exceed the revenue target absent growth, estimate the excess (less any unexpected excess receipts (including attributable interest) of the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds, the Federal Hospital Insurance Trust Fund established by section 1817 of the Social Security Act, and the Highway Trust Fund) and include such estimate as a separate entry in the report prepared pursuant to subsection (d) at the same time as the OMB sequestration preview report is issued.

On page 3, strike lines 18 and 19 and insert the following: "be considered to be in order for purposes of the Congressional Budget Act of 1974."

THE PRODUCT LIABILITY REFORM ACT OF 1997 BIOMATERIALS ACCESS ASSURANCE ACT OF 1997

ROCKEFELLER AMENDMENT NO. 1525

(Ordered to lie on the table.)

Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill (S. 648) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

Strike all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Product Liability Reform Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purposes.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Definitions.

Sec. 102. Applicability; preemption.

Sec. 103. Liability rules applicable to product sellers, renters, and lessors.

Sec. 104. Defense based on claimant's use of alcohol or drugs.

Sec. 105. Misuse or alteration.

Sec. 106. Statute of limitations.

Sec. 107. Statute of repose for durable goods used in a workplace.

Sec. 108. Transitional provision relating to extension of period for bringing certain actions.

Sec. 109. Alternative dispute resolution procedures.

Sec. 110. Offers of judgment.

Sec. 111. Uniform standards for award of punitive damages.

Sec. 112. Liability for certain claims relating to death.

Sec. 113. Workers' compensation subrogation.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

[TO BE SUPPLIED]

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

Sec. 301. Federal cause of action precluded.

Sec. 302. Effective date.

SEC. 2. PURPOSES.

Based upon the powers contained in clause 3 of section 8 of article I of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce by—

(1) establishing certain uniform legal principles of product liability that provide a fair

balance among the interests of product users, manufacturers, and product sellers;

(2) providing for reasonable standards concerning, and limits on, punitive damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in product liability actions;

(4) reducing the unacceptable costs and delays in product liability actions caused by excessive litigation that harm both plaintiffs and defendants;

(5) establishing greater fairness, rationality, and predictability in product liability actions; and

(6) providing fair and expeditious judicial procedures that are necessary to complement and effectuate the legal principles established by this Act.

TITLE I—PRODUCT LIABILITY REFORM

SEC. 101. DEFINITIONS.

In this title:

(1) ALCOHOLIC BEVERAGE.—The term "alcoholic beverage" includes any beverage in liquid form that contains not less than 1/2 of 1 percent of alcohol by volume and is intended for human consumption.

(2) CLAIMANT.—The term "claimant" means any person who brings an action covered by this title and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such an action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(3) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—The term "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy that standard is more than that required under a preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS.—The term "commercial loss" means—

(A) any loss or damage solely to a product itself;

(B) loss relating to a dispute over the value of a product; or

(C) consequential economic loss, the recovery of which is governed by the Uniform Commercial Code or analogous State commercial or contract law.

(6) COMPENSATORY DAMAGES.—The term "compensatory damages" means damages awarded for economic and noneconomic loss.

(7) DRAM-SHOP.—The term "dram-shop" means a drinking establishment where alcoholic beverages are sold to be consumed on the premises.

(8) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which—

(A)(i) has a normal life expectancy of 3 or more years; or

(ii) is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986; and

(B) is—

(i) used in a trade or business;

(ii) held for the production of income; or

(iii) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(9) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss,

loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for that loss is allowed under applicable State law.

(10) HARM.—The term “harm”—

(A) means any physical injury, illness, disease, death, or damage to property caused by a product; and

(B) does not include commercial loss.

(11) INSURER.—The term “insurer” means the employer of a claimant if the employer is self-insured or if the employer is not self-insured, the workers’ compensation insurer of the employer.

(12) MANUFACTURER.—The term “manufacturer” means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who—

(i) designs or formulates the product (or component part of the product); or

(ii) has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller—

(i) produces, creates, makes, constructs and designs, or formulates an aspect of the product (or component part of the product) made by another person; or

(ii) has engaged another person to design or formulate an aspect of the product (or component part of the product) made by another person; or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(13) NONECONOMIC LOSS.—The term “noneconomic loss” means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(14) PERSON.—The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(15) PRODUCT.—

(A) IN GENERAL.—The term “product” means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term “product” does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(16) PRODUCT LIABILITY ACTION.—The term “product liability action” means a civil action brought on any theory for harm caused by a product.

(17) PRODUCT SELLER.—

(A) IN GENERAL.—The term “product seller” means a person who in the course of a business conducted for that purpose—

(i) sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is in-

involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term “product seller” does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; or

(ii) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(18) PUNITIVE DAMAGES.—The term “punitive damages” means damages awarded against any person or entity to punish or deter that person or entity, or others, from engaging in similar behavior in the future.

(19) STATE.—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the foregoing.

(20) TOBACCO PRODUCT.—The term “tobacco product” means—

(A) a cigarette, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

(B) a little cigar, as defined in section 3 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1332);

(C) a cigar, as defined in section 5702(a) of the Internal Revenue Code of 1986;

(D) pipe tobacco;

(E) loose rolling tobacco and papers used to contain that tobacco;

(F) a product referred to as smokeless tobacco, as defined in section 9 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4408); and

(G) any other form of tobacco intended for human consumption.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) PREEMPTION.—

(1) IN GENERAL.—Except as provided in paragraph (2) and title II, this title governs any product liability action brought in any Federal or State court on any theory for harm caused by a product.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR COMMERCIAL LOSS.—A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT; NEGLIGENCE PER SE CONCERNING FIREARMS AND AMMUNITION; DRAM-SHOP.—

(i) NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(ii) NEGLIGENCE PER SE CONCERNING FIREARMS AND AMMUNITION.—A civil action brought under a theory of negligence per se concerning the use of a firearm or ammunition shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(iii) DRAM-SHOP.—A civil action brought under a theory of dram-shop or third-party liability arising out of the sale or provision of an alcoholic beverage to an intoxicated individual or an individual who has not at-

tained the age of 21 shall not be subject to the provisions of this title, but shall be subject to any applicable Federal or State law.

(C) ACTIONS INVOLVING HARM CAUSED BY A TOBACCO PRODUCT.—A civil action brought for harm caused by a tobacco product shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(D) ACTIONS INVOLVING HARM CAUSED BY A BREAST IMPLANT.—

(i) IMPLANT DEFINED.—As used in this subparagraph, the term “implant” has the same meaning as in section ____.

(ii) EXCLUSION.—A civil action brought for harm caused by a breast implant shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes a State law only to the extent that the State law applies to a matter covered by this title. Any matter that is not governed by this title, including any standard of liability applicable to a manufacturer, shall be governed by any applicable Federal or State law.

(c) EFFECT ON OTHER LAW.—Nothing in this title shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief, for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8))).

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS, RENTERS, AND LESSORS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title, a product seller other than a manufacturer shall be liable to a claimant only if the claimant establishes that—

(A)(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of the harm to the claimant;

(B)(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused the harm to the claimant; or

(C)(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) the intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) **REASONABLE OPPORTUNITY FOR INSPECTION.**—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product, if—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable care, would not have revealed the aspect of the product that allegedly caused the claimant's harm.

(b) **SPECIAL RULE.**—

(1) **IN GENERAL.**—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product, if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant is or would be unable to enforce a judgment against the manufacturer.

(2) **STATUTE OF LIMITATIONS.**—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) **RENTED OR LEASED PRODUCTS.**—

(1) **DEFINITION.**—For purposes of paragraph (2), and for determining the applicability of this title to any person subject to that paragraph, the term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

(2) **LIABILITY.**—Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101(17)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of that product.

SEC. 104. DEFENSE BASED ON CLAIMANT'S USE OF ALCOHOL OR DRUGS.

(a) **GENERAL RULE.**—In any product liability action that is subject to this title, it shall be a complete defense to a claim made by a claimant, if that claimant—

(1) was intoxicated or was under the influence of alcohol or any drug when the accident or other event which resulted in that claimant's harm occurred; and

(2) as a result of the influence of the alcohol or drug, was more than 50 percent responsible for that harm.

(b) **CONSTRUCTION.**—For purposes of subsection (a)—

(1) the determination of whether a person was intoxicated or was under the influence of alcohol or any drug shall be made pursuant to applicable State law; and

(2) the term "drug" means any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that was not legally prescribed for use by the claimant or that was taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

SEC. 105. MISUSE OR ALTERATION.

(a) **GENERAL RULE.**—

(1) **IN GENERAL.**—In any product liability action that is subject to this title, the damages for which a defendant is otherwise lia-

ble under Federal or State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the claimant's harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, a defendant's express warnings or instructions if the warnings or instructions are adequate as determined pursuant to applicable Federal or State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) **USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.**—For purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) **WORKPLACE INJURY.**—Notwithstanding subsection (a), and except as otherwise provided in section 113, the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

SEC. 106. STATUTE OF LIMITATIONS.

(a) **IN GENERAL.**—Except as provided in subsection (b) and subject to section 107, a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(b) **EXCEPTIONS.**—

(1) **PERSON WITH A LEGAL DISABILITY.**—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(2) **EFFECT OF STAY OR INJUNCTION.**—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

SEC. 107. STATUTE OF REPOSE FOR DURABLE GOODS USED IN A WORKPLACE.

(a) **IN GENERAL.**—

(1) **APPLICABLE PERIOD.**—Except as provided in subsections (b) and (c), no product liability action that is subject to this title concerning a durable good described in paragraph (2) may be filed after the 18-year period beginning at the time of delivery of the product to the first purchaser or lessee.

(2) **DURABLE GOODS DESCRIBED.**—A durable good described in this section is a durable good that is—

(A) used in a workplace; and

(B) alleged to have caused harm (other than toxic harm) that is covered under an applicable State workers' compensation law.

(b) **APPLICABILITY OF STATUTE OF LIMITATIONS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this section, a product liability action that is subject to this title and that concerns a durable good described in subsection (a)(2) may be filed during the applicable period prescribed in section 106 (including any applicable period prescribed under the exceptions under subsection (b) of

that section) if the condition under paragraph (2) is met.

(2) **CONDITION.**—Paragraph (1) shall apply with respect to a claimant in an action described in that paragraph if that claimant discovers the harm that is the subject of the action during the 18-year period beginning on the date of the delivery of the product to the first purchaser or lessee.

(c) **GENERAL EXCEPTIONS.**—

(1) **IN GENERAL.**—A motor vehicle, vessel, aircraft, or train, that is used primarily to transport passengers for hire, shall not be subject to this section.

(2) **CERTAIN EXPRESS WARRANTIES.**—Subsection (a) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety or life expectancy of the specific product involved which was longer than 18 years, except that such subsection shall apply at the expiration of that warranty.

(3) **AVIATION LIMITATIONS PERIOD.**—Subsection (a) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

SEC. 108. TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.

If any provision of section 106 or 107 shortens the period during which a product liability action could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding sections 106 and 107, bring the product liability action not later than 1 year after the date of enactment of this Act, except that nothing in this section shall affect the application of section 107(b).

SEC. 109. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) **NOTIFICATION REQUIREMENT.**—In any case in which an applicable State law provides for an alternative dispute resolution procedure, each defendant in a product liability action that is subject to this title shall, not later than 10 days before the applicable date specified for service of an offer under subsection (b), notify the claimant to inform the claimant of the applicability of that State law.

(b) **SERVICE OF OFFER.**—A claimant or a defendant in a product liability action that is subject to this title may serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which that action is maintained, not later than 60 days after the later of—

(1) service of the initial complaint; or

(2) the expiration of the applicable period for a responsive pleading.

(c) **WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.**—Except as provided in subsection (d), not later than 20 days after the service of an offer to proceed under subsection (b), an offeree shall file a written notice of acceptance or rejection of the offer.

(d) **EXTENSION.**—

(1) **IN GENERAL.**—The court may, upon motion by an offeree made prior to the expiration of the 20-day period specified in subsection (c), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (c).

(2) **PERMITTED DISCOVERY.**—Discovery may be permitted during the period described in paragraph (1).

SEC. 110. OFFERS OF JUDGMENT.

(a) **OFFERS OF JUDGMENT BY CLAIMANTS.**—Any claimant in a product liability action that is subject to this title may, at any time after filing the complaint for that action,

serve an offer of judgment to be entered against a defendant for a specified dollar amount as complete satisfaction of the claim.

(b) OFFERS OF JUDGMENT BY DEFENDANTS.—A defendant in an action referred to in subsection (a) may, during the period described in that subsection, serve an offer of judgment to be entered against that defendant for a specified dollar amount as complete satisfaction of a claim referred to in that subsection.

(c) RESPONSE PERIOD.—Subject to subsection (d), the period for response to an offer of judgment under this section shall be the later of—

(1) the date that is 30 days after the date of the receipt of the offer; or

(2) the date of expiration of any otherwise applicable period for response.

(d) EXTENSION OF RESPONSE PERIOD.—

(1) IN GENERAL.—The court may extend the period for response to an offer of judgment under subsection (c) on a motion made by an offeree.

(2) REQUIREMENTS FOR MOTION.—Any motion made by an offeree under paragraph (1) shall be accompanied by an affidavit that—

(A) sets forth the reasons why the extension requested in the motion is necessary; and

(B) includes a statement that the information that is likely to be discovered during the period of the extension referred to in subparagraph (A) is—

(i) material; and

(ii) not, after reasonable inquiry, otherwise available to that offeree.

(e) PENALTY TO DEFENDANTS FOR REJECTION OF OFFER.—

(1) MODIFICATION OF JUDGMENT.—The court may modify a judgment against a defendant under paragraph (2) if—

(A) a defendant, as an offeree, does not serve on the claimant a written notification of acceptance of an offer of judgment served by the claimant in accordance with this section—

(i) during the applicable period for response referred to in subsection (c); or

(ii) in any case in which the responsive pleading of the defendant contains a motion to dismiss, not later than 30 days after the date on which the court denies that motion to dismiss; and

(B) the unadjusted final judgment against the defendant includes damages (including any compensatory, punitive, exemplary, or other damages) in an amount greater than the amount specified by the claimant in the offer of judgment.

(2) AMOUNT OF MODIFICATION.—The court may make a modification under paragraph (1) to provide for an increase of the civil penalties assessed against that defendant in an amount not to exceed the lesser of—

(A) \$50,000; or

(B) the difference between—

(i) the amount of the unadjusted judgment; and

(ii) the amount of the offer of judgment made by the claimant.

(f) PENALTY TO CLAIMANTS FOR REJECTION OF OFFER.—

(1) MODIFICATION OF JUDGMENT.—The court may modify a judgment against a defendant in accordance with paragraph (2), if—

(A) a claimant, as an offeree, does not serve on the defendant a written notice of acceptance of an offer of judgment served by that defendant in accordance with this section during the applicable period for response referred to in subsection (c); and

(B) the unadjusted final judgment against that defendant includes damages (including any compensatory, punitive, exemplary, or other damages) in an amount less than the

amount specified by that defendant in the offer of judgment.

(2) AMOUNT OF MODIFICATION.—The court may make a modification under paragraph (1) to provide for a decrease of the civil penalties assessed against that defendant in an amount not to exceed the lesser of—

(A) \$50,000; or

(B)(i) the difference between—

(I) the amount of the unadjusted judgment; and

(II) the amount of the offer of judgment made by the defendant; reduced by

(i) a reasonable attorney's fee.

(3) CLAIMANT NOT PREVAILING PARTY.—In any case in which the claimant is not the prevailing party, the refusal of the claimant to accept an offer of judgment shall not result in the payment of a penalty under this subsection.

(g) EVIDENCE OF OFFER.—An offer of judgment that is not accepted by the offeree by the applicable date for response specified in this section—

(1) shall be considered to have been withdrawn; and

(2) except in a proceeding to determine reasonable attorney's fees and costs, shall not be admissible as evidence in an action brought under this title.

SEC. 111. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—To the extent punitive damages are permitted by applicable State law, punitive damages may be awarded against a defendant in any product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others.

(b) SPECIAL RULE.—

(1) IN GENERAL.—Subject to subsection (c), in any action described in subsection (a) against a person or entity described in paragraph (2), an award of punitive damages shall not exceed the lesser of—

(A) 2 times the amount of compensatory damages awarded; or

(B) \$250,000.

(2) PERSONS AND ENTITIES DESCRIBED.—

(A) IN GENERAL.—A person or entity described in this paragraph is—

(i) an individual whose net worth does not exceed \$500,000; or

(ii) an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has—

(I) annual revenues of less than or equal to \$5,000,000; and

(II) fewer than 25 full-time employees.

(B) ANNUAL REVENUES AND EMPLOYEES.—For the purpose of determining the applicability of this subsection to a corporation, the calculation of—

(i) the annual revenues of that corporation shall include the annual revenues of any parent corporation (or other subsidiary of the parent corporation), subsidiary, branch, division, department, or unit of that corporation; and

(ii) the number of employees of that corporation shall include the number of employees of any parent corporation (or other subsidiary of the parent corporation), subsidiary, branch, division, department, or unit of that corporation.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party, the trier of fact in any action that is subject to this section shall consider in a separate proceeding, held subsequent to the determination of the amount of compensatory damages, whether punitive damages

are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 112. LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

(a) IN GENERAL.—Subject to subsection (b), a defendant may be liable for damages that are only punitive in nature without regard to section 111 in any product liability action that is subject to this title—

(1) in which the alleged harm to the claimant is death; and

(2) that is subject to an applicable State law that, as of the date of enactment of this Act, provides, or is construed to provide, for damages that are only punitive in nature.

(b) LIMITATION.—Subsection (a) shall apply to an action that meets the requirements of paragraphs (1) and (2) of that subsection only during such period as the State law provides, or is construed to provide, for damages that are only punitive in nature.

(c) SUNSET.—This section shall cease to be effective on September 1, 1998.

SEC. 113. WORKERS' COMPENSATION SUBROGATION.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of that harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN NOTIFICATION.—Except as provided in subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the insurer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the

harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the insurer.

(B) RIGHTS OF INSURER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an insurer shall, in the same manner as any party in the action (even if the insurer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is submitted to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 301. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 302. EFFECTIVE DATE.

This Act shall apply with respect to any action commenced on or after the date of enactment of this Act without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before that date of enactment.

ADDITIONAL STATEMENTS

THE NOMINATION OF PETER SCHER TO BE SPECIAL TRADE AMBASSADOR FOR AGRICULTURE

• Mr. FEINGOLD. Mr. President, I want to make a few brief comments re-

garding the nomination of Mr. Peter Scher to be the Special Trade Ambassador for Agriculture which the Senate approved yesterday. I am pleased to report that the Senate Foreign Relations Committee, on which I serve, considered the nomination of Mr. Scher and favorably reported his nomination last month.

I met with Mr. Scher following his confirmation hearing before the Senate Foreign Relations Committee to discuss with him the problems Wisconsin's agricultural sector has had with our existing trade agreements such as the Uruguay Round of GATT and the North American Free Trade Agreement. I urged Mr. Scher, in his new position, to work diligently to ensure that our trading partners are complying with their agricultural trade obligations established by these agreements.

Specifically, I asked Mr. Scher and the USTR to accept a Section 301 petition filed by the dairy industry asking USTR to challenge the Canadian export pricing scheme before the World Trade Organization. Canada's dairy export subsidies violate the export subsidy reduction commitments under the Uruguay Round. These subsidies disadvantage the U.S. dairy industry in its efforts to compete in world markets. I also pointed out that Canada also has effectively prohibited our dairy industry from exporting products to lucrative Canadian markets. Not only must USTR aggressively pursue WTO dispute settlement proceedings against Canadian export subsidies, but it must also seek greater access for U.S. dairy products to Canadian markets, among others, in any upcoming trade negotiations.

I am pleased that late last month U.S. Trade Representative Barshesky agreed to pursue formal WTO dispute resolution proceedings challenging the Canadian dairy export subsidy scheme as well as European Union violations of the dairy provisions of the Uruguay Round. I appreciate the cooperation of Mr. Scher and Ambassador Barshesky on this important matter.

I also raised with Mr. Scher the problems the U.S. potato industry has had with respect to access to both Canadian and Mexican markets. I urged him to pursue negotiations with the Canadians to allow greater access of U.S. potatoes to their domestic markets and to aggressively seek accelerated reduction in Mexican tariffs for U.S. potatoes, a commitment made to potato growers when NAFTA was approved. Mr. Scher assured me that potatoes would be among the commodities to be considered in upcoming negotiations with Mexico.

I believe Mr. Scher has a fundamental understanding of both the importance of trade to agriculture generally and of the complex trade problems the U.S. dairy industry faces regarding compliance with existing trade agreements. For that reason, I have supported the approval of his nomina-

tion. But I expect USTR, with Mr. Scher acting as Ambassador, to aggressively pursue the resolution of the critical issues facing our domestic dairy and potato sectors. I will continue to work with USTR to resolve these issues and will hold Mr. Scher to his commitment that USTR will use all existing tools to ensure compliance with existing trade agreements and to pursue greater access for agriculture to international markets.

I continue to have serious reservations about U.S. efforts to begin new trade negotiations until the problems with our current bilateral and multilateral agreements are successfully resolved. Wisconsin is home to 24,000 dairy farmers, 140 cheese processing plants and many other businesses associated with milk production and processing. Dairy contributes some \$4 billion in income to Wisconsin's economy and provides 130,000 jobs. Wisconsin is also the fifth largest potato producing state with a large chip and french fry processing sector. Overall, Wisconsin ranks tenth in the nation in farm numbers and ninth nationally with respect to market value of agricultural products sold.

Wisconsin's farmers and food processing industry could greatly benefit by gaining a greater share of international markets. However, for that to happen, our trade agreements must not only be fair, they must be enforceable. To date, our trade agreements have not only failed to provide significant benefits for many agricultural sectors, including dairy, they have placed some sectors at a distinct disadvantage. I will look at all future trade agreement proposals with an eye to these issues and make decisions on those proposals based, in part, on how they treat Wisconsin farmers. •

TRIBUTE TO LEE H. CLARK

• Mr. ABRAHAM. Mr. President, I rise today to pay homage to a man of great character, commitment, and integrity.

Lee H. Clark has dedicated his life to public service. Beginning at the tender age of eighteen, Lee entered the United States Navy in 1943 where he served honorably for three years. After his commitment to the Navy, Lee entered college where he threw himself into academics, gaining a Master's degree in business from the University of Michigan. Following his education, Lee returned home and started his own business. Soon after, with his company flourishing, Lee's interest in the political process was sparked after serving as a precinct delegate in 1956. Lee entered into the political realm with the same determination and vigor that he displayed throughout his entire life and four years later ran for Congress. Although his bid for office was unsuccessful, Lee's desire for public service was unabated and he began a long, meritorious career in service to the State of Michigan.

Michigan has been greatly affected by Lee's energetic guidance and leadership. In the intervening years between 1956 and the present, Lee has been a driving force for the Republican Party. From community elections to those elections national in scope, Lee always offered great wisdom and foresight. Throughout his life, Lee has shown tremendous concern for his fellow citizens and was always a willing volunteer for any task. I am proud to have had the chance to work beside him.

Mr. President, I am extremely honored to have this opportunity to thank him for his many years of service and friendship. He is a very dear friend and my thoughts and prayers go out to him, his wife Nancy, and the rest of his family.●

TRIBUTE TO WESTERN COVENTRY SCHOOL, 1997 U.S. DEPARTMENT OF EDUCATION BLUE RIBBON SCHOOL

● Mr. REED. Mr. President, I rise today to recognize the achievement of Western Coventry School of Coventry, Rhode Island, which was honored earlier this year as a U.S. Department of Education Blue Ribbon School.

It is a highly regarded distinction to be named a Blue Ribbon School. Through an intensive selection process beginning at the state level and continuing through a federal Review Panel of 100 top educators, many of the very best public and private schools in the nation are identified as deserving of this honor. These schools are particularly effective in meeting local, state, and national goals. However, this honor signifies not just who is best, but what works in educating today's children.

Now, more than ever, it is important that we make every effort to reach out to students, that we truly engage and challenge them, and that we make their education come alive. At the Western Coventry School, a kindergarten through sixth grade school, parent-teacher cooperation, through an award winning Parent Teacher Association (PTA), has helped to improve the quality of education. The school has instituted a mentoring program for at-risk youth and has made concerted efforts to ensure that students with special needs receive the assistance they require. In addition, teachers have taken an aggressive role in developing

new approaches to teaching reading and math.

Mr. President, Western Coventry School is dedicated to the highest standards. It is a school committed to a process of continuous improvement with a focus on high student achievement. Most importantly, Western Coventry recognizes the value of the larger community and seeks its support and involvement. This school and community are making a huge difference in the lives of its students.

Mr. President, the Blue Ribbon School initiative shows us the very best we can do for students and the techniques that can be replicated in every school to help all students succeed. I am proud to say that in Rhode Island we can look to a school like the Western Coventry School. Under the leadership of its principal, Barry Ricci, its capable faculty, and its involved parents, Western Coventry School will continue to be a shining example for years to come.●

HOW NOT TO BUILD CONFIDENCE IN GOVERNMENT STATISTICS

● Mr. MOYNIHAN. Mr. President, on October 16, following the release of monthly price data by the Bureau of Labor Statistics [BLS], the Social Security Administration announced a 2.1-percent cost of living adjustment [COLA] for Social Security and other Government programs. Yet a week earlier, the Social Security Administration circulated a table which indicated that the benefit increase would be 2.7 percent.

How could this happen? Simple. The Administration, as I have noted on numerous occasions, insisted on using an outdated economic forecast so as to obscure the fact that the budget was approaching balance in fiscal year 1997 in the absence of a budget agreement. While that budget legislation was pending in Congress last summer, it was feared that if the economic outlook was too favorable, pressure for the budget bills would decrease and agreement would not be reached. And so the Social Security Actuaries had no recourse other than to use the official forecast when presenting data on the actuarial status of the trust funds.

Here is why the numbers were, to put it mildly, misleading. The Administration notes that its mid-session budget review—released almost 2 months late

on September 5—is based on economic projections finalized in early June. But even by then it should have been clear what was happening to prices. By early June 1997, data for 8 months of the benefit computation period, August 1996–April 1997, indicated that, on an annual basis, CPI-W had increased by 2.4 percent. To increase by 2.7 percent for the full year would require, on an annual basis, a 3.2-percent increase in CPI-W for the remaining 4 months, April 1997–August 1997, of the computation period. Put another way the Administration was predicting a one-third increase in the inflation rate. Yet, on an annual basis, CPI-W increased by only 1.5 percent during these 4 months. That is, the inflation rate actually declined by almost 40 percent.

In short, by the spring it should have been clear that the benefit increase would be less than 2.7 percent. And by late summer it was virtually certain that the increase would be 2.0 to 2.2 percent, but nowhere near 2.7 percent.

What does this mean to the average beneficiary now receiving a monthly benefit of \$749? Instead of a \$20 monthly benefit increase—2.7 percent of \$749—the benefit increase will be about \$16. Fortunately, few if any Members of Congress rushed out in early October and announced to constituents, based on the Administration's estimates, that they would receive an expected 2.7-percent benefit increase.

The Advisory Commission to Study the Consumer Price Index—the Boskin Commission—concluded that the Consumer Price Index [CPI] overstates changes in the cost of living by about 1.1 percentage points. And many other researchers concur with the findings of the Boskin Commission. The American Association of Retired Persons [AARP], and others, have argued that the only way to keep politics out of the process is to let the BLS do it. Such critics should be mindful that accurate statistics include timely and accurate projections. By late September or early October of each year Social Security beneficiaries should be able to rely on their Government to provide reliable projections of upcoming benefit increases.

Mr. President, I ask that a table prepared by the Social Security Administration, Office of the Actuary, on October 7, 1997, be printed in the RECORD.

The table follows:

TABLE 1.—ECONOMIC ASSUMPTIONS UNDERLYING THE MID-SESSION REVIEW OF THE PRESIDENT'S FISCAL YEAR 1998 BUDGET
(In percent)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Change in real GDP	2.4	3.5	2.0	2.0	2.1	2.4	2.4	2.4	2.4	2.4	2.4	2.4
Civilian unemployment rate	5.4	5.0	5.2	5.4	5.5	5.5	5.5	5.5	5.5	5.5	5.5	5.5
Change in average annual CPI	2.9	2.7	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Change in average covered wage	4.3	4.6	3.2	3.8	3.9	3.7	3.6	3.8	3.8	3.8	3.9	3.9
Real wage differential	1.4	2.0	0.7	1.2	1.4	1.2	1.1	1.3	1.3	1.3	1.4	1.4
Benefit increase	2.9	2.7	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Average annual interest rate	6.6	6.7	6.1	5.7	5.6	5.4	5.4	5.4	5.4	5.4	5.4	5.4

Note: Social Security Administration, Office of the Chief Actuary, October 7, 1997.●

WORKING MOTHER'S 100 BEST COMPANIES FOR WORKING MOTHERS

• Ms. MOSELEY-BRAUN. Mr. President, yesterday afternoon, I attended the White House Conference on Child Care. Business, labor, and religious leaders will be sharing their strategies and successes for improving and expanding child care opportunities. This afternoon's discussion is entitled "learning from what works."

In government, we can do no better than to look to the private and non-profit businesses and organizations in our communities to learn what works. With today's focus on child care issues, I commend to my colleagues, this month's issue of Working Mother Magazine, and it's 12th annual survey of the 100 best companies for working mothers.

The companies included on the 100 best list are ones that provide working mothers with exceptional opportunities to contribute to the company's success, and to care for their families. Working Mother Magazine measures companies based on five criteria: pay, opportunities to advance, child care, flexibility, and other family friendly benefits.

The 100 best companies have made a commitment to strengthening families and communities. At the same time, these companies are strengthening their bottom line. In order for our Nation to remain globally competitive in the 21st century, we must utilize all of the talents of all of our people. Working mothers have talents and abilities our country cannot afford to be without. The 100 best companies are utilizing creative, effective solutions to the problems working mothers face as they try to balance career and family concerns. By doing so, these companies profit as mothers are able to focus more energy and attention on their work.

Making jobs work for women and their families is what these companies are all about. I am especially proud that 7 of the companies on the 100 best list are based in my home State of Illinois. Each of the Illinois companies has taken steps to recognize the talents of working mothers, and to help them help their families. Among other accomplishments,

Allstate Insurance Co. recently opened a \$3 million child care center in Northbrook, IL, that not only provides child care at the company's headquarters, but also offers full day kindergarten and holiday, vacation, and backup care;

Amoco Corp. provides elder and child care referral services that were used by over 6,000 employees last year, and provides reimbursements for child care expenses accrued due to travel or overtime;

Leo Burnett Co., Inc., continues to promote working mothers to executive positions. Today, the president and the chief creative officer are women;

Fel-Pro, Inc., offers family friendly programs ranging from an 8-week sum-

mer camp to a \$1,000 savings bond for newborns. Fel-Pro has been included in the 100 best list since its inception years ago;

First Chicago NBD Corp. has been improving on their already impressive array of services with financial support for adoptions, and benefits for part-time employees;

Motorola, Inc., according to the magazine, "remains the corporate leader in providing subsidized child care for employees' kids";

Northern Trust Corp. has doubled the number of employees working at home in the past year; and

Sara Lee Corp. has a commitment to helping working mothers advance. Today, its general counsel, chief financial officer and treasurer, among others, are female.

This list includes some of the most successful companies in the country, including the largest advertising firm in the country, and one of the Nation's oil companies. What each of these seven corporations has shown is that both companies and children benefit from policies that take not only the employee, but her whole family into account. Working mothers are an important asset to the Nation's employers. Strong families are an important asset to us all.

I urge my colleagues to read this month's issue of Working Mother Magazine so that we can learn from industry leaders—we all benefit from policies that support working families.●

THE IMPORTANCE OF RENEWABLE FUELS

• Mr. HARKIN. Mr. President, just this week, we in the U.S. Senate have been confronted with two strong reminders of the importance of renewable fuels to this country. This emerging industry, potentially lucrative for American farmers and agribusiness, can help solve two key problems that we face: the impact of greenhouse gases on the global climate, and the growing dependency of the American economy on the import of foreign petroleum products.

On Wednesday, President Clinton, announced the U.S. position with respect to the climate change treaty to be negotiated in Kyoto in December. Under his instructions, American negotiators will seek to fashion an agreement that will commit, on an equitable basis, the nations of the world to reducing emissions of greenhouse gases over the next several decades. If implemented, our ability to meet such goals will depend greatly on the development and adoption of new technologies which are more energy efficient. The President's proposal to provide tax incentives for more energy efficient technology should be important in spurring such development efforts. Renewable fuel technologies, especially those derived from agricultural products, will be a crucial component of such activities. Many forms, such as the energy that

will be produced from the switchgrass project underway in Centerville, IA, offer the added benefit of actually withdrawing carbon from the atmosphere. Expansion of production of renewable fuels also increases income for the farm sector, and creates new jobs. In keeping with a key theme voiced at the recent White House Conference on Climate Change, with renewable fuels we can do well by doing good, for American agriculture and the whole country.

If that were not enough, Mr. President, Tuesday's announcement by the Commerce Department that record oil imports caused our merchandise trade deficit to increase in August gives added urgency to the promotion of renewable fuels. It is clear that even if no treaty on climate change comes out of Kyoto, our dependence on oil imports still looms on the horizon. The share of imports in U.S. oil consumption has been climbing steadily over the last few years, and the Energy Information Administration of the Department of Energy projects that the share could reach 75 percent within the next 10-15 years. Increased production and use of renewable sources of energy could help to stem that tide, and reduce our need to rely on energy sourced in large part from a politically unstable region of the world.

During this session of Congress, we can begin to respond to these events in at least one concrete way, by passing into law the proposed extension of the ethanol tax credit to the year 2007. I urge my colleagues to seize this opportunity now to show our confidence in agriculture's ability to make a positive contribution in these areas by producing renewable energy for American consumers to use.●

MEASURE READ THE FIRST TIME—SENATE JOINT RESOLUTION 37

Mr. LOTT. Mr. President, I understand that Senate Joint Resolution 37, which was introduced earlier today by Senator JEFFORDS, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER (Mr. FRIST). The clerk will read the joint resolution for the first time by title.

The assistant legislative clerk read as follows.

A joint resolution (S.J. Res. 37) to provide for the extension of a temporary prohibition of strikes or lockout and to provide for binding arbitration with respect to the labor dispute between Amtrak and certain of its employees.

Mr. LOTT. I now ask for its second reading and would object to my own request on behalf of the other side of the aisle.

The PRESIDING OFFICER. Objection is heard.

MEASURE READ THE FIRST TIME—H.R. 2646

Mr. LOTT. Mr. President, I understand that H.R. 2646 has arrived from

the House, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time by title.

The assistant legislative clerk read as follows.

A bill (H.R. 2646) to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes.

Mr. LOTT. I now ask for its second reading and object to my own request on behalf of the other side of the aisle, Mr. President.

The PRESIDING OFFICER. Objection is heard.

DAVID B. CHAMPAGNE POST
OFFICE BUILDING

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2013.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

A bill (H.R. 2013) to designate the facility of the United States Postal Service located at 561 Kingstown Road in South Kingstown, RI, as the "David B. Champagne Post Office Building."

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. LOTT. Mr. President, I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto appear at the appropriate place in the RECORD as if read.

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

The bill (H.R. 2013) was passed.

ORDERS FOR MONDAY, OCTOBER
27, 1997

Mr. LOTT. Now, Mr. President I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 12 noon on Monday, October 27. I further ask that on Monday, immediately following the prayer, the routine requests through the morning hour be granted and there then be a period of morning business until the hour of 1:30 p.m. with Senators permitted to speak for up to 10 minutes each with the exception of the following: Senator THOMAS for 30 minutes, Senator FEINSTEIN for 30 minutes, and Senator DORGAN for 30 minutes.

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

PROGRAM

Mr. LOTT. As I just indicated, on Monday I hope the Senate will be able to take final action on the Federal Re-

serve Board nominees. We may still give some additional time to consideration of the pending highway bill. It is our intent to have the Interior appropriations conference report voted on following the vote on Judge Marbley at 5 o'clock. Also, the Senate could be asked to consider Amtrak reform legislation in conjunction with the strike legislation.

Under a previous order, at 5 o'clock, we will conduct the one rollcall vote on Judge Marbley. Then it could be followed by as many as three other votes, and we will have to determine that during the day Monday. But a minimum of one and possibly a maximum of five votes.

Another cloture motion was filed today, of course, on the highway bill, and that vote would occur on Tuesday.

DISAPPROVING PRESIDENT'S VETO
OF CERTAIN PROJECTS IN THE
MILITARY CONSTRUCTION AP-
PROPRIATIONS ACT

Mr. BYRD. Mr. President, before the distinguished majority leader yields the floor, will he allow me to inquire, is he in a position to say when the Senate will take up the resolution reported from the Senate Appropriations Committee on yesterday disapproving the acts of the President in vetoing certain projects in the fiscal year 1998 Military Construction Appropriations Act?

Mr. LOTT. Mr. President, if I could respond to the distinguished Senator from West Virginia, I would need to consult further with Senator STEVENS, the chairman of the Appropriations Committee, and the Senator from West Virginia. But if they would agree, I think we should look for a time on Tuesday or Wednesday to take that matter up, because we are not sure exactly what will be our final days in session this year but it could be just the next 2 weeks. So I would like to go ahead and take this up at the earliest possible time.

I yield the floor.

ORDER FOR ADJOURNMENT

Mr. LOTT. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 2:08 p.m., adjourned until Monday, October 27, 1997, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate October 24, 1997:

DEPARTMENT OF ENERGY

CURT HEBBERT, JR., OF MISSISSIPPI, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 1999, VICE ELIZABETH ANNE MOLER.

NATIONAL FOUNDATION ON THE ARTS AND THE
HUMANITIES

WILLIAM R. FERRIS, OF MISSISSIPPI, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES FOR A TERM OF FOUR YEARS, VICE SHELDON HACKNEY, RESIGNED.

THE JUDICIARY

L. PAIGE MARVEL, OF MARYLAND, TO BE A JUDGE OF THE U.S. TAX COURT FOR A TERM OF FIFTEEN YEARS

AFTER SHE TAKES OFFICE, VICE LAWRENCE A. WRIGHT, RETIRED.

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be general

LT. GEN. JOHN P. JUMPER, 0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. FRANK B. CAMPBELL, 0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. DAVID W. MCILVOY, 0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. LANSFORD E. TRAPP, JR., 0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. DAVID J. MCCLLOUD, 0000.

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

LT. GEN. PATRICK K. GAMBLE, 0000.

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE U.S. OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 12203:

To be brigadier general

COL. HOWARD L. GOODWIN, 0000.

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, UNITED STATES CODE, SECTION 12203:

To be major general

BRIG. GEN. DAVID R. BOCKEL, 0000.
BRIG. GEN. JAMES G. BROWDER, JR., 0000.
BRIG. GEN. MELVIN R. JOHNSON, 0000.
BRIG. GEN. J. CRAIG LARSON, 0000.
BRIG. GEN. RODNEY D. RUDDOCK, 0000.

To be brigadier general

COL. CELIA L. ADOLPH, 0000.
COL. DONNA F. BARBISH, 0000.
COL. EMILE P. BATAILLE, 0000.
COL. JOEL G. BLANCHETTE, 0000.
COL. GEORGE F. BOWMAN, 0000.
COL. GARY R. DILALLO, 0000.
COL. DOUGLAS O. DOLLAR, 0000.
COL. RUSSELL A. EGGERS, 0000.
COL. SAM E. GIBSON, 0000.
COL. FRED S. HADDAD, 0000.
COL. KAROL A. KENNEDY, 0000.
COL. DENNIS E. KLEIN, 0000.
COL. DUANE L. MAY, 0000.
COL. ROBERT S. SILVERTHORN, JR., 0000.

IN THE NAVY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT IN THE U.S. NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

VICE ADM. WILLIAM J. FALLON, 0000.

WITHDRAWAL

Executive message transmitted by the President to the Senate on October 24, 1997, withdrawing from further Senate consideration the following nomination:

DEPARTMENT OF ENERGY

CURT HERBERT, JR., OF MISSISSIPPI, TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 1999, VICE ELIZABETH ANNE MOLER, WHICH WAS SENT TO THE SENATE ON OCTOBER 23, 1997.