

daily reservation life. Exercise programs may not be readily available, dietary changes may be contrary to local custom for preparing foods, or soft drinks may be routinely substituted for drinking water that is not plentiful or potable.

These kinds of factors in Indian life will be studied carefully at the Gallup Diabetes Prevention Research Center. Recommendations and CDC assistance will be provided to IHS service providers throughout the Navajo Nation, the Zuni Pueblo, and other Apache and Pueblo Indians in New Mexico and Arizona. The improved diagnostic and prevention programs will flow from this Gallup center to all IHS facilities around the country.

Through these efforts we hope diabetes rates will drop, and not continually increase as they have for the past four decades. The number of U.S. diabetes cases reported annually between 1980 and 1994 has risen steadily, from 5.5 million cases to 7.7 million cases. The number of diagnosed cases is up from 1.6 million Americans in 1958.

The human toll is devastating and the medical costs of treating diabetes will continue to escalate unless our medical and prevention research efforts are more successful. While we still have not found a cure for diabetes, enough is known today to significantly control the negative end results of diabetes like blindness, amputation, and kidney failure.

The "Walk to Cure Diabetes" has been helpful in raising public awareness of the growing diabetes problem. I am pleased that we in the Senate join this effort through federal funding, policy initiatives and moral support.

Madam President, I would encourage my colleagues to note the 1998 "Walk to Cure Diabetes." It is one step in the American quest to attack this awful disease and improve the situation for all the people who are susceptible to the ravages of diabetes.

URGENT SUPPLEMENTAL FUNDING

Mr. DOMENICI. Madam President, I come to the floor not to discuss the pros and cons of an urgent supplemental, or any of the ingredients contemplated to be within it, but to render an accounting to the Senate, as best I can, of the request that the President has made for urgent supplemental funding that would come as an emergency funding, which means we would be spending the surplus that we have worked so hard to protect to pay for these items.

The calculations that the Budget Committee staff has worked up for me would indicate that, as of now, the President's requests amount to \$14.148 billion. That means that the President asks us to spend \$14.148 billion for such things as agriculture emergencies, Y2K emergencies—the computer situation that may result in a disaster if we don't try to use some new system and the purchase of new computers to alle-

viate the problem that may occur in the year 2000—there is some Bosnia money; embassy security money; interior security, or terrorism money; state embassies money; treasury security; and an economic support fund. They are listed in detail in this statement.

I ask unanimous consent that this part of the budget bulletin, issued by the Budget Committee staff on September 28, which encapsulates these and then goes through a narrative as to how each one has occurred, be printed in the RECORD at this point.

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

EMERGENCY, EMERGENCY: WHO'S GOT THE REQUEST?

*President's pending request fiscal year 1998
emergency funding*
(In millions of dollars)

<i>Request</i>	<i>Amount</i>
Y2K, contingency	3,250
Agriculture:	
President	1,800
Daschle/Harkin (net impact)	5,200
Defense:	
Bosnia ¹	1,859
Embassy Security	200
Disaster Recovery	224
Disaster Recovery, contingency	30
Interior—Security: Terrorism	6
State—Embassies	1,398
Justice	22
Treasury—Security	90
Funds to President:	
Economic Support Fund	50
Security Assistance	20
Total	14,148

¹ FY 1999 Emergency Funding.

In terms of how much emergency spending has come out of the surplus, the Bulletin notes that \$5.7 billion in FY 1998 supplemental emergency appropriations has already been enacted since the beginning of the year. The continuing issue for this week is how much additional emergency spending does the President thus far want to take from the surplus: \$14.1 billion for a 1998 total of \$19.8 billion.

Last week's Bulletin, expected that the President's requests for emergency appropriations for both Fiscal Year 1998 and 1999—but not yet acted upon by Congress—total \$8.0 billion.

Following last week's Bulletin, on Tuesday, September 22, President Clinton made official the Administration's request for emergency funding in a number of areas, that had been assumed would be requested but had not been official transmitted to Congress.

The Bulletin now believes it can accurately quantify the President's emergency requests pending before Congress. The table above allocates the pending \$14.148 billion of Presidential emergency request to each affected agency, except for Y2K contingency appropriations. The Y2K emergency appropriation request transmitted on September 2 would be made available to the Office of the President for unanticipated needs to be transferred as necessary to affected agencies.

Officially, the September 22 emergency request for agricultural programs was for \$1.8 billion. However, President Clinton states: "The proposals I am transmitting today do not include income assistance to farmers for low commodity prices. On September 10, Secretary Glickman communicated the Admin-

istration's support for such assistance through Senators Daschle and Harkin's proposal to remove the cap on marketing loan rates for 1998 crops." CBO estimates the 1999 cost of such a proposal would reach \$6.2 billion, with repayments in 2000 of nearly \$1.0 billion. Hence, the table below includes a net cost for this Clinton supported emergency proposal of \$5.2 billion.

On September 22 the President requested \$1.8 billion for emergency expenses arising from the "consequences of recent bombings of our embassy facilities."

The President has still not requested amounts anticipated for defense readiness. The President did send a letter to Chairman of the Armed Services Committee, Strom Thurmond, on September 22 stating that: "I have asked key officials of my Administration to work together over the coming days to develop a fully offset \$1 billion funding package for these [defense] readiness programs." But this does not constitute an official request for emergency defense funding from the Administration.

Mr. DOMENICI. Madam President, I do not pass judgment on whether each and every one of these is something we should fund, nor whether each and every one of them is something we should not fund. I merely want to state to the Senate, and to those who are interested, that there seems to be a big argument going on now as to what is happening to the surplus and whether or not the Republicans in the U.S. House who want a tax bill are spending the surplus.

Actually, I will tell everybody that in the first year, the 1999 year, that bill spends \$7 billion of the surplus—if anybody is interested. The President's request for supplemental funding, emergency funding, not included in the budget—therefore, using the same fund—in the first year already amounts to \$14.148 billion, and I believe I can say it is growing, because there is nothing in this number for special moneys that the Defense Department might need. There is some indication of a billion dollars for readiness. But the President's people are quick to say that won't be new money, it will be offset. Well, we will see what they are offsetting it with.

The chiefs of staff are meeting here in the Congress to tell us what they think they need for readiness, and I understand their message is not a good one. It is one that says we are really getting behind with reference to the kinds of things needed to keep a strong military which is totally built around voluntarism—such things as getting behind in the amount of pay we are giving them, the kind of pensions we are giving them, and the readiness equipment. So we don't have anything in this accumulation that equals \$14.148 billion. There is nothing for that part of anything that would be an emergency.

I want to make one observation. Again, on this occasion, in speaking to the Senate and to anybody interested, I am not passing judgment on the use of the surplus for any of these things, I am merely saying that there is one surplus and there are two ways to use it. One is to spend it; one is to cut taxes.

They both, in a sense, spend it, or some small portion of it. I just want everybody to know that the President of the United States, who seems to be saying, "Don't cut any taxes," is at the same time saying, however, "Give me \$14.148 billion in new money," out of that same surplus for things that the country needs that he calls emergencies. They are all listed and they are all detailed in this statement that has been printed in the RECORD.

I repeat, I don't believe, from the surplus standpoint, that there is any difference between the two. In other words, if you want to spend a huge amount of the surplus and you want to spend it for \$100 billion worth of American programs, needed or otherwise, you have diminished it by \$100 billion. If you choose to cut taxes by \$100 billion, you have diminished this surplus by \$100 billion. It is the same diminution. It is the same reduction, the exact same effect. We estimate the surplus to be \$1.6 trillion over the next decade. And now we will engage here and elsewhere in a debate with reference to these emergency supplementals, which will be year long, which will spend some of that. We will engage in a discussion of whether there should be some for tax cuts.

I repeat. The tax cut bill that the House proposed in the first year is \$7 billion. The new expenditures requested by the President is \$14.1 billion. It seems to me that deserves consideration when we start saying we shouldn't have tax cuts, but we should spend the money.

I yield the floor.

FEDERAL VACANCIES REFORM ACT OF 1998

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of debate of Senate bill 2176, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2176) to amend sections 3345 through 3349 of title V, United States Code (commonly referred to as the "Vacancies Act") to clarify statutory requirements relating to vacancies in and appointments to certain Federal offices, and for other purposes.

The Senate resumed consideration of the bill.

Mr. THOMPSON. Madam President, the Senate today will vote on whether to invoke cloture on the Federal Vacancies Reform Act. This legislation, which enjoys bipartisan cosponsorship, is necessary to restore the Senate's authority as an institution in the process of appointing important Federal officials.

Madam President, I request that I be allotted 20 minutes of our time.

The PRESIDING OFFICER. The Senator has that right.

Mr. THOMPSON. Madam President, I want to make sure that we reserve plenty of time for the distinguished

Senator from West Virginia, Senator BYRD, who is really in many ways the author of this legislation and has been such a guiding light and firm supporter for so long a period of time.

Article II, section 2 of the Constitution provides that

The President shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and consuls, judges of the Supreme Court and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law, but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or the heads of departments.

This is an important provision of the Constitution's system of checks and balances.

The Supreme Court, in 1997, said that the appointments clause "is more than just a matter of etiquette or protocol; it is among the significant structural safeguards of the constitutional scheme." By requiring the participation of the Senate with the President and selecting officers, the framers believed that persons of higher quality would be appointed than if one person alone made those appointments.

One of the ways in which those persons would be better would be in respecting individual liberties.

So the appointments clause serves to protect better government administration and the rights of the American people.

The appointments clause was also adopted because manipulation of official appointments was one of the revolutionary generation's greatest grievances against executive power.

As participants in the appointments process, we Senators have an obligation, I believe, to ensure that the appointments clause functions as it was designed, and that manipulation of executive appointments not be permitted. Nonetheless, we also need to recognize that despite the appointments clause, there will be times when officers die or resign in office. Their duties should continue to be performed by someone else on a temporary basis. It may not be possible as a matter of logistics that each temporary official serving as an acting officer in a position subject to the appointments clause will himself or herself receive Senate confirmation. Early Congresses recognized the need for persons to serve temporarily in advice and consent positions when vacancies arose, even when the person had not received Senate confirmation.

The Vacancies Act has existed one way or another since then, with length of temporary service increasing to 120 days in legislation that was passed in 1988. The 1886 Vacancies Act was intended to provide the exclusive means for filling temporary appointments. And it has operated that way for several years.

However, in 1973, the Justice Department, in seeking to appoint a temporary FBI Director in the midst of the

Watergate scandal, appointed L. Patrick Gray without complying with the terms of the Vacancies Act. The Department for the first time made a public declaration that its organic statute created an alternative method for designating temporary appointments at the Department of Justice not subject to any time limit was there position. Since 1973 the Department has continued to make acting appointments outside the strictures of the Vacancies Act.

The Justice Department relies on its organic statute's "vesting and delegation" provision, which states that the Attorney General can designate certain other powers to whomever she chooses in the Department, since specific statutory functions were not given to the subordinate officials. The Department makes this claim although current law states that a

... temporary appointment ... to perform the duties of another under the Vacancies Act ... may not be made otherwise than as provided by the Vacancies Act.

But the Justice Department's organic statute was designed simply to coordinate all Federal Government litigation, and did not change the Vacancies Act.

The legislative history of the Department's organic statute confirmed this. In 1988, Congress, recognizing that the Justice Department was not applying the Vacancies Act as Congress clearly intended, sought to amend the act to make it more clear. They changed the law to eliminate this unsupported position of the Justice Department largely through the efforts of Senator JOHN GLENN of Ohio. The Department of Justice, however, refused to read the language as Congress intended, relying on its same old arguments.

As a result, the Department of Justice believes that the Attorney General can designate acting officers for 2 or even 3 years. The head of the Criminal Division—an important position with respect to guidance in Federal prosecutions, including independent counsel—was vacant for 2½ years without a nomination.

An acting Solicitor General served an entire term at the Supreme Court, and no nomination for the position was ever sent to the Senate. Even the administration claims that an acting person can serve for only 120 days. But after an acting person served for 181 days, the administration designated another person to serve as the Acting Assistant Attorney General for Civil Rights.

Today all 14 Departments have similar language in their organic statutes. Now many Departments, at DOJ's urging, are claiming similarly that the Vacancies Act doesn't apply to them either as an exclusive means for filling vacancies.

There is no time limit on temporary services. That has been adhered to under the organic statutes, making both the Vacancies Act and the appointments clause effective nullities,