O'Grady, Jennifer Baxendell, and Alec Phillips on the Majority staff.

I would also like to thank Senator MOYNIHAN's staff for their cooperation and input. Let me thank Chuck Konigsberg, Liz Fowler, Edwin Park, Jon Resnick, Faye Drummond, Kyle Kinner, Dustin May, Julianne Fisher, Jewel Harper, and Doug Steiger.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN), the Senator from Washington (Mr. GORTON), and the Senator from Oregon (Mr. SMITH) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. SMITH) would vote yea.

Mr. REID. I announce that the Senator from Washington (Mrs. MURRAY), is absent attending a funeral.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 1, as follows:

[Rollcall Vote No. 372 Leg.]

YEAS—95

Abraham	Edwards	Lincoln
Akaka	Enzi	Lott
Allard	Feingold	Lugar
Ashcroft	Feinstein	Mack
Baucus	Fitzgerald	McConnell
Bayh	Frist	Mikulski
Bennett	Graham	Moynihan
Biden	Gramm	Murkowski
Bingaman	Grams	Nickles
Bond	Grassley	Reed
Boxer	Gregg	Reid
Breaux	Hagel	Robb
Brownback	Harkin	Roberts
Bryan	Hatch	Rockefeller
Bunning	Helms	Roth
Burns	Hollings	Santorum
Byrd	Hutchinson	Sarbanes
Campbell	Hutchison	Schumer
Chafee, L.	Inhofe	Sessions
Cleland	Inouye	Shelby
Cochran	Jeffords	Smith (NH)
Collins	Johnson	Snowe
Conrad	Kennedy	Specter
Coverdell	Kerrey	Stevens
Craig	Kerry	Thomas
Crapo	Kohl	Thompson
Daschle	Kyl	Thurmond
DeWine	Landrieu	Torricelli
Dodd	Lautenberg	Warner
Domenici	Leahy	Wellstone
Dorgan	Levin	Wyden
Durbin	Lieberman	

NAYS—1

Voinovich

NOT VOTING—4

Gorton	Murray
McCain	Smith (OR)

The conference report was agreed to.

Mr. GORTON. Mr. President, had I been present for the vote on the conference report on H.R. 1180, I would have voted ''no.'' I would have done so in spite of my high approval of most of the tax extenders and of many of the work initiative provisions. Nevertheless, the bill included an unwise and ill-considered new tax credit for the use of chicken waste for power production. That provision could never have survived standing alone. It is another unjustified complication in our tax code never considered by either House of Congress. It poisons the entire bill.

Mr. MOYNIHAN. I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I ask unanimous consent that the next two votes in this series be limited to 10 minutes in length.

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

SEASONS GREETINGS

Mr. LOTT. Mr. President, once again, I thank Senators on both sides for their cooperation and for their good work this year and wish you all a Happy Thanksgiving and a Merry Christmas.

I yield the floor.

DISTRICT OF COLUMBIA APPROPRIATIONS ACT, 2000—CONFERENCE REPORT—Resumed

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative assistant 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 conference report to accompany the District of Columbia appropriations bill.

Trent Lott, Ted Stevens, Larry E. Craig, Judd Gregg, Tim Hutchinson, Don Nickles, Mike Crapo, Connie Mack, Slade Gorton, Ben Nighthorse Campbell, Arlen Specter, Pat Roberts, Chuck Hagel, Richard Shelby, Thad Cochran, and John Warner.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that the conference report accompanying H.R. 3194, an act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against revenues of said District for the fiscal year ending September 30, 2000, 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 Oregon (Mr. SMITH), the Senator from Arizona (Mr. MCCAIN), and the Senator from Washington (Mr. GORTON) are necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. SMITH) would vote yea.

Mr. REID. I announce that the Senator from Washington (Mrs. MURRAY) is absent attending a funeral.

The yeas and nays resulted—yeas 87, nays 9, as follows:

[Rollcall Vote No. 373 Leg.]

YEAS—87

Abraham	Edwards	Lugar
Akaka	Enzi	Mack
Allard	Feinstein	McConnell
Ashcroft	Frist	Mikulski
Baucus	Gramm	Moynihan
Bayh	Grassley	Murkowski
Bennett	Gregg	Nickles
Biden	Hagel	Reed
Bingaman	Harkin	Reid
Bond	Hatch	Robb
Boxer	Helms	Roberts
Breaux	Hollings	Rockefeller
Brownback	Hutchinson	Roth
Bryan	Hutchison	Santorum
Bunning	Inhofe	Sarbanes
Burns	Inouye	Schumer
Byrd	Jeffords	Sessions
Campbell	Johnson	Shelby
Chafee, L.	Kennedy	Smith (NH)
Cleland	Kerrey	Snowe
Cochran	Kerry	Specter
Collins	Kyl	Stevens
Coverdell	Landrieu	Thomas
Craig	Lautenberg	Thompson
Crapo	Leahy	Thurmond
Daschle	Levin	Torricelli
DeWine	Lieberman	Voinovich
Dodd	Lincoln	Warner
Domenici	Lott	Wyden

NAYS—9

Conrad	Feingold	Grams
Dorgan	Fitzgerald	Kohl
Durbin	Graham	Wellstone

NOT VOTING—4

Gorton	Murray
McCain	Smith (OR)

The PRESIDING OFFICER. On this vote, the ayes are 87, the nays are 9. Three-fifths of the Senators duly chosen and sworn having he voted in the affirmative, the motion is agreed to.

FISHERIES RESEARCH VESSEL

Mr. LOTT. Mr. President, the NOAA budget includes $51.56 million in funds to procure the first of four state-of-the-art fishery research vessels to conduct critical research on our Nation's fishery resources. This is an important step in providing for sustainable fisheries for our fishermen, U.S. trade, and U.S. consumers. It is my understanding that these ships will be some of the most technically complex research vessels in the world. It Is critical that the procurement of thee ships reflect this complexity, and that all U.S. shipbuilders with technical expertise in oceanographic research ships will have the opportunity to offer their expertise to the Government. Is it the Senator's understanding that this solicitation will be open to all U.S. shipbuilders, without set-asides that limit competition?

Mr. STEVENS. The Majority Leader is correct. In providing for the first of these ships to be built, we understood that the public will benefit from free and unrestricted competition on this vessel. The demands placed on our fishery management system dictate that

we procure the most technically sophisticated ship possible from our U.S. shipbuilding industry. The only way to guarantee this result is to conduct a free and open competition among all U.S. shipbuilders and meet with Dr. Baker, the Director of NOAA, who has agreed to homeport this vessel in Kodiak. By locating it mid way between the Gulf of Alaska and the Bering Sea, it will have ready access to the Nation's two largest fisheries.

Mr. CRAIG. Mr. President, my friends from Alaska, Senator MURKOWSKI, and Nevada, Senator REID, have worked hard to protect the mining jobs in their States and in mine, and I extend my thanks to them for working with me to keep the Department of Interior from mindlessly destroying jobs and lives by trying to rewrite the Mining Law. We want to make sure the intent of the provision on mill sites included in the Department of Interior portion of the appropriations bill is clear, and would like to ask your clarification on a few points.

Mr. REID. I thank my friend from Idaho for his hard work. I want to confirm my understanding of one absolutely critical thing with respect to the language in Section 337 protecting plans of operations submitted prior to November 7, 1997. It is my understanding that the language covers revisions, modifications, and amendments to such plans that are made before such plans are fully approved by the BLM or Forest Service. If an as yet unapproved plan of operations was submitted prior to November 7, 1997 and revised earlier this year, for instance, then the proposed operation, as revised, would be protected. It is the operation, not a specific property position—whether mining claims or mill sites—that is protected. This is very important to my State and I ask the chairman to specifically confirm my understanding.

Mr. STEVENS. I can say unequivocally that your understanding is correct. We all know that plans and operations are often revised by the applicant before being finally approved. Indeed, some revisions are required by the BLM or Forest Service during the plan review process. It is the clear intent of the language to protect revisions made prior to the plan's final approval. It is the operation, not a specific property position (whether mining claims or mill sites), that is protected. Anything less would be grossly inequitable and directly contrary to the clear intent of the conference.

Mr. MURKOWSKI. I thank my friends from Alaska and Nevada for that clarification. It is also my understanding that the provision is intended to protect large investments made in mining operations approved by the Department of Interior under its old interpretation of the law. Frankly, it would be shameful for us to endorse the actions of a Federal agency that approves a project, allows the proponent to spend millions of dollars to develop it, and then changes its mind about what the law says and on that basis shuts the operation down. I understand that the provision would protect these enormous investments and the jobs they create from such arbitrary action by the Department of Interior.

Mr. STEVENS. My friend is right. In compromising the House and Senate versions, our intention was to avoid the retroactive application of the Solicitor's opinion of November 7, 1997 and the resulting destruction of existing jobs and investments.

Mr. MURKOWSKI. I thank the chairman for that clarification. Finally, as my friend knows, mining operations are large, complex undertakings, and circumstances change all the time, requiring changes in the plan of operations. Miners must ask the BLM and Forest Service to approve amendments to their plans all the time in order to keep operating. In fact, the BLM and Forest Service often require these miners to amend their plans. I'm concerned that unless these types of amendments to existing plans are protected, the provision we are adopting would be of very little value. The BLM or the Forest Service could simply require an operator of a large existing mine to amend its plan of operations, and then deny the plan amendment and shut down the operation on the basis of the Solicitor's opinion. I would like clarification that amendments to existing plans are protected by the provision.

Mr. STEVENS. I assure my colleague that it was never our intent to shut down existing operations under any circumstances. Applying the opinion to these existing operations through the back door of a plan amendment would undermine the entire provision and make it meaningless. Anybody who knows the mining industry knows that plan amendments are routine. We want operators to be able to amend their plans when necessary to make them better. The provision covers such amendments, and protects them from the legal interpretation contained in the Solicitor's opinion.

Mr. REID. I thank my friends from Alaska, the committee chairmen, for these important clarifications.

Mr. LOTT. Mr. President, for many years I have been working with the Minority Leader, Senator DASCHLE, to develop and enact legislation to provide liability relief for recyclers of scrap metal and other material, under the Superfund program. I am pleased that we have been able to work together to reach a successful resolution on this issue, and that the legislation incorporates the agreement of a broad spectrum of parties.

Mr. DASCHLE. I have appreciated the hard work of the Majority Leader on this issue, and I am pleased that this legislation has been included as part of the omnibus appropriations bill. I hope that this provision will serve to achieve our goal of encouraging recycling.

It is also my understanding that the language of the bill is not intended to exempt from liability parties who had reason to believe that the recyclable material originated from the portion of a DOD, DOE, NRC or Agreement State-licensed facility where source, byproduct or special nuclear material, as defined in the Atomic Energy Act, was processed, utilized or managed. Is it your understanding that the agreement does not cover these materials?

Mr. LOTT. Yes, that is correct.

Mr. DASCHLE. Mr. President, this issue is of great significance to many of my colleagues and to members of the public. In particular, it is of great interest to the Senator from Arkansas, and I deeply appreciate her leadership on this issue.

Mrs. LINCOLN. Mr. President, for the last six years I have worked in Congress to provide relief from liability to legitimate recyclers. Congress never intended to create a disincentive to recycle when it created the Superfund program, and for that reason, I am delighted that this legislation was included in the omnibus appropriations bill.

In addition, I agree with Senator DASCHLE's clarification of the intent of this bill. I am very concerned about the possibility that this legislation could be misinterpreted to relieve from Superfund liability persons who release radioactive material to recyclers, such as those in the steel industry in my home state of Arkansas, who may be unaware of the danger of the products they are receiving, and who could in turn pass it on to consumers. I believe it is critical that we further clarify that this was not intended, and I am hopeful that the Majority Leader and the Minority Leader will work with me to do so.

Mr. DASCHLE. I agree completely with the Senator from Arkansas. Since an explicit provision to this effect was inadvertently omitted, would the Majority Leader agree to address this issue through a technical correction to be enacted at the earliest possible opportunity next session?

Mr. LOTT. Yes. I would be happy to work with the Minority Leader and the Senator from Arkansas early next year to pass a technical correction to this legislation to achieve this goal.

Mr. MURKOWSKI. Mr. President, on November 1 of this year, the Committee on Energy and Natural Resources reported S. 623, the Dakota Water Resources Act of 1999, to the Senate. The legislation amends existing law in an effort to address the water needs of North Dakota. The legislation, as is true of most water related legislation in the arid West, is not without controversy.

Proposals to divert water from the Missouri River to meet agricultural, municipal and industrial, and other needs in North Dakota have a long history. The Missouri, like the Colorado and the Columbia, serves many States and a multitude of interests, including navigation. The Missouri is also important to the management and operation

of the Mississippi. Although there are sufficient resources in each of those Basins to meet all the water related needs if the resources were developed using on-stream and off-stream storage, that development has not occurred and for various reasons, including what I believe are short sighted concerns by national organizations, are not likely to occur in the near term. That being the case, it is not surprising that whenever any Basin State manages to corral all the competing interests in its State and even obtains support from the Administration that other States that could be potentially affected want to examine the agreement and reassure themselves that this particular solution does not come at their expense.

The best way to accomplish that is to bring all the parties together to allow them to review their concerns and work out whatever arrangement will best address their needs. Our Committee did just that several years ago as part of the legislation to settle the water claims of the Colorado Ute Tribes. Once we had revised the agreement in a fashion that was acceptable to the Tribes, the State of Colorado, and the other affected water users, we then had several weeks in intense discussions with the other Colorado River Basin States. I want to point to that process, because it did result in the passage of legislation that was supported by all the parties and provided for the completion of the Dolores and Animas projects.

I rise today to speak and offer reassurance to the North Dakota delegation and the Missouri delegation that the Energy and Natural Resources Committee is committed to assisting these two delegations in working out their difficulties regarding S. 623, the Dakota Water Resources Act of 1999.

I appreciate the hard work and good will expressed by both delegations over the past several weeks, but we have just run out of time in this session of Congress to address the concerns of all affected states. To continue these discussions, I have proposed to my colleagues that when Congress returns next year, the Energy Committee will hold a workshop or other forum so that the Senate can fully identify, discuss, and attempt to resolve the issues that have prevented this legislation from moving this year.

With the assistance of my colleagues, I propose that the Energy Committee staff work with their staffs during the recess and that we convene a meeting during the first week in February to bring all the parties together. Hopefully, if we use the time well during the recess, we can identify who the technical people are who need to be involved so that the delegations will be able to have a constructive meeting. I want to note that Senator SMITH, the Chairman of the Subcommittee on Water and Power, who held the hearings earlier this year on the legislation has indicated that he is also willing to assist in this process.

Mr. DORGAN. I appreciate the Chairman's cooperation and assistance on this bill and his willingness to work with me in the Energy Committee to bring this legislation to the floor. His commitment to convene a workshop to resolve outstanding issues provides the basis for moving forward with this legislation, which would meet the outstanding Federal commitment to our state.

As the Senator from Alaska knows, North Dakota has significant water quality and water quantity needs that must be addressed. In many parts of my state, well water in rural communities resembles weak coffee or strong tea; it is unfit for drinking and other domestic uses. Several parts of my state, including the Red River Valley, do not have access to reliable sources of water. This bill is designed to address those needs and help provide clean, reliable water to families and businesses across North Dakota. When the Senate attempted to consider this legislation in recent days, objections were registered by other Senators who had concerns about the bill. In response, Senator CONRAD and I have worked with those Senators to address their concerns.

I am certain that with the Chairman's assistance and that of Senator SMITH we will be able to resolve these concerns expeditiously.

Mr. BOND. I too, extend my thanks to the Chairman of the Energy Committee for his willingness to help us on this very complex and difficult issue. Missouri, and other States in the Missouri River Basin are dependent on the flow of the Missouri River. Any legislation that affects this flow must be thoroughly vetted by the people in our state who have the knowledge and the expertise. Since this legislation came up at the end of the session with no time for debate on the Senate floor, we appreciate the opportunity the Chairman is providing us to bring together those people from our States who know this issue well. A forum with the free exchange of ideas is an excellent way to air very serious concerns as well as explore possible solutions that can make this a win-win situation for everyone. Representatives of the Missouri Basin States are currently in deep negotiations to discuss water flow. This forum should be held in the context of those negotiations.

Mr. ASHCROFT. I would like to associate myself with the remarks of my colleague from Missouri. We in Missouri are just as protective of our water as any other State in the Missouri River Basin, or for that matter, the rest of the United States. Before either of us can agree to any legislation that has the potential to affect our State, we must have the opportunity for our state experts to go over this legislation with a fine-tooth comb. I welcome the chance that the Senator from Alaska has offered and I know our state water experts will be happy to participate. As I have repeatedly stated, I am willing to work with my colleagues to try to resolve any concerns in a manner that will fully protect the interests of Missouri.

Mr. CONRAD. I also appreciate the Senator's continued willingness to work with us. We will continue to work in good faith to develop a bill that can be passed by the Congress.

I want to be absolutely clear that it is not our intent or that of anyone in North Dakota to harm any of our neighbors. This legislation significantly reduces the amount of irrigated acreage from that authorized by current law and completely eliminates any irrigated acreage from this project in the Hudson River drainage. We have significantly increased the levels of review by both the State Department to ensure compliance with the Boundary Water Treaty and by EPA to ensure compliance with the Clean Water Act on any trans-basin diversion that might occur. There is no guarantee that such a diversion will actually occur. I also want to make it clear that we are willing to discuss the timing, amount, and source of any diversions to ensure that the legitimate needs of our neighboring Basin States are met. The Chairman's offer is helpful and I hope that with a full and frank discussion we will be able to fully resolve all concerns.

Mr. BINGAMAN. I agree with this proposal. I want to assure my colleagues that I will work with the Chairman to provide a forum to allow the North Dakota and Missouri delegations, along with adjacent states, to resolve their concerns.

C–BAND INDUSTRY

Mr. STEVENS. Mr. President, I would like to engage the Senator from Utah, the chairman of the Judiciary Committee, in a colloquy.

As the Senator knows, the C–Band industry is declining and the conferees correctly exempted existing C–Band consumers from numerous provisions in this bill at my request. It is my understanding the conferees sought to exempt the C–Band industry from the program exclusivity rules that we are applying in the satellite bill. Complying with the program exclusivity rules would be technically and economically unreasonable for the C–Band industry and would only deprive C–Band consumers with some of their favorite programming.

Mr. HATCH. Yes, the Senator from Alaska is correct; that was the intent of the conferees. And, I appreciate the Senators concerns and pledge to work with him to ensure that when the FCC promulgates these rules, the C–Band industry is exempt and C–Band consumers are protected.

Mr. STEVENS. I thank the Senator.

Mr. GRASSLEY. I would like to ask the distinguished Chairman of the Committee on Finance a question regarding a tax provision which Congress adopted this summer as part of the vetoed Taxpayer Refund and Relief Act of 1999.

Mr. Chairman, section 1005 of that Act would have provided that the principles of section 482 should be used to determine whether transactions between tax-exempt organizations and related non-exempt entities give rise to unrelated business income tax. This provision was needed to insure that legitimate arms length transactions between these entities are not penalized.

Unfortunately, it appears that this session will end without our having another opportunity to once again enact this vitally needed protection for the tax exempt community. As a result, I would like to ask the distinguished Chairman whether he would agree that this provision should be included as a high priority in the first tax vehicle that we adopt in the second session.

Mr. ROTH. I can assure the distinguished Senator that the enactment of this provision, which has already been agreed to by both the House and Senate, is a high priority for our next tax bill.

Mr. NICKLES. I want to join my distinguished colleague from Iowa in his remarks, and also thank our distinguished Chairman for his commitment to enact this provision next year. Tax exempt organizations provide critical services to our communities, and this provision will make it far easier for them to continue to perform these important functions.

Mr. ROTH. I look forward to working with both the Senators from Iowa and Oklahoma next year to provide the relief that this provision would give to the many fine exempt organizations that are awaiting its enactment.

NURSE ANESTHETISTS

Mr. HARKIN. In 1994, the Health Care Financing Administration issued a draft regulation deferring to State law on the issue of physician supervision of certified registered nurse anesthetists (CRNA's). This action was followed –in 1997 by a proposed HCFA rule deferring to State law on this issue. HCFA's rule has been subject to great scrutiny and numerous studies. Nevertheless, HCFA has to date failed to issue its final rule on the matter, and defer this issue to State law. Would the distinguished Chairman of the Senate Labor, Health and Human Services, and Education Appropriations Subcommittee agree with this assessment?

Mr. SPECTER. I agree with my distinguished colleague, the ranking subcommittee member. States should have the authority to regulate CRNA's in the same manner as States regulate other health care providers. There is a wealth of information already in existence that supports the view that the issue of supervision should be left to the States, just as HCFA has proposed.

Mr. HARKIN. Therefore, we agree that HCFA's proposed rule has been extensively researched and that HCFA should move forward expeditiously.

Mr. GORTON. I join with my distinguished colleagues to agree that HCFA should move forward expeditiously to resolve this issue.

Mr. SPECTER. Absolutely, HCFA should do what it has initially proposed several years ago and defer to State law on this issue.

Mr. GORTON. I thank the Senators. I look forward to working with them both to resolve this matter.

Mr. HOLLINGS. As you know, I initially objected to the movement of this legislation because of my concerns about the manner in which it preempted state law. As introduced, this bill would have nullified any ability of state legislatures to adopt the Uniform Electronic Transactions Act, (UETA), in a manner that varied from the provisions of the bill, or in a manner that reserved the right of states to adopt UETA in conformance with their consumer protection laws. When the bill was reported by the Commerce Committee, provisions were included to provide states this flexibility. Since the reporting of the bill, the preemption language has been amended to provide that to avoid adherence to the federal law, a state must adopt UETA ''in the form, or any substantially similar variation'' as provided to the states by the National Conference on Uniform State Law.

Do you agree that notwithstanding this change, the purpose and intent of the preemption provisions, either pursuant to the definitions in the bill or otherwise, have not changed? And that the legislation, in its current form, is intended to permit states the flexibility of adopting and enacting UETA in a manner and form that ensures its conformance with state consumer protection laws?

Mr. ABRAHAM. Yes, Senator Hollings, that is certainly the intent of the legislation in its current form, but I would note that there must be a modicum of common sense involved in this approach. It is expected that states will pass consumer protection provisions in conjunction with the Electronic Transactions Act. It is important, however, that states not use the heading of ''consumer protection'' to enact changes which are inconsistent with the spirit of UETA and which threaten to undermine the uniformity which UETA is intended to convey. I believe the current language realizes these important goals.

Mr. HOLLINGS. I would like to address another change to the bill since its reporting by the Committee. As you know, the legislation has been amended to incorporate language providing that the bill applies to the business of insurance. This language has the effect of permitting the validation of insurance contracts pursuant to electronic commerce. As you know, state insurance commissioners have expressed reservations about this provision. There is concern that the provision could potentially adversely affect the ability of states to maintain their full regulatory authority over these transactions. Do you agree that insurance companies that enter into agreements via electronic commerce are still required to meet all other state insurance regulatory requirements?

Mr. ABRAHAM. I agree wholeheartedly. The purpose of this section is to permit insurance companies to use electronic signatures in the same manner and extent as other market participants. Under no circumstances is the legislation intended to allow insurance companies to evade state insurance regulations.

Mr. BURNS. As the sponsor of the low power television provisions contained in the Intellectual Property and Communications Omnibus Reform Act of 1999, I would like to take this opportunity to clarify one of the provisions. Specifically, I want to ensure that a qualified low power television (LPTV) station in New York City serving the Korean-American community on Channel 17 (WEBR(LP), formerly W17BM) is not prohibited from obtaining Class A licensing as a result of Sec. 5008(f)(7)(C)(ii) of the Act.

As drafted, Section 5008(7)(C)(ii) requires a qualified LPTV station to demonstrate the it will not interfere with land mobile radio services operating on Channel 16 in New York City in order to obtain the Class A license. However, in 1995, the Commission authorized public safety agencies to use Channel 16 in New York City on a conditional basis pursuant to a waiver of the Commission's rules. The Order granting that waiver specifically stated that the low power television station on Channel 17 would not have any responsibility to protect land mobile televisions on adjacent Channel 16. Do you agree with my understanding of Section 5008(f)(C)(ii), namely that this section is not intended to prevent that low power station's qualification for the Class A license?

Mr. HATCH. Yes, it is also my understanding that the low power station on Channel 17 in New York City should not be precluded from the Class A license due to Section 5008(f)(7)(ii). The interference that is currently permitted by the Commission is intended to continue. Is this also your understanding Senator Moynihan?

Mr. MOYNIHAN. Yes, it is. Otherwise, the Channel 17 LPTV station in New York City will be permanently deprived of a Class A license, notwithstanding the fact that it exemplifies exactly the type of low power station that should have the opportunity to achieve Class A status. WEBR(LP) has a demonstrated strong commitment to the local Korean community in New York, providing locally originated programming 24 hours a day, 7 days a week. This station's worthwhile service to the community has been a benefit to the public good, and this legislation should not thwart such service from continuing.

THE SCOPE OF COMPULSORY LICENSES FOR TELEVISION BROADCAST SIGNALS

Mr. HATCH. Mr. President, the measure before us contains some technical amendments to various provisions of the Copyright Act, including sections

111 and 119, which deal with the cable and satellite compulsory licenses, respectively. It is important to emphasize that these technical amendments make no change whatsoever in the key definitional provisions of these two compulsory licenses. Section 111(f) defines ''cable systems,'' and section 119(d)(6) defines ''satellite carrier.'' Neither of these definitions is changed by the measure before us.

Mr. LEAHY. Will the Senator from Utah yield for a question?

Mr. HATCH. I am glad to yield to my friend from Vermont.

Mr. LEAHY. I thank the Senator with whom I worked on this important legislation. Does he agree that these definitions should be interpreted in exactly the same way after enactment of this legislation as they were interpreted before its enactment?

Mr. HATCH. The Senator is correct. In other words, if a facility qualified as a ''cable system'' under section 111(f) prior the enactment of this measure, it should also qualify after enactment. Conversely, if a facility did not meet the definition of ''cable system'' before this measure was enacted, it still would not meet that definition after enactment, and therefore the operations of that facility could not rely upon the cable compulsory license established by section 111. And an entity which was not entitled to claim the section 119 compulsory license because it did not meet the definition of a ''satellite carrier'' prior to enactment of the measure before us would be in exactly the same position after enactment, that is, it could not claim the satellite compulsory license under section 119.

Mr. LEAHY. I appreciate that response.

Mr. HATCH. I would point out that none of this is affected by the fact that in any earlier version of this legislation, there were technical amendments that would have affected these definitions. Those particular amendments do not appear in this legislation, and neither their inclusion in the earlier version nor their omission here has any legal significance. Would the Senate from Vermont agree with that statement?

Mr. LEAHY. I would, and I would hope that both the Copyright Office and the courts would take the same approach. In that regard, I would ask my friend from Utah, the chairman of the Judiciary Committee, for his understanding of the current state of the law concerning the availability of these compulsory licenses to digital online communications services?

Mr. HATCH. In reply to that question, I would say that certainly under current law, Internet and similar digital online communications services are not, and have never been, eligible to claim the cable or satellite compulsory licenses created by sections 111 or 119 of the Copyright Act. To my knowledge, no court, administrative agency, or authoritative commentator has ever held or even intimated to the contrary.

Mr. LEAHY. Is the distinguished chairman aware of the views of the Copyright Office on this question? After all, since the Copyright Office administers these compulsory licenses, their views are of particular importance.

Mr. HATCH. The Copyright Office studied this issue exhaustively in 1997 and came to the same conclusion which I have just stated. In fact, in undertaking the study, the Copyright Office asked the fundamental question whether a statutory license should be created for the Internet. The underlying assumption of the question was that there was not, and never was, a statutory license applicable to the Internet. In response, there was little or no comment challenging that assumption. And I would point out that valid exercises of the Office's statutory authority to interpret the provisions of these compulsory licensing schemes are binding on the courts.

Mr. LEAHY. I recall the Copyright Office's 1997 study, entitled ''A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals,'' which concluded that no existing statutory license authorizes retransmission of television broadcast signals via the Internet or any online service. We held a hearing on that report. I recently received a letter from the Register of Copyrights reaffirming this interpretation. Indeed, in that letter, dated November 10, 1999, the Register stated that ''the compulsory license for secondary transmissions of television broadcast signals by cable systems does not apply to digital online communication services,'' and specifically that ''the section 111 license does not and should not apply to Internet transmissions.''

Mr. HATCH. I also received such a letter from the Register. And along the same lines, I have received a letter on this issue from one of America's most distinguished copyright scholars, Professor Arthur Miller of Harvard Law School. Professor Miller's interpretation of the scope of eligibility for these compulsory licenses under current law appears to be very similar to the Register's, and his letter also underscores the point I was making earlier, that there is no legal significance to the fact that this legislation omits certain technical amendments to the definition of ''cable system'' and ''satellite carrier'' that appeared in earlier versions of this legislation. I ask unanimous consent that these letters be printed in the RECORD.

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

THE REGISTER OF COPYRIGHTS
OF THE UNITED STATES OF AMERICA,
Washington, DC, November 10, 1999.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I am writing to you today concerning pending proposals regarding the Satellite Home Viewer Act, and particularly the compulsory copyright licenses addressed by that Act. As the director of the Copyright Office, the agency responsible for implementing the compulsory licenses, I have followed the actions of the Congress with great interest.

Let me begin by thanking you for all your hard work and dedication on these issues, and by congratulating you on your success in achieving a balanced compromise. Taken as a whole, the Conference Report on H.R. 1554, the Intellectual Property and Communications Omnibus Reform Act of 1999, represents a clear step forward for the protection of intellectual property. I particularly appreciate your support for provisions that improve the ability of the Copyright Office to administer its duties and protect copyrights and related rights.

I was greatly concerned when I heard the statements of Members on the floor of the House suggesting that in the final few legislative days of this session, subsection 1011(c) of the Conference Report should be amended or removed. Section 1011(c) makes unmistakable what is already true, that the compulsory license for secondary transmissions of television broadcast signals by cable systems does not apply to digital on-line communication services.

It is my understanding that some services that wish to retransmit television programming over the Internet have asserted that they are entitled to do so pursuant to the compulsory license of section 111 of Title 17. I find this assertion to be without merit. The section 111 license, created 23 years ago in the Copyright Act of 1976, was tailored to a heavily-regulated industry subject to requirements such as must-carry, programming exclusivity and signal quota rules—issues that have also arisen in the context of the satellite compulsory license. Congress has properly concluded that the Internet should be largely free of regulation, but the lack of such regulation makes the Internet a poor candidate for a compulsory license that depends so heavily on such restrictions. I believe that the section 111 license does not and should not apply to Internet transmissions.

I also question the desirability of permitting any existing or future compulsory license for Internet retransmission of primary television broadcast signals. In my comprehensive August 1, 1997 report to Congress, *A Review of the Copyright Licensing Regimes Covering Retransmission of broadcast Signals,* Internet transmissions were addressed in Chapter VIII, entitled ''Should the Cable Compulsory License Be Extended to the Internet?'' the report concluded that it was inappropriate to ''besto[w] the benefits of compulsory licensing on an industry so vastly different from the other retransmission industries now eligible for compulsory licensing under the Copyright Act.''

The report observed that ''Copyright owners, broadcasters, and cable interests alike strongly oppose . . . arguments for the Internet retransmitters' eligibility for any compulsory license. These commenters uniformly decry that the instantaneous worldwide dissemination of broadcast signals via Internet poses major issues regarding the United States and international licensing of the signals, and that it would be premature fur Congress to legislate a copyright compulsory license to benefit Internet retransmitters at this time.'' the Copyright Office believes that there would be serious international implications if the United States were to permit statutory licensing of Internet transmissions of television broadcasts.

Therefore I urge that no action be taken to remove or alter section 1011(c) of the Conference Report. At this point, to do so could be construed as a statement that digital online communication services *are* eligible for

the section 111 license. Such a conclusion would be reinforced in light of section 1011(a)(1), which replaces the term ''cable system'' in section 111 of Title 17 with the term ''terrestrial system.'' In the absence of section 1011(c), section 1011(a)(1) might incorrectly be construed as implying a broadening of the section 111 license to include Internet transmissions.

The Internet is unlike any other medium of communication the world has ever known. The application of copyright law to that medium is of utmost importance, and I know that you have personally invested a great deal of time and energy in recent years to assure that a balance of interests is reached. Permitting Internet retransmission of television broadcasts pursuant to the section 111 compulsory license would pose a serious threat to that balance.

Please feel free to contact me if I can be of any assistance in this matter. Thank you.

Sincerely,

MARYBETH PETERS,
Register of Copyrights.

HARVARD LAW SCHOOL,
Cambridge, MA, November 15, 1999.

Hon. ORRIN G. HATCH,
Chairman, Judiciary Committee,
U.S. Senate, Washington, DC.
Hon. HENRY J. HYDE,
Chairman, Judiciary Committee,
House of Representatives, Washington, DC.

DEAR CHAIRMEN HATCH AND HYDE: I am writing to you to express my views on a proposal to amend the cable and satellite compulsory licenses in Sections 111 and 119 of the Copyright Act. I have taught Copyright Law at Harvard Law School, as well as Michigan and Minnesota, for over thirty-five years and have written extensively and lectured throughout the world on this area of the law. In addition, I was very active in the legislative process that led to the Copyright Act of 1976 and was appointed by President Ford and served as a Commissioner on the Commission for New Technological Uses of Copyright Works (CONTU).

The Conference Report on H.R. 1554, the Intellectual Property and Communications Omnibus Reform Act of 1999, included amendments to Sections 111 and 119 to state explicitly that digital online communication services do not fall within the definitions of ''satellite carrier'' and ''terrestrial system'' (currently ''cable system'') and, therefore, are not eligible for either compulsory license. I understand that Congress is currently considering deleting these amendments or enacting legislation that would not include them. I believe that the amendments were wholly unnecessary and that the deletion or exclusion of them will have no effect on the law, which is absolutely clear: digital online communication services are not entitled to the statutory license under either Section 111 or Section 119 of the Copyright Act.

A compulsory license is an extraordinary departure from the basic principles underlying copyright law and a substantial and significant encroachment on a copyright owner's rights. Therefore, any ambiguity in the applicability of a compulsory license should be resolved against those seeking to take advantage of what was intended to be a very narrow exception to the copyright proprietor's exclusive rights. As the Fifth Circuit Court of Appeals has noted in a case involving another compulsory license: the compulsory license provision is a limited exception to the copyright holder's exclusive right to decide who shall make use of his (work). As such, it must be construed narrowly, lest the exception destroy, rather than prove, the rule.

Fame Publishing Co. v. *Alabama Custom Tape, Inc.*, 507 F.2d 667, 670 (5th Cir. 1975).

In this situation, however, there is absolutely no ambiguity as to the correct construction of the cable and satellite compulsory licenses. Neither the language of the Copyright Act, nor any statement of Congressional intent at the time of their enactment, nor any judicial interpretation of Section 111 or Section 119 in any way suggests that these compulsory licenses could apply to digital online communication services. And, as far as I know, the representatives of these services have not offered any substantive argument to the contrary—with good reason. No reasonable person—or court—could interpret these statutory licenses to embrace these services.

And if there was any doubt left in anyone's mind, the federal agency charged with interpreting and implementing these statutory licenses, the United States Copyright Office, has addressed this issue directly: retransmitting broadcast signals by way of the Internet is clearly outside the scope of the current compulsory licenses. In fact, the Copyright Office recommended in 1997 that Congress not even create a new compulsory license, concluding that it would be ''inappropriate for Congress to grant Internet retransmitters the benefits of compulsory licensing.'' See U.S. Copyright Office, A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals (August 1, 1997), at 99 and Executive Summary at xiii.

My work in the field of copyright over the past decades, especially my extensive activities in connection with the development of the legislation that became the Copyright Act of 1976, leads me to agree with the Office's conclusions that it would be far too premature to extend a compulsory license to the Internet. That conclusion seems sound given the enormous differences between the Internet and the industries embraced by the existing licensing provisions and the need to engage in extensive research and analysis regarding the potentially enormous implications of digital communications. We simply do not know enough to legislate effectively at this point. Doing so at this time—especially without hearing from numerous affected interests—would create a risk of upsetting the delicate balance between the rights of copyright proprietors and the interests of others.

Thus, in any judicial action that might materialize by or against the providers of digital online communication services, the court would be bound by the Copyright Office's interpretation of the statutory licenses. See *Cablevision Systems Development Co.* v. *Motion Picture Association of America, Inc.*, 836 F.2d 599, 609–610 (D.C. Cir. 1988) (deferring to the Copyright Office's interpretation of Section 111, noting Congress' grant of statutory authority to the Copyright Office to interpret the Copyrights Act, and the Supreme Court's indication that it also would defer to the Copyright Office's interpretation of the Copyright Act), *Satellite Broadcasting and Communications Assoc* v. *Oman*, 17 F.3d 344, 345 (11th Cir. 1994) (holding that valid exercises of the Copyright Office's statutory authority to interpret the provisions of the compulsory licensing scheme are binding on the court).

In summary, based on the unmistakable fact that digital online communication services are ineligible for the cable and satellite compulsory licenses and the identical, unequivocal interpretation by the Copyright Office, amendments to the existing statute reiterating this legal truth are unnecessary. Consequently, the status quo with respect to who is eligible for the statutory licenses will remain undisturbed whether Congress deletes these amendments from the pending legislation or excludes them from subsequent legislation.

Respectfully yours,

ARTHUR R. MILLER,
Bruce Bromley Professor of Law.

Mr. LEAHY. I thank my colleague from Utah for his responses. I believe this colloquy should help to clarify that this legislation leaves these crucial definitions unchanged, and also to clarify what is the current state of the law, which this legislation does not disturb.

Mr. HATCH. I think the Senator from Vermont. And I would clarify one other point relating to a minor modification we made to the definition of ''unserved household'' in the distant signal satellite statutory license found in section 119 of Title 17 of the United States Code. The conferees decided to add the word ''stationary'' to the phrase ''conventional outdoor rooftop receiving antenna'' in Section 119(d)(10) of the Copyright Act. As the Chairman of the Conference Committee and of the Senate Judiciary Committee, which has jurisdiction over copyright matters, I should make clear that this change should not require any alteration in the methods used by the courts to enforce the ''unserved household'' limitation of Section 119. The new language states only that the antenna is to be ''stationary''; it does not state that the antenna is to be misoriented (*i.e.*, pointed away from the station in question). Any interpretation that assumed misorientation would be inconsistent with the basic premise of the definition of ''unserved household,'' which defines that term in relation to an individual TV station rather than to all network affiliates in a market—and speaks to whether a household ''cannot'' receive a Grade B intensity signal from a particular station. If a household can receive a signal of Grade B intensity with a properly oriented stationary conventional antenna, it is not ''unserved'' within the meaning of Section 119. In addition, if station towers are located in different directions, conventional over-the-air antennas can be designed so as to point towards the different towers without requiring the antenna to be moved. And reading the definition of ''unserved household'' to assume misoriented antennas would mean that the ''unserved household'' limitation had no fixed meaning, since there are countless different ways in which an antenna can be misoriented, but only one way to be correctly oriented, as the Commission's rules make clear.

With that clarification, I yield the floor.

PATENT REFORM LEGISLATION

Mrs. FEINSTEIN. I want to thank the Chairman and the Ranking Member for their tireless efforts on patent reform. I strongly support passage of S. 1798, which is included in this omnibus measure, because so many companies in California and across the nation depend on a strong and well-functioning patent system.

While S. 1798 will provide important protection for inventors and innovators and help reduce needless patent litigation, I do have some concerns regarding the compromise reached regarding the reexamination procedure set forth in Title VI. As I understand it, this section will reduce the burden of patent cases in our federal courts. However, we need to be sure that the procedure fully and fairly protects the rights of all parties, and some concerns about this process have been brought to my attention over the last few weeks.

Out of deference to the Chairman and the Ranking Member of the Judiciary Committee, and being sensitive to the compromise that the House reached, I did not seek amendments to this title of the bill. Furthermore, I feel strongly that the bill should move forward without further delay, so I support its final passage. This does not mean, however, that I believe we should cease to be concerned about how the new system will function. Accordingly, I would like to receive assurances from Chairman HATCH that we will keep a close eye on how well this new reexamination system works. In particular, I would like to request that the Committee obtain an interim report from the Patent and Trademark Office under the authority specified in section 606 of S. 1798 not later than 18 months after this bill becomes effective. I would also invite Chairman HATCH to hold a hearing to consider this information, and to obtain views from people who both supported and opposed this compromise system.

Mr. HATCH. I thank the Senator from California for her remarks and appreciate her support for this important legislation. I agree that Congress must closely monitor the effectiveness and fairness of the new reexamination procedure. I also believe it would be very useful to obtain the interim report she mentioned in a timely fashion and look forward to continuing to work with her on this issue.

CPB LIST SHARING PROVISION

Mr. MCCONNELL. Mr. Chairman, I would like to engage with you in a colloquy concerning the Corporation for Public Broadcasting (CPB) list-sharing prohibition in the Intellectual Property and Communications Reform Act.

Mr. HATCH. I would be happy to.

Mr. MCCONNELL. The bill amends Section 396(h) of the Communications Act to prevent public broadcasting entities that receive federal funds from renting or exchanging lists with political candidates, parties or committees.

Mr. Chairman, am I correct in reading this language as providing that the list-sharing restriction only applies to the CPB and not any other organizations?

Mr. HATCH. That is correct.

Mr. MCCONNELL. Mr. Chairman, in my view, CPB is a unique entity and its unique nature may be used by supporters of this provision to justify the restrictions on list sharing. CPB is unique because it is created, controlled and funded by the government with a legal obligation to be balanced and objective.

Many non-profit organizations rely upon exchanges of lists with political organizations as a way to attract new members to their organizations to support their charitable works. A number of mainstream non-profit organizations, such as the Disabled Veterans of America, have expressed concern that this CPB provision may set a precedent for future restrictions on list sharing by other non-profit organizations. It is my understanding, however, that this list sharing restriction is not a precedent for similar restrictions on other non-profits that are not: (1) created by the federal government; (2) controlled by the federal government; (3) funded by the federal government; and (4) legally required to be balanced and objective. Thus, I do not think this provision relating to CPB is a precedent for imposing such restrictions on other non-profits. Does the Chairman agree with my assessment?

Mr. HATCH. Yes, the Senator's assessment is correct. The conferees included the CPB list-sharing language in the bill because of concerns related to CPB's unique status. This provision should in no way be interpreted as precedent for restrictions on list sharing by other non-profit organizations that may receive federal funds.

Mr. MURKOWSKI. Mr. President, I would like to ask a question of the senior Senator from Alaska, Mr. Stevens, in his capacity as chair of the full Committee on Appropriations, and the senior senator from Washington, Mr. GORTON, who is chair of the Interior Subcommittee, regarding clarification of a vital issue facing the State of Alaska.

The Year 2000 will be the 20th anniversary of the passage of the Alaska National Interest Lands Conservation Act of 1980. ANILCA is the most far-reaching piece of legislation ever passed—in the history of the United States—in terms of creating massive set-asides for conservation purposes.

Last year, in the appropriations conference report, Congress passed specific language requiring that the federal managers chosen from around the United States to oversee the implementation of ANILCA's Conservation Units receive adequate, in-depth training on its many components and ramifications. The language read as follows:

> The Committees agree that the Secretary of the Interior and the Secretary of Agriculture should provide comprehensive training to land managers on the history and provisions of statutes affecting land and natural resource management in Alaska, including but not limited to Revised Statute 2477, the Act of May 17, 1906 (34 Stat. 197), the Alaska Statehood Act, the Mineral Leasing Act of 1920, the White Act, the Alaska National Interest Lands Conservation Act, the Alaska Native Claims Settlement Act, and the Magnuson-Stevens Fishery Conservation and Management Act.

When this language passed it was our hope that this training would also be provided to those employees who manage programs in Alaska and to employees whose jobs entail knowledge of one or more of the laws described above.

I want to further clarify that it is our hope that the Secretary of the Interior and the Secretary of Agriculture would enter into an agreement with, and provide funding to, Alaska Pacific University, in conjunction with University of Washington School of Law and Northwestern School of Law, Lewis and Clark College, to develop and conduct training.

I feel training in these laws very specific to Alaska is badly needed, as most federal employees arriving in the state know little about Arctic and sub-Arctic environments. Many people coming to Alaska imagine incorrectly that the statute governing Alaska's federal Parks and Refuges is identical to those they have worked with in the South 49. This, of course, is far from the truth.

Because of the dimensions of ANILCA's reclassification of Alaska's lands, encompassing more than 104 million acres, an area larger that the State of California, the Congress rightfully tailored the law with a series of Alaska-specific provisions, unfamiliar to other states. The purpose of these provisions was clearly intended to ensure that these land designations protect the natural glories of Alaska's most beautiful regions but neither destroy the way of life of Alaska's Native people nor violate the promises made to all Alaskans in the Compact made between our people and the U.S. Government in the Alaska Statehood Bill.

During the August recess, I held hearings in Alaska to discover how the federal managers of the federal Conservation Units in Alaska are doing in carrying out and living by the provisions required in the law. Sadly, I must report a long litany of abuses being suffered by Alaskans as individuals, as outdoor sports participants, as business owners, and as a community due to ignorance by federal managers. Much of this ignorance is through honest misunderstanding of the Statute. I, therefore, ask my honorable colleagues to respond to my query about the status of the language passed last year that would fill this void.

I also want to call to your attention that Alaska Pacific University's Institute of the North has followed up on that language, and is inaugurating a semester course this coming semester addressing all of these issues on the 20th anniversary of ANILCA. All stakeholders—from conservationists to Native peoples to resource harvesters—will be part of the discussions and learning process. The University is working with Lewis and Clark's Northwestern School of Law to develop the needed legal research in this area. And while the University was invited to participate at its own expense in the one-day ANILCA training held here in Washington this spring, I believe the Interior Department and the Department of Agriculture have done no more than that to fulfill Congressional intent.

I believe a good curriculum can be developed at a cost of some $300,000, a small investment for an issue this important. The existing course can be reformatted in a thorough but intensive week-long seminar and delivered specifically for the federal employees who constantly are rotated into Alaska to serve on the front line of this pioneering experiment in conservation and sustainable development.

Mr. STEVENS. Mr. President, I agree with my colleague, the Chairman of the Committee on Energy and Natural Resources. The Senator from Alaska and the Senator from Washington will remember that I asked that the language in the conference report be inserted last year. I, too, am concerned that no action has taken place. It is my intent, as chairman of this committee, that the training called for in last year's conference report take place, and that the program led by Alaska Pacific University, in conjunction with two of the closest law schools in Washington and Oregon, take place. There are sufficient funds in the training budgets of the several Interior agencies to make this happen, and I believe it should happen in conjunction with the outside resources who are developing this curriculum. While I participated in the program held in Washington, DC, on this issue, I would hope that a greater effort is put forth in the future.

Mr. GORTON. Mr. President, I concur with the Alaska Senator's intent, and I believe the Interior and Agriculture budgets are sufficient to allow the Department to contract with these schools to provide the training we called for. Each of these Alaska laws referred to in the report language last year is important, is unique, and needs appropriate training for our managers to ensure that Congressional intent is followed.

Mr. MURKOWSKI. Thank you, Mr. President, and through the chair, thank you to my colleagues. We have considered making this a legal requirement in an amendment to law, but I believe this year—in the 20th anniversary of ANILCA—we should see that the training gets started. We will be following it closely in the year to come, and we appreciate the comments provided by the committee chairman and the manager of the bill.

BLM CLOSURE OF TWIN FALLS AIRTANKER RELOAD BASE

Mr. CRAIG. Mr. President, I would like to discuss with the Chairman of the Interior Appropriations Subcommittee a problem that has come up in Twin Falls in my State of Idaho. In July 1998, the Bureau of Land Management's state office closed the tanker resupply base at the Twin Falls airport, after an internal inspection indicated unsafe conditions. At the time of that closing, the BLM Shoshone and state BLM offices expressed their interest in re-opening the facility as soon as possible. Over the following months, discussions between BLM and local officials included mention of re-opening as early as during fiscal year 2000.

Then, approval and timing of the project appeared to enter a twilight zone somewhere between south Idaho and Washington, DC. In February of this year, a project data sheet was produced showing a request for FY 2001. Local officials in Twin Falls were told that this delay was the result of no prioritization decision being made at the national level, and that FY 2001 was going to be the earliest year for which the request could be made. Subsequently, local officials were told both, that no final decisions had been made, and that the project had slipped to a lower priority and would be delayed at least until FY 2002.

Prompt replacement of this airtanker reload base is important for several reasons. It is the only such base within 100 miles of most of the Idaho-Nevada border and is therefore situated to provide the fastest possible response in the area during the fire season. Because of the location of the airport and its clear departure paths, it offers fast, safe turnaround times. Many customers in addition to BLM need a base in this area. If the base is not reopened soon, it will hurt airport operations and hurt the local economy.

I am not suggesting to the Chairman that anyone is acting inappropriately. But I do think it is important for us to look into the matter, find out more about the decisionmaking process and what it is producing, consider what the fairest, most prompt outcome should be, and engage with BLM to arrive at that solution.

Mr. GORTON. I appreciate the gentleman bringing this to the Subcommittee's attention. I certainly can understand the Senator's concern with the closure of this base and his constituents' frustration with seemingly inexplicable delays in making progress toward a re-opening. I look forward to working with the Senator and with BLM, to look into this matter and arrive at the best, earliest possible resolution.

DESULFURIZATION (BDS) GRANT

Mr. STEVENS. The FY 2000 Interior Appropriations conference report provides a grant to a refinery in Alaska for a pilot project to demonstrate the effectiveness of diesel biocatalytic desulfurization technology, or BDS for short. This technology holds great promise for helping our petroleum refining industry reduce the sulfur content of diesel fuel in order to meet new EPA regulations. Would the Chairman of the Subcommittee clarify a couple of points about this grant?

Mr. GORTON. Certainly.

Mr. STEVENS. It is my understanding that the Chairman intends for this grant to be made available only to a refinery owned by a small business in Alaska. Is that correct?

Mr. GORTON. The Senator is correct. I understand that the BDS technology is ideally suited to small refineries. Therefore, I believe that the grant should be made available only to a refinery that meets the Small Business Administration's definition of small; that is, less than 75,000 barrels per day capacity of petroleum-based inputs and less than 1,500 employees.

Mr. STEVENS. Why is the BDS technology better suited to small refineries?

Mr. GORTON. It has to do with the nature of the technology itself. As the Senator may know, diesel engine manufacturers currently are in the process of developing new technologies with the potential to radically reduce harmful diesel emissions, but which will require fuel with very low sulfur content in order to work effectively. To reduce the environmental impact of diesel emissions, the EPA is considering new regulations which would require significant reductions in the sulfur content of diesel fuel.

Large-scale, fully-integrated refineries are capable of cost-effectively producing low-sulfur diesel fuel using the traditional technology for removing sulfur from gasoline and diesel fuel, called hydrodesulfurization, or HDS. However, small refineries do not have that capability. HDS is a highly complex, energy intensive, and expensive process. As a result, it is not well-suited to small refineries, which generally are much more simply configured and produce a smaller variety and quantity of refined products than large refineries, and therefore cannot justify the expense of building and operating HDS units.

BDS, on the other hand, is a simple, efficient, and low cost technology which uses much less energy than the traditional HDS technology. A BDS unit is likely to cost 50% less to construct and operate than a traditional HDS unit. For these reasons, BDS technology is particularly well-suited to small refineries and holds great promise as a cost-effective alternative for producing low-sulfur diesel fuel. Because small refineries will be the principal users of the BDS technology if it works like we hope it will, it makes sense to first try it out at a small refinery. Therefore, we believe that the grant for a demonstration project should be directed to a small refinery.

Mr. STEVENS. Thank you.

Mr. CRAIG. Senator GORTON, I have in my hand a copy of an August 27 order from Judge William Dwyer instructing the parties in a lawsuit over timber sales in the Pacific Northwest to negotiate a settlement regarding a requirement to survey for 77 species of mollusks, lichens, bryophytes, salamanders and slugs prior to conducting ground disturbing activities. This lawsuit has held up over one quarter of a billion board feet of federal timber sales.

Let me read a single sentence from the Judge's order:

> Negotiations should now be resumed, should include the defendant-interveners, and should explore short-term solutions that would reduce the impact of injunctive relief

on logging contractors and their employees while complying with the Northwest Forest Plan.

I have been advised by media accounts that the settlement announced, with great fanfare, by Under Secretary Jim Lyons yesterday did not involve the ''defendant-interveners.'' Indeed, in his public comments Mr. Lyons indicates that, the defendant-interveners were excluded from discussions. Defendant-interveners have been unsuccessful in even securing basic information that the government currently has available about affected sales. Furthermore, the settlement did not ''reduce the impact of injunctive relief on logging contractors and their employees'' at all. Instead, it actually expanded the injunction by adding four more sales to the dozens that are already either enjoined by the Court, or not awarded by a decision of the Administration. Mr. Lyons gave the environmental plaintiffs more than what Judge Dwyer ordered in his original decision simply to settle the case and claim that his Northwest Forest Plan was ''back on track.'' This seems more like a capitulation, rather than a settlement.

Mr. GORTON. The Senator is correct. Additionally, I also understand that the day before this ''deal'' was announced, Judge Dwyer held a status conference with all the parties, including the defendant-interveners. The government attorneys told him that no agreement had been reached, and that the next mediation session was to occur on December 2. The Judge then set December 3 for the next status conference. Apparently, this Administration has as much trouble speaking with any probity to the Judicial Branch as they have recently with the Congress. It appears that the Judge's admonition to include the ''defendant-interveners'' in the discussions was ignored.

Mr. CRAIG. Senator, I also understand that Section 334 of the Interior Appropriations Bill was dropped, in part, because of concerns by the Administration that the measure would disrupt the negotiations that were underway, and could prevent the release of any of the enjoined timber sales. But, the settlement announced yesterday will not release any of the enjoined sales.

To add insult to injury, Mr. Lyons is nevertheless claiming that the settlement he announced yesterday will, indeed, allow the sales to go forward. I understand that nothing could be further from the truth. These sales are still on hold while the Forest Service tries to figure out how to search for slugs, slime and salamanders. Most importantly, the Administration is not willing to commit to a time-frame to complete these surveys. I believe this is a wrong that must be corrected.

Mr. GORTON. I concur with the observations of my colleague from Idaho. The sales in question have not been made available to operate. They are still subject to the impossible survey requirements that caused the injunction to begin with. That is why I would urge the Administration in the strongest terms to return to the negotiating table with the defendant-interveners and address their concerns.

Specifically, there should be an agreed-upon time-frame and a date certain for the completion of the agreed-upon survey requirements. Failure to conduct a good-faith effort to complete the settlement process in the fashion ordered by the Judge should be grounds for withholding final approval of the agreement.

Mr. CRAIG. I agree. It seems to me that, based upon the Administration's performance, Congress should reinstate Section 334 or some similar measure in the FY2000 Supplemental Appropriations bill and direct the Administration to release these sales immediately. The Administration's present course will keep this conflict alive interminably, and expose the taxpayers to the liability of damage claims from contract holders. Moreover, this consistent record of deceit and chicanery from the Administration must stop. We made a good faith effort to respond to the Administration's concerns over Section 334 based, in part, on its promise to negotiate a fair settlement of this legal dispute. Not only did they not do that, they now have the audacity to claim publicly that they did, and spin their announcement in the most shameful of ways. If truth is the coin of the realm, Mr. Lyons and his cohorts are hopelessly bankrupt.

Mr. SMITH of New Hampshire. I would like to ask the Chairman of the Interior Appropriations subcommittee to clarify some matters concerning the President's American Heritage Rivers initiative that concerns the Interior and related agencies portion of the appropriations act. Senator GORTON, is it your understanding that there is nothing in this bill that authorizes the American Heritage Rivers initiative?

Mr. GORTON. Yes, I would like to clarify that matter. There is no language whatsoever in the Interior portion that provides an authorization for the American Heritage Rivers Initiative.

Mr. SMITH of New Hampshire. Thank you Mr. Chairman. In addition, is it true that there is no separate appropriation for the American Heritage Rivers initiative in the Interior portion of the bill?

Mr. GORTON. Yes, it is true that there is no appropriation for the American Heritage Rivers initiative in the appropriations act. In fact, the bill includes in Title three a provision that clearly prohibits the transfer of any funds from this act to the Council on Environmental Quality (CEQ) for purposes related to the American Heritage Rivers initiative.

Mr. SMITH of New Hampshire. Thank you Mr. Chairman. In addition, can you comment on some guidance that you have given the Forest Service in your statement to the managers?

Mr. GORTON. Yes, certainly. The statement of the managers provides a limitation on spending for the Forest Service for purposes related to designated American Heritage Rivers. This is not an appropriation, but it provides a maximum that may be spent from funds appropriated for other purposes on any efforts that are consistent with existing authorized programs. I would also like to point out that the Interior subcommittee has questioned this initiative previously. The Committee reports accompanying the FY 1999 bill clearly stated that efforts on this initiative by agencies covered by the Interior bill must complete with, or be normal part of, the authorized program of work of the agency.

INTELLECTUAL PROPERTY AND COMMUNICATIONS

Mr. SCHUMER. Mr. President, I rise today in support of the revised ''Intellectual Property and Communications Omnibus Reform Act of 1999'' (H.R. 1554). As a Member of the Judiciary Committee, I am particularly pleased that this legislation includes as Title IV, the ''American Inventors Protection Act of 1999.'' This important patent reform measure includes a series of initiatives intended to protect rights of inventors, enhance patent protections and reduce patent litigation.

Perhaps most importantly, subtitle C of title IV contains the so-called ''First Inventor Defense.'' This defense provides a first inventor (or ''prior user'') with a defense in patent infringement lawsuits, whenever an inventor of a business method (i.e., a practice process or system) uses the invention but does not patent it. Currently, patent law does not provide original inventors with any protections when a subsequent user, who patents the method at a later date, files a lawsuit for infringement against the real creator of the invention.

The first inventor defense will provide the financial services industry with important, needed protections in the face of the uncertainty presented by the Federal Circuit's decision in the *State Street* case. *State Street Bank and Trust Company* v. *Signature Financial Group, Inc. 149* F.3d 1368 (Fed. Cir. 1998). In *State Street,* the Court did away with the so-called ''business methods'' exception to statutory patentable subject matter. Consequently, this decision has raised questions about what types of business methods may now be eligible for patent protection. In the financial services sector, this has prompted serious legal and practical concerns. It has created doubt regarding whether or not particular business methods used by this industry—including processes, practices, and systems—might now suddenly become subject to new claims under the patent law. In terms of every day business practice, these types of activities were considered to be protected as trade secrets and were not viewed as patentable material.

Mr. President, the first inventor defense strikes a fair balance between patent law and trade secret law. Specifically, this provision creates a defense for inventors who (1) acting in

good faith have reduced the subject matter to practice in the United States at least one year prior to the patent filing date (''effective filing date'') of another (typically later) inventor; and (2) commercially used the subject matter in the United States before the filing date of the patent. Commercial use does not require that the particular invention be made known to the public or be used in the public marketplace—it includes wholly internal commercial uses as well.

As used in this legislation, the term ''method'' is intended to be construed broadly. The term ''method'' is defined as meaning ''a method of doing or conducting business.'' thus, ''method'' includes any internal method of doing business, a method used in the course of doing or conducting business, or a method for conducting business in the public marketplace. It includes a practice, process, activity, or system that is used in the design, formulation, testing, or manufacture of any product or service. The defense will be applicable against method claims, as well as the claims involving machines or articles the manufacturer used to practice such methods (i.e., apparatus claims). New technologies are being developed every day, which include technology that employs both methods of doing business and physical apparatus designed to carry out a method of doing business. The first inventor defense is intended to protect both method claims and apparatus claims.

When viewed specifically from the standpoint of the financial services industry, the term ''method'' includes financial instruments, financial products, financial transactions, the ordering of financial information, and any system or process that transmits or transforms information with respect to investments or other types of financial transactions. In this context, it is important to point out the beneficial effects that such methods have brought to our society. These include the encouragement of home ownership, the broadened availability of capital for small businesses, and the development of a variety of pension and investment opportunities for millions of Americans.

As the joint explanatory statement of the Conference Committee on H.R. 1554 notes, the provision ''focuses on methods for doing and conducting business, including methods used in connection with internal commercial operations as well as those used in connection with the sale or transfer of useful end results—whether in the form of physical products, or in the form of services, or in the form of some other useful results; for example, results produced through the manipulation of data or other inputs to produce a useful result.'' H. Rept. 106–464 p. 122.

The language of the provision states that the defense is not available if the person has actually abandoned commercial use of the subject matter. As used in the legislation, abandonment refers to the cessation of use with no intent to resume. Intervals of non-use between such periodic or cyclical activities such as seasonable factors or reasonable intervals between contracts, however, should not be considered to be abandonment.

As noted earlier, Mr. President, in the wake of *State Street*, thousands of methods and processes that have been and are used internally are now subject to the possibility of being claimed as patented inventions. Previously, the businesses that developed and used such methods and processes thought that secrecy was the only protection available. As the conference report on H.R. 1554 states: ''(U)nder established law, any of these inventions which have been in commercial use—public or secret—for more than one year cannot now be the subject of a valid U.S. patent.'' H. Rept. 106–464, p. 122.

Mr. President, patent law should encourage innovation, not create barriers to the development of innovative financial products, credit vehicles, and e-commerce generally. The patent law was never intended to prevent people from doing what they are already doing. While I am very pleased that the first inventors defense is included in H.R. 1554, it should be viewed as just the first step in defining the appropriate limits and boundaries of the *State Street* decision. This legal defense will provide important protections for companies against unfair and unjustified patent infringement actions. But, at the same time, I believe that it is time for Congress to take a closer look at the potentially broad and, perhaps, adverse consequences of the *State Street* decision. I would hope that beginning early next year that the Judiciary Committee will hold hearings on the *State Street* issue, so that Senators can carefully evaluate its economic and competitive consequences.

Mr. TORRICELLI. My college is correct. The *State Street* decision may have unintended consequences for the financial services community. By explicitly holding that business methods are patentable, financial service companies are finding that the techniques and ideas, that were in wide use, are being patented by others.

The Prior Inventor Defense of H.R. 1554 is an important step toward protecting the financial services industry. By protecting early developers and users of a business method, the defense allows U.S. companies to commit resources to the commercialization of their inventions with confidence that a subsequent patent holder will prevail in a patent-infringement suit. Without this defense, financial services companies face unfair patent-infringement suits over the use of techniques and ideas (methods) they developed and have used for years.

While I support the Prior Inventor Defense, as a member of the Judiciary Committee, I hope that we will revisit this issue next year. More must be done to address the boundaries of the *State Street* decision with the realities of the constantly changing and developing financial services industry.

I look forward to working with Senator SCHUMER and my colleagues on the committee on this important issue.

Mr. JEFFORDS. Mr. President, I rise today to support an extremely important provision in the budget agreement. A provision which will mean the difference for many dairy farmers around the country on whether they will stay in business or not.

The dairy compromise that is included in the budget agreement will help bring stability to the price dairy farmers around the country receive for their product—as well as protect consumers and processors by helping to maintain a fresh local supply of milk.

The agreement extends the very successful Northeast Dairy Compact and overturns Secretary Glickman's flawed pricing rule, saving dairy farmers around the country millions of dollars in lost income.

Take one look at this chart and you will know why the dairy compromise in the budget agreement is so important to the survival of this country's dairy farmers.

Why, because every farmer in every state in the red would lose money out of their pockets if Secretary Glickman's flawed pricing rule known as option 1–B were to be put in place. The dairy compromise corrects this and creates a pricing formula that is fair for both farmers and consumers.

For three years the farmers in New England have had a program that works. It's called the Northeast Dairy Compact. Because the Dairy Compact pilot program has worked so well—no less than twenty-five states have approved Compacts and are now asking Congress for approval.

Today, I am so pleased two of the people responsible for creating the idea of the dairy compact are here in Washington today. Bobby Starr and Dan Smith are two Vermonters that over 10 years ago put their heads together in an effort to help protect the Vermont way of life.

It was my hope and the hope of the majority of the Senate that we could have expanded the compacts into other regions so other states could benefit from having a means of stabilizing prices for both their farmers and consumers.

Unfortunately, this time we were not able to expand the dairy compact into other regions. However, a great deal of progress has been made as more and more states are seeing the benefits of protecting their dairy farmers and rural economies through the use of Interstate Compacts.

Given the broad support for compacts among the states, we all know that the issue of regional pricing is one that will continue to be debated. I am pleased with the tremendous progress the Southern states and other Northeastern states have made to move their compacts forward.

While the debate continues, this reasonable compromise allows the Northeast Compact to continue as the pilot project for the concept of regional pricing

The Northeast Dairy Compact has given farmers and consumers hope. The Compact, which was authorized by the 1996 farm bill as a three-year pilot program, has been extremely successful.

The Compact has been studied, audited, and sued but has always come through with a clean bill of health. Because of the success of the Compact it has served as a model for the entire country.

Mr. President, I am of course aware that some of my colleagues oppose our efforts to bring fairness to our states and farmers by continuation of the Dairy Compact pilot project.

Also, unfortunately, Congress has been bombarded with misinformation from an army of lobbyists representing the national milk processors, led by the International Dairy Foods Association (IDFA) and the Milk Industry Foundation. These two groups, backed by the likes of Philip Morris, have funded several front groups to lobby against this compromise.

Their handy work has been seen recently in misinformed newspaper editorials, deceiving advertisements and uninformed television ads. Yesterday Senator LEAHY and I came to the floor to correct the misinformation contained in the Wall Street Journal Editorial.

Mr. President, I would like to take this opportunity to set the record straight about the operation of the Northeast Compact. It is crucial that Congress understand the issues presented by dairy compacts on the merits, rather than based on misinformation.

When properly armed with the facts, I believe you will conclude that the Northeast Dairy Compact has already proven to be a successful experiment and that the other states which have now adopted dairy compacts should in the future be given the opportunity to determine whether dairy compacts will in fact work for them as well.

Contrary to the claims of the opposition, regional compact regulation remain open to the interstate commerce of all producer milk and processor milk products, from whatever source. Compacts establish neither ''cartels'', ''tariffs'' nor ''barriers to trade'' and are not ''economic protectionism.''

According to the opponents characterizations, dairy compacts somehow establish a ''wall'' around the regions subject to compact regulation, and thereby prohibit competition from milk produced and processed from outside the regions.

These are entirely misleading characterizations.

It is really quite simple and straightforward: All fluid, or beverage milk sold in a compact region is subject to uniform regulation, regardless of its source within or outside the compact region.

This means that all farmers, including farmers from the Upper Midwest, providing milk for beverage sale in the region, receive the same pay prices without discrimination. It can thus be seen that there is no economic protectionism or the erection of barriers to trade.

Except for uniform regulation, the market remains open to all, and the benefits of the regulations are provided without discrimination to all participating in the market, including those who participate in the market from beyond the territorial boundaries of the region.

Next, I would like to address the actual and potential impact of dairy compacts on consumer prices. In short, opposition claims about the actual and possible impact of dairy compacts on consumers, including low income consumers, are unfounded and grossly distorted.

Over the years, while farm milk prices have fluctuated wildly, remaining constant overall during the last ten years, consumers prices have risen sharply.

The explanation for this is apparently that variations in store prices do not mirror the wild fluctuations in farm prices.

In other words, when farm prices go up, the store prices go up, but when the farm prices recede, the store prices do not come back down as quickly or at the same rate. Hence, and quite logically, if you take away the fluctuations in farm prices, you take away the catalyst for unwarranted increases in store prices.

When the 1996 Farm Bill granted consent to the Northeast Dairy Compact as a pilot program, Congress gave the six New England states the right under the compact clause of the Constitution to join together to help regulate the price paid to farmers for fluid milk in the New England region.

The six New England states realized that in order to maintain a viable agriculture infrastructure and an adequate supply of milk for the consumers they needed to work together.

When the compact passed as part of the 1996 Farm Bill, the opponents were so sure the compact would not operate as its supporters had promised, they asked the Office of Management of Budget to conduct a study on the economic effects of the Northeast Dairy Compact.

The opponents of the dairy compact intended for the OMB study to discredit the dairy compact. The study did just the opposite. Instead, the OMB study proved just what we had thought—that the dairy compact works and it works well.

The OMB studied the economic effects of the Northeast Dairy Compact and especially its effects on the federal food and nutrition programs. The study also examined the impacts of milk prices at various levels on utilization and shipment of milk, and on farm income both within and outside the Compact region.

Here's what the study concluded:

The New England retail milk prices were $.05 cents per gallon lower on average then retail milk prices nationally following the first six months of operation of the Northeast Dairy Compact.

The compact over-order payments made in New England through the Compact Commission have had little impact on the price consumers pay as a result of the compact. Consumers, who are well represented on the Compact Commission, are very pleased with how the Dairy Compact has operated.

The Northeast Dairy Compact has not added any costs to federal nutrition programs, such as the Women, Infants and Children (WIC) and the school lunch and breakfast program, due to compensation procedures implemented by the New England Compact Commission. A program that helps protect farmers and consumers with no cost to the federal government.

The OMB study found that the Dairy Compact was economically beneficial to dairy producers. It increased their income from the milk sales about six percent.

The study concluded that the retail prices in New England were lower than the national average and it increased the income of dairy producers. No wonder twenty-five states are interested in having compacts in their states. And it's no wonder why governors, state legislatures, consumers and farmers alike support the continuation of the Northeast dairy compact.

Also, the OMB study concluded that there were no adverse affects for dairy farmers outside the Compact region and the study noted that some dairy producers outside the region actually received increased financial benefits through the sale of their milk into New England.

The OMB study helped Congress understand just how well the compact works. The opponents of the compact did not get what they had hoped for—instead we all have benefitted, both opponents and proponents of the compact, with the facts.

Despite what some of my colleagues have said, the Northeast Dairy Compact is working as it was intended to.

Instead of trying to destroy an initiative that works to help dairy farmers with no cost to the federal government, I urge my colleagues from the Upper Midwest to respect the states' interest and initiative to help protect their farmers and encourage other regions of the country to explore the possibility of forming their own interstate dairy compact in the future.

Mr. President, the Northeast Dairy Compact has worked well. Just think if other commodities and other important resources around the country developed a program that had no cost to the federal government and benefitted both those who produce, sell, and purchase the product.

Mr. FEINGOLD. Mr. President, I rise today in strong opposition to this legislation, which would revive an arcane

and unjust federal dairy policy that has destroyed thousands of family dairy farms.

Once again, the Senate is faced with dairy riders that fly in the face of recommendations from the Secretary of Agriculture, our nation's dairy farmers, and numerous taxpayer and consumer groups. It seems that political favors are more important to some in this Congress than policy decisions that help our nation's dairy farmers.

During the last four years neither of these two harmful provisions—Option 1A or the Northeast dairy compact—has won Senate approval. I ask my colleagues on the other side of the aisle: why must Senate and House leaders continue to play political games at the expense of our nation's dairy farmers?

Mr. President, these backdoor deals must stop. America's dairy farmers deserve a national dairy policy that ensures that all dairy farmers receive a fair price for their milk.

Unfortunately, the House and Senate leadership went into a back room, and snuck in these two riders that step up the attack on our dairy industry.

These decisions were separate even from the eyes and ears of members, and most members of the Senate Agriculture committee. With the proliferation of these backroom deals, it is no wonder that the general public is frustrated with Congress.

The simple fact is that neither of these two dairy riders has been approved by both chambers of Congress, or the President.

I would like to make my colleagues aware of the history behind these two provisions. During the last four years, the only Senate vote explicitly on the Northeast dairy compact resulted in a resounding rejection.

This year, the Senate again voted on a package containing the Northeast dairy compact, and it again failed to gain enough support to invoke cloture.

Mr. President, the House has yet to take a single vote specifically on the Northeast dairy compact. Compared to the record of the House, these two votes make the Senate look like experts on the Northeast dairy compact.

Furthermore, Mr. President, the 1996 farm bill required that the Northeast dairy compact expire upon implementation of USDA's reforms. Unfortunately these dairy riders seek to defy the will of Congress, and give the back of their hand to America's dairy farmers.

After tens of thousands of comments, USDA came up with a modest plan to reform our 30-year-old milk marketing order structure.

More than 59,000 dairy farmers from all over the United States participated in a USDA national referendum and 96% voted in favor of the United States Department of Agriculture's final rule to consolidate the current 31 federal milk marketing orders into 11, and to reform the price of Class I milk.

USDA's proposal garnered nearly uniform support in each of the 11 regions, including the Southeast, Midwest, and Northeast.

The second of these harmful dairy riders, would overturn these reforms.

Well, Mr. President, I take the floor today to deliver a simple message: Congress should not renew a milk marketing order system that devastates family farmers, and imposes higher costs on consumers and taxpayers.

There has been a great deal of confusion over the effects of these harmful dairy provisions. Some say that mandating Option 1A and a two year extension of the Northeast dairy compact simply preserves the status quo.

This legislation does much more than simply extend the 60-year milk marketing system.

A new forward contracting provision in this dairy rider enables processors to pay farmers much less than the federal blend price for their milk.

This forward contracting provision will also make the market less competitive for all other producers by reducing demand on the open market. Since it is likely that forward contracts would be offered to only the largest producers, this provision will result in losses to small and medium-sized producers, who will become residual suppliers.

Mr. President, these dairy provisions shift the attack on our nation's dairy farmers into overdrive. This harmful legislation will continue to push our nation's dairy farmers out of business, and off their land.

For sixty years, dairy farmers across America have been steadily driven out of business, and disadvantaged by the very Federal dairy policy this legislation seeks to revive.

In 1950, Wisconsin had over 143 thousand dairy farms. After nearly 50 years of the current dairy policy, Wisconsin is left with only 23 thousand farms. Let me repeat: 23 thousand farms.

Why would anyone seek to revive a dairy policy that has destroyed over 110 thousand dairy farms in a single state? That's more than five out of six farms in the last half-century.

This devastation has not been limited to Wisconsin. Since 1950, America has lost over three million dairy farms. And this trend is accelerating, since 1985, America has lost over half of its dairy producers.

Day after day, season after season, we are losing small farmers at an alarming rate. While these operations disappear, we are seeing the emergence of larger dairy farms.

The trend toward a few large dairy operations is mirrored in States throughout the nation. The economic losses associated with the reduction of small farms goes well beyond the impact on the individual farm families that have been forced off their land.

The loss of these farms has devastated rural communities where small family-owned dairy farms are the key to economic stability.

Option 1A also hurts these communities in other ways: through higher costs passed on to both consumers and taxpayers.

Option 1A would increase prices for milk and cheese in virtually every state in the country. Low income families and federal nutrition programs, which rely heavily on milk and cheese, will be seriously hurt by the price increases mandated by this legislation.

The poor and elderly will be especially burdened by higher costs. Under Option 1A and the Compact food stamp recipients would lose $40 million a year due to increases in beverage milk prices and another $18 million a year due to increased cheese prices.

This legislation also soaks taxpayers with a milk tax by imposing higher costs on every taxpayer because we all pay for nutrition programs such as food stamps and the national school lunch program.

According to USDA, Option 1A alone would increase the average beverage milk price by nearly five cents a gallon and the cost of milk used for cheese by about two cents a gallon.

If we add up these costs to all of the federal nutrition programs, the costs mount up quickly.

Option 1A would cost the school lunch and school breakfast programs $19 million a year in higher beverage milk prices and cheese prices.

The WIC program would face over $16 million in higher cheese and milk prices.

Mr. President, the loss caused by Option 1A to the three major nutrition programs is $93 million. These regressive taxes unfairly burden children and the elderly. These hidden penalties on America's children and elderly must not be allowed to continue.

The fact is, we need a new national dairy policy that stops devastating small farmers, and imposing higher costs on taxpayers and consumers.

During my six years in the United States Senate, and twelve years in the Wisconsin State Senate, the overwhelming message I hear from dairy farmers in Wisconsin, Minnesota and throughout the Midwest, is that we need milk marketing order reform.

Congress recognized the need for a new national dairy policy, and in 1996, mandated that USDA reform the Federal milk marketing order system.

Well, let's take a look at why farmers across the U.S. support USDA's reforms. This chart compares Class I milk prices under the final rule and the current pricing system.

Under USDA's final rule dairy farmers in New England would receive 19.29 per hundredweight, a $.26 increase over the current system. Farmers in eastern New York and Northern New Jersey would receive $19.04 per hundredweight, an $.11 per hundredweight increase. In Northern Florida, farmers would receive $20.34, a $.97 increase over the current system.

These statistics underscore the importance of USDA's reforms for dairy farmers across the nation.

As this chart makes clear, USDA's reforms provide relief to America's

dairy farmers, and begin to re-institute fairness into our dairy pricing structure.

Perhaps even more compelling is this simple bar graph that illustrates the national average Class I milk price that farmers receive under the final rule and the current pricing system.

As you can see farmers would have received 58 cents more per hundredweight under USDA's final rule.

Farmers, consumer advocates, and taxpayer groups support USDA's reforms, and oppose these harmful dairy riders.

Mr. President, America's farmers demanded USDA's reforms. We should heed their call and support USDA's final rule.

Unfortunately, supporters of this legislation feel that they know better than America's dairy farmers, and wish to prevent USDA's moderate reforms. Ironically, one of the few changes to Federal dairy policy over the last 60 years has accelerated the attack on small farmers.

Despite the discrimination against Wisconsin dairy farmers under the Eau Claire rule, backdoor politicking during the eleventh hour of the conference committee for the 1996 farm bill, stuck America's dairy farmers with the devastatingly harmful Northeast Dairy Compact. This provision further aggravated the inequities of the Federal milk marketing order system by establishing the Northeast Interstate Dairy Compact. While the Compact may sound benign, it establishes a price fixing entity for six Northeastern States—Vermont, Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut.

The Northeast Interstate Dairy Compact Commission is empowered to set minimum prices for fluid milk higher than those established under Federal milk marketing orders. Never mind that farmers in the Northeast already receive higher minimum prices under the antiquated, 60 year old Eau Claire rule.

The compact not only allows these six States to set artificially high prices for their producers, it permits them to block entry of lower-priced milk from producers in competing States. Further distorting the markets are subsidies given to processors in these six States to export their higher-priced milk to non-compact States.

Who can defend this system with a straight face? This compact amounts to nothing short of government-sponsored price fixing. It is outrageously unfair, and also bad policy.

The compact interferes with interstate commerce and wildly distorts the marketplace by erecting artificial barriers around one specially protected region of the nation.

The compact arbitrarily provides preferential price treatment for farmers in the Northeast at the expense of farmers in other regions who work just as hard, who love their homes just as much and whose products are just as good or better.

It also irresponsibly encourages excess milk production in one region without establishing effective supply control. This practice flaunts basic economic principles and ignores the obvious risk that it will drive down milk prices for producers outside the compact region.

Despite what some have argued, the Northeast Dairy Compact hasn't even helped small Northeast farmers.

Since the Northeast first implemented its compact in 1997, small dairy farms in the Northeast, where this is supposed to help, have gone out of business at a rate of 41 percent higher than they had in the previous 2 years—41 percent higher.

In fact, compacts often amount to a transfer of wealth to large farms by affording large farms a per-farm subsidy that is actually 20 times greater than the meager subsidy given to small farmers.

We need to support USDA's moderate reforms, reject these harmful dairy riders and let our dairy farmers get a fair price for their milk.

Mr. President, I yield the floor.

Mr. KYL. Mr. President, today we are considering the District of Columbia appropriations bill, which includes not only funding for the nation's capital, but also regular appropriations for seven cabinet-level departments—the Departments of Labor, Health and Human Services, Education, State, Justice, Commerce, and Interior.

The package also includes four major authorization bills covering Medicare, foreign operations, satellite television, dairy programs, and scrap-metal recycling.

Mr. President, under ordinary circumstances, legislation should not be packaged this way. If I were to base my vote merely upon the process that led us to combine these measures into one huge bill, I would vote no, as I have on the other omnibus bills that have come before the Senate during the last few years. However, I think there are some important distinctions between the package before us this year and what we have seen in the past.

Unlike last year, for example, when free-for-all negotiations resulted in an orgy of new spending and wholesale concessions to the White House, this year the individual parts of the bill were negotiated separately, in a largely orderly process. Unlike last year, any additional spending won by the White House was required to be offset so that net spending would not increase.

With the exception of the dairy provisions, which I oppose, I have concluded that I would vote for each of the measures included here if we had the opportunity to vote on them separately. For this reason and, because on balance, I believe the good in the rest of the package outweighs the bad, I will vote aye.

Mr. President, when we look back on this legislation five or 10 years from now, I think we will see one aspect of it as truly historic.

The legislation, despite its shortcomings, establishes a historic new precedent against ever again raiding the Social Security trust fund for other purposes—a precedent that future Presidents and Congresses will deviate from only at their own peril.

The package has been designed to avoid intentionally spending a dime of the Social Security surplus. And if our estimates turn out to be right, it will be the first time since 1960—the first time in nearly 40 years—that Congress did not tap the Social Security surplus to pay for other programs. It also means that we will be able to pay down publicly held debt by another $130 billion or so this year.

Mr. President, I think everyone needs to recognize that estimates of spending and revenues can be affected by even the slightest changes in the economy, and so we will need to be prepared to adjust spending levels early next year if it appears that that is necessary to take further action to safeguard the Social Security surplus. We should even consider putting an automatic mechanism in place, as proposed in legislation I cosponsored with Senator ROD GRAMS, to make sure Social Security is never again tapped.

In any event, it is important to recognize just how far we have come since 1995. That was the year Bill Clinton sent Congress a budget that would have spent every penny of the Social Security surplus every year for the foreseeable future, and still run $200 billion annual deficits on top of that. The President's FY96 budget submission would have resulted in actual deficits rising from about $259 billion in 1995 to roughly $289 billion this year.

We did not follow the President's recommendations. We charted an entirely different course. The result: We now have a budget that sets aside the entire Social Security surplus and even runs an estimated $1 billion surplus in the government's operating budget. That is progress.

Because we do not raid Social Security, we had to do a better job of setting priorities so that we could take care of those things the American people care most about, and to a large degree, I think we succeeded. This bill provides a substantial increase in funds for medical research at the National Institutes of Health. We provide even more resources for education than the President asked for, and we take a modest first step in the direction of public school choice and providing local school districts with increased flexibility in how they will use federal funds to meet the particular needs of their students. We restore funding for hospitals and nursing homes that care for Medicare patients.

We also include additional resources for law enforcement, including funding for 1,000 new Border Patrol agents, and funds to combat the scourge of methamphetamine in our communities. We are able to provide more money than the President sought for the Violence

Against Women Act. And we provide money to make sure federal agencies can be better stewards of our national parks, forests, and wildlife refuges.

We require that international family-planning money be used for just that—family planning, not abortion or lobbying to liberalize the abortion laws of other countries. Although the compromise provisions would allow the President to waive the limitations and provide about $15 million to groups that engage in such activity, about 96 percent of the dollars would still remain subject to the restrictions.

Of course, funding these various priorities means we had to limit spending in other areas in order to keep our promise not to raid Social Security. For example, the National Endowment for the Arts does not get the increase it sought. There will not be as much foreign aid as President Clinton wanted. We cut the President's Advanced Technology Program. To make doubly sure we keep our pledge to stay out of Social Security, we include a small across-the-board spending cut to force agencies to ferret out waste and abuse.

It is hard for me to conceal my disappointment in several regards. First, I regret that Congress did not protect the projected surplus in the non-Social Security part of the budget. This bill, combined with the other appropriations bills that have already been signed into law, will spend the entire $14 billion surplus that was projected in the government's operating budget—excluding Social Security—and it will bust the spending caps Congress and the President agreed to only two years ago.

Second, there is still far too much wasteful spending in the budget.

And third, there is so much advance funding in the bill for FY2001 that it will be difficult for us to stay within our spending targets for next year.

On balance, though, it strikes me that the short-term cost of exceeding the caps and spending the relatively small non-Social Security surplus for this year is more than outweighed by the long-term discipline that will be imposed by the precedent we have set with regard to protecting Social Security.

Mr. President, with that in mind, I intend to vote for this bill.

A BAD DEAL FOR WORKING AMERICANS

Mr. GRAMS. Mr. President, a year ago I was here in this chamber speaking on the 1998 Omnibus Appropriations legislation. I criticized the abusive process that made the entire negotiations exclusive, arbitrary, and conducted behind closed doors by only a few congressional leaders and White House staff, and few Members of the Congress had any idea what was in the bill but were asked to approve it without adequate review and amendments. I also urged the Congress not to repeat the mistake that we need to reform the process and start the process early in the year to avoid appropriations pressure.

Many of my colleagues shared my views at the time and agreed that the federal budget process had become a reckless game, and it not only weakened the nation's fiscal discipline but also undermined the system of checks and balances established by the Constitution.

At the beginning of the 106th Congress, I argued repeatedly in this chamber that the key to a successful budget process was to pursue comprehensive budget process reforms. I have introduced legislation to achieve these goals which includes legislation that would force us to pass a legally-binding federal budget, allow an automatic continuing resolution to kick-in to prevent government shutdown, set aside funds each year in the budget for true emergencies; strengthen the enforcement of budgetary controls; enhance accountability for Federal spending; mitigate the bias toward higher spending; modify Pay-As-You-Go (PAYGO) procedures to accommodate budget surpluses; and establish a look-back sequester mechanism to ensure the Social Security surplus will be protected. We also need to pursue biennial budgeting and getting rid of the so-called ''baseline budgeting.''

We were assured by Senate leaders that we were going to pursue real budget process reform early this year and that we would never have another omnibus spending bill in the future.

Mr. President, I believe what we have before us today is a repeat of what was promised to never occur again. Once more, with inadequate time to review. The Houses passed this omnibus bill with absolutely no knowledge of what was in it. This is nearly a play-by-play of 1998 because we have not reformed our budget process. As a result, after seven Continuing Resolutions, we have before us an omnibus spending bill that is full of creative financing and earmarked pork programs.

Mr. President, when will we ever learn our lessons?

Mr. President, it is entirely irresponsible and reckless that Congress has over-used advanced appropriations, used directed scoring, emergency spending and many other budgetary smoke and mirrors to dodge fiscal discipline and significantly increase government spending. Like last year's omnibus bill, this legislation is heavily loaded with irresponsible and inappropriate provisions. It is severely flawed by new spending, no CBO scoring, gimmick offsets and billions of pork-barrel programs. Many last-minute spending needs were loaded into this omnibus bill just in the last few days. I still cannot even tell you what they are, since we haven't been given enough time to review it. The double whammy delivered to Minnesota dairy farmers by adding a two-year extension of the Northeast dairy compact and 1 A order reform is my main reason for opposing this bill. These outrageous last-minute additions seriously hurt Mid-West dairy farmers and are the reason why we are still here today.

This omnibus bill has again proven that big government is well and alive in Washington. The bill provides a total $385 billion for just five spending bills, a significant increase over last year's levels. Congress is recklessly and irresponsibly throwing more and more taxpayers' money to help the President enlarge the government. Billions of dollars were added to the spending legislation avoiding the normal committee process, without any amendments and full debate. If hiring more police officers and more elementary school teachers is the solution to stop crime and improve education, let us have an open debate on the merits of the policy through the usual democratic process. Let's not cut deals behind the closed door in meetings by just a few.

Since we established statutory spending limits, Washington has repeatedly broken them because of lack of fiscal discipline. We have done so again this year.

In my judgment, this omnibus spending bill and the other appropriation bills have been enacted have spent billions of dollars more than the spending caps if we would use honest numbers to score them. To date, the Congressional Budget Office has not provided us with its estimates on this bill. Because of the CBO's inability to score the bill, we do not know what the real cost of it, or whether it stays within the 302(b) allocations.

But we do know many accounting rules have been bent in putting this bill together to avoid the tighter spending caps. Let me explain: This bill relies heavily on the so-called ''directed scoring'' technique for it increased spending. Traditionally, Congress always uses the Congressional Budget Office estimates for scorekeeping. However, because the Office of Management and Budget (OMB) has more favorable estimates for some government programs than the CBO, the Congress simply directed CBO to use OMB numbers to keep score for this year's spending bills.

One of these OMB estimates the CBO was directed to use is the $2.4 billion spectrum sales revenue expected to be collected next year. We all know that level of sales will not be reached. In fact, we criticized the President for using this overoptimistic number in his past budgets.

Just by using the OMB's rosy estimates, without making any hard choices, Congress has increased this year's 302(b) allocations by over $17.4 billion. But the real danger is, by the end of the year, the CBO will use its own estimates to score our budget surplus or deficit. If OMB's numbers prove to be unrealistic and wrong, we end up spending the Social Security surplus we have vowed to protect and it will be too late to adjust the budget accordingly. This is the last thing we want to

do. That is why I was disappointed my bill to provide an automatic sequester triggered by spending of the Social Security surplus was not passed. This procedure is absolutely essential to ensure we keep our commitment to protect Social Security.

Again and again, Washington lowers the fiscal bar and then jumps over it, or finds ways around it, at the expense of the American taxpayers, so all the spenders and those special interests who benefit at other expenses go home happy.

Mr. President, abusive use of emergency spending is another gimmick applied in this omnibus spending bill, as well as in the other appropriation bills we've passed. Last year alone, Congress appropriated $35 billion for so-called emergencies. This year again, over $24 billion of emergency spending was appropriated. Since 1991, emergency spending has totaled over $145 billion. Most of these ''emergencies'' were used to fund regular government programs, not unanticipated true emergencies. Emergency spending is sought as a vehicle to add on even more spending priorities and thus to dodge fiscal discipline because emergency spending is not counted against the spending caps. This has gone too far. We need a better way to budget for emergencies. Most of this spending can be planned within our budget limits. Even natural disasters happen regularly—why not budget for them, as I proposed in my budget process legislation.

Mr. President, while I agree ''advance appropriations,'' ''advance funding'' and ''forward funding'' are not uncommon practice here, it does not mean they are the right thing to do, particularly when these budget techniques are used to dodge much-needed fiscal discipline.

In the past five years, ''advance appropriations'' have increased dramatically, jumping from $1.9 billion in FY 1996 to $11.6 billion in FY 2000, an increase of $9.7 billion over five years. This year, at least $19 billion was advanced into FY 2001 and outyears which will create even worse problems for us next year and in the future.

I understand the upward spending pressure the Congress is facing this year and in the outyears. But I believe we should, and can, meet this challenge by prioritizing and streamlining government programs while maintaining fiscal discipline. We can reduce wasteful, unnecessary, duplicated, low-priority government programs to fund the necessary and responsible function of government. But we need a Biennial Budget, as Senator DOMENICI recommends, to give us time to do this.

Instead of streamlining federal spending, we have thrown in more money to please big spenders without the needed analysis to ensure the spending will help us solve problems. Like last year's bill, this bill looks like a Christmas tree full of pork projects. Many are added in the last minute negotiation. But we don't know exactly what they are and how much they cost, because again we have not been given enough time to review this bill. Here are a few examples as identified by Senator MCCAIN:

An entirely new title is included in the legislation during last minute negotiations, the ''Mississippi National Forest Improvement Act of 1999,'' which had not previously been considered in the previous Senate or House bills. A half million dollars is added for the Salt Lake City Olympic tree program. It earmarked $2 million for the University of Mississippi Center for Sustainable Health Outreach and $3 million for the Center for Environmental Medicine and Toxicology at the University of Mississippi Medical Center at Jackson. An earmark of $3 million is added for the Wheeling National Heritage Area and $3 million for the Lincoln Library. It earmarked $2 million for Tupelo School District in Mississippi for technology innovation. It includes an earmark of $3 million for the Southwest Pennsylvania Heritage Area. It also earmarked $1 million for the completion of the Easter Seal Society's Early Childhood Development Project for the Mississippi River Delta Region and $1 million for the Center for Literacy and Assessment at the University of Southern Mississippi. It also includes an increase of $3.6 million for Washington State Hatchery Improvement.

As the result, we've ended up spending much more money than we should have. My biggest fear, Mr. President, is this omnibus spending legislation may allow Congress and the President to spend some of the Social Security surplus by not imposing an adequate across-the-board spending reduction.

Even counting all the ''directed scoring,'' ''advanced appropriations,'' every penny of the $14 billion on-budget surplus and other budgetary gimmicks, it is estimated that Congress could still dip into the Social Security surplus by nearly $5 billion. To fill that gap we need to reduce government spending by 0.97 percent across-the-board. But the agreement reached between congressional leaders and the White House allows only a 0.38 percent reduction which would result in $1.3 billion savings. Clearly, this is done just for face-saving reason, and will not ensure that the Social Security surplus is protected.

The proponents of this omnibus bill may quickly point out that there are offsets to fund the new spending. But we all know most of the offsets are simply gimmicks. The best example is a $3.5 billion transfer from the Federal Reserve surplus to the Treasury.

As you know, there is nothing new about this proposal and it has been around for quite a while. In the past, Chairman Greenspan called this transfer of the Fed's surplus to the Treasury ''a gimmick that has no real economic impact on the deficit.'' Because it is just an intra-governmental transfer that would not change the government's true economic and financial position.

Other offsets such as a one-day delay in pay for our military and civilians will cause enormous financial hardship for millions of American families who depend on the regular paychecks to pay their mortgage, daycare for their kids, and other priorities. Many small businesses and contractors can be adversely affected by this offset as well. Again, this has proven that the victims of Washington's spending spree are the American taxpayers.

Mr. President, there are many provisions in the omnibus appropriations bill I support, such as the BBA Medicare fix which includes reinstatement of Minnesota's DSH allotment, the State Department Authorization which includes payment of the U.N. arrears and my embassy security proposal, Home Satellite TV access and others. In fact I have worked hard on many of these proposals. However, I believe the dairy provisions and the general lack of fiscal discipline in the bill have far overshadowed the good provisions. Overall, it is a bad deal for working Americans in general and it is a bad deal for my fellow Minnesotans in particular. I therefore cannot in good conscience vote for this fiscally irresponsible legislation.

Mr. GRASSLEY. Mr. President, I rise to express my deep disappointment at the language affecting Federal dairy policy included in the Omnibus appropriations bill before us. As the Members know, the Omnibus measure includes an extension of the Northeast Dairy Compact and language on reforming our Nation's Federal dairy policy which has been in place since the Depression.

It may seem unusual to some Members that a Senator from Iowa would have an interest in this matter. While Iowa's reputation as an agriculture powerhouse is well-established and well-deserved, I think when many people think of agriculture in Iowa, they think of commodities such as soybeans or pork. However, the dairy industry is very important to Iowa as well. The total economic contribution of the dairy industry to the Iowa economy is over $1.5 billion annually. Nearly 10,000 Iowans are employed through dairy farming and processing. Furthermore, Iowa ranks 12th in the Nation in Dairy Production. So the State of Iowa has good reason to be concerned about Federal dairy policy.

I have long been concerned about the impact of the Northeast Dairy Compact, which was authorized by the 1996 farm bill and which was due to sunset in October of this year, has had, and how it will affect producers in the future. I voted in 1996 to strip the language from the farm bill which allowed for the formation of the Northeast Dairy Compact. The only reason the language was included in the farm bill was political trading at the last minute. Since the inception of the Northwest Compact, it is clear that its consequences have not been good.

According to the International Dairy Foods Association, the Northeast Compact has cost New England milk consumers nearly $65 million in higher milk prices, at the same time costing child nutrition programs $9 million more. Consumers have paid a price that is too high for the Northeast Compact. We should not make more consumers suffer the same consequences. I also believe that compacts are an abuse of the Constitution. While the Constitution does allow for the formation of compacts, it is usually invoked for transportation or public works project.

The Northeast Dairy Compact is the first time that compacts have been used for the purpose of price fixing for regional interests. For the most effective functioning of the U.S. economy, it must be unified. Preventing economic protectionism is at the heart of our Constitution. Renewing or expanding compacts flies in the face of that basic tenet. Furthermore, neither the Judiciary Committee or the Agriculture Committee, which have jurisdiction over such matters, has had the opportunity to review this measure. Such a committee examination is warranted and necessary.

One of the things that worries me about dairy compacts is their potential effect on other commodities. Higher prices mean more milk and less demand. The key to increasing dairy producers' income is expanding demand for milk and dairy products. If we take steps to expand dairy compacts, we will be going in the opposite direction. It is also my view that compacts are contradictory to the philosophy of freedom to farm, which my friend, the senior Senator from Vermont, supported. The whole philosophy behind freedom to farm was moving away from the old ''command and control'', government-run AG policies of the past. We need more free markets and free trade, not less. which brings me to my final point on compacts. As Chairman of the Finance Committee's Subcommittee on Trade, maintaining a strong trade position for the United States is my top priority. One of the reasons why the United States is the only true superpower left in the world and why our Nation remains economically strong while others have faltered is because we function as one economically. Our economic prosperity is undeniable proof of the superiority of free and open markets. If we were to allow the perpetuation of dairy compacts, it would send a very damaging signal to the rest of the world.

It would send the message that we do not have the confidence that a free and open economy will ensure that producers who come to the market with a quality product will be able to support themselves. Not only is the compact language in this bill unacceptable for dairy producers in the Midwest, but the Omnibus bill also includes language on the Nation's milk marketing orders that is detrimental to Iowa's dairy producers. Members know that milk marketing orders are a system put in place over 60 years ago to regulate milk handlers in a particular order region to promote orderly marketing conditions.

The 1996 farm bill required USDA to cut the number of marketing orders by over half and implement an up-to-date market oriented system of milk distribution. After a great deal of study and comment, USDA came up with two proposals, Option 1–A, and Option 1–B. Option 1–A is close to the status quo and Option 1–B is geared toward the free market and modernizing the system. While neither proposal was perfect, Option 1–B was definitely a better choice. However, given the concerns expressed by the public about both proposals, USDA issued a compromise initiative, which was still preferable to Option 1–A. Unfortunately, Option 1–A proponents have succeeded in getting Option 1–A language included in the Omnibus appropriations bill.

Those who favor 1–A sometimes make the argument that the compromise devised by USDA would cost dairy farmers nationwide $200 million. However, according to the USDA, net farm income would be higher under the compromise that under the status quo which is what 1–A is in many ways. The Food and Agricultural Policy Research Institute, which is located in my State at Iowa State University, has concluded that 60 percent of the Nation's dairy farmers would receive more income under the USDA compromise plan.

The unequal treatment of the old system, which is maintained by 1–A, artificially raises prices for milk in other parts of the country, encouraging excess production which spills into Midwestern markets. This simply lowers the price that Midwestern producers receive.

The Federal Milk Marketing order System is out of date and out of touch with modern production and economics. It is long overdue for reform and this language in the Omnibus bill just puts that off. My producers and others in other Midwestern States have endured the inequities of the Milk Marketing Order System long enough. I am very disappointed that the unfairness of the old system would be perpetuated by the language in this bill. We could still correct the mistakes made by this bill which would have a tremendously detrimental effect on dairy producers within Iowa and the rest of Midwest.

I urge the leadership on both sides of the aisle to work with Midwestern Senators to help put an end to the unfair treatment of the Midwestern dairy farmers. Thank you.

Ms. SNOWE. Mr. President, I reiterate my support for the two year extension of the very successful Northeast Interstate Dairy Compact. And after all I have read recently—not that one should believe everything they read—I feel compelled to set the record straight on this issue one more time.

The Northeast Dairy Compact has addressed the needs of states in New England who compacted together within their region to determine fair prices for locally produced supplies of fresh milk. All six legislatures and all six governors in New England approved the Compact.

In fact, in 1989–1990, the Vermont House passed it unanimously and the Senate passed it 29 to 1. The Maine House passed it 114 to 1 and it was unanimously adopted by the Senate. The legislatures in Connecticut, Massachusetts, New Hampshire and Rhode Island adopted it overwhelmingly in 1993.

I would also note that despite the varying views, party affiliations and economic philosophies, this is one issue where the entire New England Congressional Delegation is united. And that, in and of itself, is quite a feat.

Let me tell you why New England is united behind the Dairy Compact. We want our family farmers. This way of life is threatened for a number of reasons including the encroachment of development which leads to the increased cost of land.

I think one Mainer summed it up quite nicely in a letter to the editor. In this letter she noted that it was okay to be against the Compact ''. . . if you think we will be better off having subdivisions where our farms once stood, if you believe it's to our advantage to say good-bye to the last family farms and hello to big business controlling the production, distribution and pricing . . . .''

In my own state of Maine we have lost 31 percent of our dairy farms in the last 10 years. We have 485 dairy farms left and they average 80 milking cows and provide 2100 related jobs. They allow the continuation of a rural way of life that is fast disappearing not only in New England but throughout the country. And it is a way of life that we will not give up without a fight.

The men and women who own our dairy farms are doing it because it is in their blood—their parents did it, their grandparents did it and in many cases their great grandparents did it. You don't go into dairy farming to make money—you go into it because it is in your blood, it is what you know and what you love. And the Compact is the only thing standing between many of these families and the loss of not only their farm but their way of life.

In Maine we have a saying that you are ''from away'' if you are not from Maine. Let me assure you that if you told a Maine dairy farmer that he was part of a price fixing cartel, as several newspapers have claimed, he would immediately know that you were from away . . . far, far away.

The beauty of the Compact is that it reflects the New England way of life—self-reliance—we don't ask the federal government for one penny. Instead, New Englanders pay a few cents more for milk to support the Compact—a very small price to pay to protect our rural way of life.

Let me repeat that—we are not asking the federal taxpayer in Wisconsin

or Texas or Minnesota to subsidize our farmers—although I might add that New England's taxpayers have historically subsidized farmers in other parts of the country.

The Compact has proven to be an effective approach to address farm insecurity. The Compact has protected New England against the loss of their small family dairy farms and the consumers against a decrease in the fresh local supply of milk. The Compact has stabilized the dairy industry in this entire region and protected farmers and consumers against volatile price swings.

Over ninety-seven percent of the fluid milk market in New England is self-contained within the area, and fluid milk markets are local due to the demand for freshness and because of high transportation costs, so any complaints raised in other areas about unfair competition are quite disingenuous.

All we are asking, Mr. President, is the continuation of the Northeast Dairy Compact, the existence of which does not threaten or financially harm any other dairy farmer in the country.

Let there be no mistake, the Northeast Dairy Compact does not stand alone in the Omnibus bill. Additional dairy language is included in the bill that restores the existing federal program, the Milk Marketing Order system, which fixes the price of milk in different regions across the country, and is initiated and approved by producers in specific areas.

The USDA adopted a final Rule on Milk Marketing Orders in March, a rule I might add that favors dairy farmers in the Upper Midwest at the expense of the rest of the country. On September 22, the House expressed its opposition to this rule when they voted 285–140 to restore the current system by placing a moratorium on the Final Rule. So, this is not one region of the country speaking—although some apparently believe that New England's family farmers make a good scapegoat—as 65 percent of the House of Representatives voted to pass the moratorium language.

The New England Compact adds about two cents a gallon to the consumer—not 20 cents as the Wall Street Journal would have you believe. They seem to be under the impression that the farmers set the price for the milk you buy at the store—the fact is that the prices, as we all know, are set by the retailer. Under the Compact, New England retail milk prices have been among the lowest and the most stable in the country.

The opposition has tried to make the argument that interstate dairy compacts increase milk prices. This is just not so as milk prices around the U.S. have shown time and again that prices elsewhere are much higher and experience much wider price shifts than in the Northeast Compact states. Just take a look at dairy prices around the country for a gallon of milk.

The price in Bangor and Augusta, Maine ranged from $2.89 to $2.99 per gallon from February to April of 1999 and has remained stable at $2.89 for the last several months.

In the Boston, Massachusetts market, the price stayed perfectly stable—at $2.89—from February to April of 1999.

The price in Seattle ranged from $3.39 to $3.56 over the same time period. Washington State is not in a compact, yet their milk was approximately 50 cents higher per gallon than in Maine. The range in Los Angeles was from $3.19 to $3.29. In San Diego, the range was from $3.10 to $3.62. California is not in a compact.

Las Vegas prices were $2.99 all the way up to $3.62. Not much price stability there, but then, Nevada is not in a compact. In Philadelphia, the range was $2.78 to $3.01 per gallon—not as wide a shift as Nevada but a much wider price shift than the Northeast Compact states. It's no wonder Pennsylvania dairy farmers want to join us.

How about Denver—Colorado is not in a compact. A gallon of milk in Denver has cost consumers anywhere from $3.45 to $3.59 over the past few months, over one half of a dollar more than in New England. So, the Northeast Dairy Compact has not resulted in higher milk prices in New England, but the milk prices are among the lowest in the country—and are among the most stable.

Only the consumers and the processors in the New England region pay a few cents extra for milk that already costs less than just about anywhere else in the country—to provide for a fairer return to the area's family dairy farmers and to protect a way of life important to the people of the Northeast.

Also, where is the consumer outrage from the Compact states for spending a few extra pennies for fresh fluid milk so as to ensure a safety net for dairy farmers so that they can continue an important way of life? I have not heard any swell of outrage of consumer complaints over the last three years. Why, because the consumers also realize this initial pilot project, whose costs are borne entirely by the New England consumers and processors, has been a huge success.

So, I ask my colleagues to look at the facts, not the fables being spread by those who have simply chosen not to let the facts get in their way.

Mr. KENNEDY. Mr. President, I welcome this opportunity to express my strong support for the Northeast Dairy Compact. Since taking effect in October 1997, the Compact has stabilized milk prices for both farmers and consumers in New England.

Farmers across the country are unable to make ends meet. The number of farmers in New England has declined significantly in recent years. In 1992, Massachusetts had 365 dairy farms. Today, that number has declined to 290 dairy farms. Farmers in New England are losing a priceless heritage, that their families have owned for generations—some since the 1600s. The Northeast Dairy Compact helps ensure that in the face of these difficult times for their industry, our farmers will have a consistent income to preserve their way of life.

There are many misconceptions about the Dairy Compact. One of the most serious misconceptions is that taxpayers pick up the cost of the Compact. Taxpayers do not pay for this program—it is run at no cost to the federal government.

In addition, with respect to competition a Congressional a condition imposed on the Compact specifically provides that: ''The Northeast Interstate Dairy Compact Commission shall not prohibit or in any way limit the marketing in the compact region of any milk or milk product produced in any other production area in the United States.''

Another misconception is that the Dairy Compact hurts the poor. This program does not hurt poor people. WIC and the school lunch program are exempt. In fact, in New England, the Compact overpaid these programs for two years in a row.

When approved in 1996, the purpose of the Dairy Compact was to ensure the viability of dairy farming in the Northeast and to ensure an adequate supply of local milk to consumers. The Compact is a price support, and was never intended to make anyone rich. It was intended to preserve small family farms and provide safeguards against excessive production.

The Compact has been a great success. The price of milk has actually dropped by an average of 5 cents a gallon across New England, and for many months at a time, prices have remained so stable that no compact money has been paid to farmers.

The Dairy Compact is good for our farmers, preserving their way of life. It is good for the environment, preserving farms and green space that Western Massachusetts is known for. And it is good for consumers, stabilizing prices and ensuring a fresh and local supply of milk.

We stand for free competition, but we also stand for fair competition. In many areas of current law, there are long-standing provisions designed to produce competition that is both free and fair. The New England Dairy Compact deserves the support it has received from the Senate in recent years, and I hope that it will continue to receive that support.

Mr. HARKIN. Mr. President, this is a great day for the critically important search for medical breakthroughs. I am very pleased to say that the omnibus appropriations act contains a record $2.3 billion increase in support for medical research through the National Institutes of Health. We are now well on our way towards our goal of doubling our nation's investment in the search for medical breakthroughs.

This increase will directly benefit the health of the American people. It will speed up the day when we have a

cure for cancer and other deadly diseases.

On top of that, the Senate has passed S. 1268, the Twenty-First Century Research Laboratories Act of 1999. This bill cosponsored by Senators FRIST, KENNEDY, CHAFEE, REED of Rhode Island, MACK, MIKULSKI, MURRAY, CLELAND, HELMS, WARNER, SARBANES, SCHUMER, COCHRAN, DURBIN, MOYNIHAN, BOXER, ROBERTS, REID of Nevada, SPECTER, FEINSTEIN, COLLINS, INOUYE and HAGEL. I want to thank my colleagues for cosponsoring this legislation, and for their support in getting it passed.

This bill addresses a critical shortfall in our nation's medical research enterprise. I was pleased to work with Senator SPECTER this year to achieve a $2.3 billion increase for the National Institutes of Health. The Conference Agreement of the Fiscal Year 2000 Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee, provides $17.9 billion for the NIH. This puts us well on track to double funding for the NIH over the next five years, a target that was agreed to by the Senate, 98–0, in 1997.

However, as Congress embarks on this important investment in improved health, we must strengthen the totality of the biomedical research enterprise. While it is critical to focus on high quality, cutting edge basic and clinical research, we must also consider the quality of the laboratories and buildings where that research is being conducted.

In fact, Mr. President, the infrastructure of research institutions, including the need for new physical facilities, is central to our nation's leadership in medical research. Despite the significant scientific advances produced by Federally-funded research, most of that research is currently being done in medical facilities built in the 1950's and 1960's, a time when the Federal government obligated from $30 million to $100 million a year for facility and equipment modernization. Since then, however, annual appropriations for modernization of our biomedical research infrastructure have dramatically declined, ranging from zero to $20 million annually over the past decade.

I am pleased to report that this year we were able to increase that amount to $75 million in our appropriations bill. While this is an important improvement, much more is needed. As a result, many of our research facilities and laboratories are outdated and inadequate to meet the challenge of the next millennium.

In order to realize major medical breakthroughs in Alzheimer's, diabetes, Parkinson's, cancer and other major illnesses, our nation's top researchers must have top quality, state-of-the-art laboratories and equipment. Unfortunately, the status of our research infrastructure is woefully inadequate.

A recent study by the National Science Foundation finds that academic institutions have deferred, due to lack of funds nearly $11.4 billion in repair, renovation, and construction projects. Almost one quarter of all research space requires either major renovation or replacement and 70% of medical schools report having inadequate space in which to perform biomedical research.

A separate study by the National Science Foundation documents the laboratory equipment needs for researchers and found that 67 percent of research institutions reported an increased need for laboratory instruments. At the same time, the report found that spending for such instruments at colleges and universities actually declined in the early 1990s.

Several other prominent organizations have documented the need for increased funding for research infrastructure. A March 1998 report by the Association of American Medical Colleges stated that ''The government should reestablish and fund a National Institutes of Health construction authority. . . .'' A June 1998 report by the Federation of American Societies of Experimental Biology stated that ''Laboratories must be built and equipped for the science of the 21st century . . . Infrastructure investments should include renovation of existing space as well as new construction, where appropriate.''

As we work to double funding for medical research over the next few years, the already serious shortfall in the modernization of our nation's aging research facilities and labs will continue to worsen unless we take specific action. Future increases in NIH must be matched with increased funding for repair, renovation and construction of research facilities, as well as the purchase of modern laboratory equipment.

Mr. President, the bill that passed the Senate today expands federal funding for facilities construction and state-of-the-art laboratory equipment through the NIH by increasing the authorization for this account within the National Center for Research Resources to $250 million in FY 2000 and $500 million in FY 2001.

In addition, the bill authorizes a ''Shared Instrumentation Grant Program'' at NIH, to be administered by the Center. The program will provide grants for the purchase of shared-use, state-of-the-art laboratory equipment costing over $100,000. All grants awarded under these two programs will be peer-reviewed, as is the practice with all NIH grants and projects.

We are entering a time of great promise in the field of biomedical research. We are on the verge of major breakthroughs which could end the ravages of cancer, heart disease, Parkinson's and the scores of illnesses and conditions which take the lives and health of millions of Americans, But to realize these breakthroughs, we must devote the necessary resources to our nation's research enterprise.

I want to thank the Association of American Universities, the Association of American Medical Colleagues and the Federation of American Societies of Experimental Biology for their support for this legislation.

I thank my colleagues for their support of this important health care legislation, and I look forward to working with our colleagues in the House of Representatives next year to ensure this legislation is signed into law. Thank you.

Mr. FRIST. Mr. President, I am pleased that the Senate passed today, S. 1243, the Prostate Cancer Research and Prevention Act, which I introduced on June 18, 1999 to address the serious issue of prostate cancer.

This year 37,000 American men will die, and 179,300 will be diagnosed with prostate cancer, the second leading cause of cancer-related deaths in American men. Cancer of the prostate grows slowly, without symptoms, and thus is often undetected until in its most advanced and incurable stage. It is critical that men are aware of the risk of prostate cancer and take steps to ensure early detection.

While the average age of a man diagnosed with prostate cancer is 66, the chance of developing prostate cancer rises dramatically with age—which makes it important for men to be screened or consult their health care professional. The American Cancer Society and the American Urological Association recommend that men over 50 receive both an annual physical exam and a PSA (prostate-specific antigen) blood test. African-American men, who are at higher risk, and men with a family history of prostate cancer should begin yearly screening at age 40.

Even if the blood test is positive, however, it does not mean that a man definitely has prostate cancer. In fact, only 25 percent of men with positive PSAs actually have prostate cancer. Further testing is needed to determine if cancer is actually present. Once the cancer is diagnosed, treatment options vary according to the individual. In elderly men, for example, the cancer may be especially slow growing and may not spread to other parts of the body. In those cases, treatment of the prostate may not be necessary, and physicians often monitor the cancer with follow-up examinations.

Unfortunately, preventive risk factors for prostate cancer are currently unknown and the effective measures to prevent this disease have not been determined. In addition, scientific evidence is insufficient to determine if screening for prostate cancer reduces deaths or if treatment of disease at an early stage is more effective than no treatment in prolonging a person's life. Currently, health practitioners cannot accurately determine which cancer will progress to become clinically significant and which will not. Thus, screening and testing for early detection of prostate cancer should be discussed between a man and his health care practitioners.

In an effort to help address the serious issues of prostate cancer screening,

to increase awareness and surveillance of prostate cancer, and to unlock the current mysteries of prostate cancer through research, the ''Prostate Cancer Research and Prevention Act'' expands the authority of the Centers for Disease Control and Prevention (CDC) to carry-out activities related to prostate cancer screening, overall awareness, and surveillance of the disease. In addition, the bill extends the authority of the National Institutes of Health to conduct basic and clinical research in combating prostate cancer.

The bill directs the CDC to establish grants to States and local health departments in an effort to increase awareness, surveillance, information dissemination regarding prostate cancer, and to examine the scientific evidence regarding screening for prostate cancer. The main focus is to comprehensively evaluate the effectiveness of various screening strategies for prostate cancer and the establishment of a public information and education program about the issues regarding prostate cancer. The CDC will also strengthen and improve surveillance on the incidence and prevalence of prostate cancer with a major force on increasing the understanding of the greater risk of this disease in African-American men.

The bill also reauthorizes the authority of the CDC to conduct a prostate screening program upon consultation with the U.S. Preventive Services Task Force and professional organizations regarding the scientific issues regarding prostate cancer screening. The screening program, when implemented, will provide grants to States and local health departments to screen men for prostate cancer with priority given to low income men and African-American men. In addition the screening program will provide referrals for medical treatment of those screened and ensure appropriate follow up services including case management.

Finally, to continue the investment in medical research, the bill extends the authority of the National Cancer Institute at the National Institutes of Health to conduct and support research to expand the understanding of the cause of, and find a cure for, prostate cancer. Activities authorized include basic research concerning the etiology and causes of prostate cancer, and clinical research concerning the causes, prevention, detection and treatment of prostate cancer.

Mr. President, on the very day I introduced this bill last June, I participated in an event sponsored by the American Cancer Society and Endocare to award our former colleague Senator Dole for his leadership in raising public awareness for prostate cancer. In 1991, Senator Dole was diagnosed with prostate cancer, and since that diagnosis and successful treatment he has turned this potential tragedy into a triumph as he has helped untold others by raising public awareness of this devastating disease. I want to take this opportunity to thank Senator Dole and organizations that have worked tirelessly to help promote this and other men's health issues, including The American Cancer Society, The Men's Health Network, and American Urological Association. I also want to thank these organizations for their support and help in drafting this legislation. I am pleased that the Senate has acted to pass this important bill, which will help to further increase awareness, surveillance and research of this deadly disease, and look forward to its ultimate enactment into law.

Mr. CLELAND. Mr. President, I would like to add some additional comments to my statement that appeared in the CONGRESSIONAL RECORD on Tuesday, November 16, 1999.

Just a few days ago, on Tuesday, November 16, several constituents of mine were involved in a disastrous truck-related crash on I–285, a major commuter route around Atlanta. The crash took place during the morning rush hour. Four tractor-trailer trucks were involved in the crash, two of which were tankers hauling flammable materials. Four passenger cars were also involved in the crash, and tragically, one woman was killed when her vehicle was crushed between two tractor-trailer trucks. Four others were rushed to the hospital to be treated for injuries. Thankfully, no further fatalities have been reported and no evacuation was required due to the sensitive material two of the trucks were hauling. This crash underscores the need to guarantee that truck safety is a priority in this country, and hopefully, reduce the occurrence of accidents such as this.

H.R. 3419 is a step in the right direction. It creates a new motor carrier safety administration. In a hearing before the Senate Commerce Committee, of which I am a member, the Department of Transportation (DOT) Inspector General (IG) testified that the current oversight system for the trucking industry within the Federal Highway Administration (FHWA) is not adequate. In fact, one of the main supporters of this legislation is Transportation Secretary Slater, who saw the need to create a separate motor carrier oversight administration focused entirely on safety.

Now that Congressional sentiment has swung toward adoption of H.R. 3419 and the establishment of a new Motor Carrier Safety Administration, my colleagues and I should track the implementation of this statute to ensure that the new agency will not bring with it the problems associated with the former body. Safety and compliance should be the utmost concerns of this office, with the American motorist as the benefactor of their efforts.

Mrs. BOXER. Mr. President, I would like to speak about H.R. 3419, the Motor Carrier Safety Improvement Act, which the Senate approved today. I commend Senator MCCAIN, chairman of the Commerce Commitee, for holding hearings on this issue. These hearings, as well as reports from the Department of Transportation's Inspector General, have shown how critical it is for us all to pay closer attention to the safety problems on our highways.

In 1998, 5,374 people were killed in truck-related crashes and over 127,000 were injured. Although trucks account for only 3 percent of registered vehicles, they are involved in 9 percent of fatal crashes, and 12 percent of all highway-related deaths. This is simply unacceptable, and we must do all we can to reduce fatalities and injuries on our highways.

Recently, I met with one of my constituents, Cynthia Cozzolino, who lost her brother, sister-in-law, young nephew, and niece in a horrible truck-related crash last August. This terrible tragedy could have been prevented if we made safety a higher priority, particularly truck inspection. Worn straps may have contributed to a truck spilling its load of concrete piping instantaneously killing this young family riding in their van behind the truck.

Highway truck traffic is an increasing part of our economy. California highway trucks carry 57 billion tons per mile, second only to Texas. In Southern California, the growing goods movement from ports and airports will push the current regional truck volume up by 40 percent over the next 20 years. One section of Interstate 15 is likely to see almost 13,000 truck trips a day. That is why we must do all we can to strengthen our commitment to safety on our highways.

I am encouraged by certain key features of H.R. 3419. By establishing a separate Motor Carrier Safety Administration, at long last we are making safety a priority. The bill directs the Secretary of Transportation to develp a long term strategy for improving commercial motor vehicle, operator and carrier safety. It also directs the Secretary to implement safety improvement recommendations from the Inspector General, and it calls for the development of staffing standards for motor carrier safety inspectors at our international border areas, an important element for California.

In addition, strengthening the Commercial Driver License regulations by explicitly directing the disqualification of any commercial driver found to have caused a death because of negligent or criminal operation of a truck or bus and establishing stern penalties for foreign carriers who operate illegally beyond the current southern border commercial zone, are key improvements. Disqualifying these carriers on the spot will send a strong deterrent measure to any foreign trucking or bus companies who think that they can violate current motor carrier laws and regulations with impunity.

However, I am concerned that H.R. 3419 is not stronger in terms of potential conflict of interest in the research conducted for this new administration. According to testimony before the Surface Transportation Subcommittee, in

1996, the Office of Motor Carriers (OMC) awarded more than $8 million to the trucking industry and its consultants to perform research on various issues, including driver fatigue and graduated licensing. I understand that such research can form the basis for future rulemakings governing the trucking industry.

The new Motor Carrier Safety Administration must maintain a high degree of integrity and independence. I supported a provision that specifically forbids any research for rulemaking and other programs that is conducted by any entity with a vested economic interest in its outcome, and to forbid any individual who serves in a senior position within the new motor carrier agency from maintaining any affiliation with the trucking industry. H.R. 3419 includes a provision that directs the new motor carrier administrator to comply with the current Federal regulations regarding conflict of interest, and it also directs the administrator to conduct a study to determine whether compliance with these regulations is sufficient to avoid conflicts of interest. I look forward to the results of that study as well as any swift action by Congress to correct this problem if the study finds additional protection for conflicts of interest is warranted.

H.R. 3419 would establish a separate administration for Motor Carrier Safety. I would prefer to transfer the OMC from the Federal Highway Administration to the National Highway Traffic Safety Administration (NHTSA) and avoid the creation of a separate modal administration. NHTSA already issues regulations for newly manufactured trucks, and in truck-car crashes 98 percent of the deaths are suffered by the passenger vehicle occupants.

Nevertheless, today we have taken an important step toward building greater confidence in highway safety. The creation of a new administration dedicated to safety is a new direction that I hope will lead to improved safety for the traveling public.

Mr. KERREY. Mr. President, I would like to rectify some information entered into the RECORD during the debate on the Bankruptcy Reform Bill on November 5, 1999.

A comprehensive bankruptcy study was cited during the course of debate. This study was conducted by Professors Marianne Culhane and Michaela White from Creighton University, an impressive institution of higher learning in my home State of Nebraska.

When discussing this study, my colleague from Iowa referred to a GAO Report that reviewed four different bankruptcy studies, including the one written by Professors Culhane and White. It is my understanding some comments were made indicating that GAO challenged the methodology the Creighton professors used in conducting this study. After reviewing the GAO Report, that was not my understanding. In fact, the GAO Report specifically says, ''In our review, we found that the Creighton/ABI researchers prepared and analyzed their data in a careful, thorough manner.''

In order to clarify the record and any misperceptions about the GAO's findings, I ask unanimous consent the following ''Scope and Methodology'' section of GAO Report, number 99–103 ''Personal Bankruptcy: Analysis of Four Reports on Chapter 7 Debtors' Ability to Pay'', be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD.

GAO REPORT #99–103; PAGES 5 AND 6 SCOPE AND METHODOLOGY

To evaluate and compare the four reports' research methodologies, we assessed the strengths and limitations, if any, of each report's assumptions and methodology for determining debtors' ability to pay and the amount of debt that debtors could potentially repay. The comments and observations in this report are based on our review of the March 1998 and March 1999 Ernst & Young reports, the March 1999 Creighton/ABI report, and the January 1999 EOUST report; some additional information we requested from each report's authors; independent analyses using the Creighton/ABI report's database; and our experience in research design and evaluation. We reviewed specific aspects of each report's methodology, including the proposed legislation on which the report was based, how the bankruptcy cases used in the analysis were selected, what types of assumptions were made about debtors' and their debt repayment ability, how debtors' income and allowable living expenses were determined, and whether appropriate data analysis techniques were used. We also assessed the similarities and differences in the methodologies used in the four reports.

In addition to reviewing the reports, we had numerous contacts with the reports' authors. On March 16, 1999, we met with one of the authors of the Creighton/ABI report, and on March 25, 1999, we met with the authors of the two Ernst & Young reports to discuss our questions and observations about each report's methodology and assumptions. Following these discussions, we created a detailed description of each report's methodology (see app.I), which we sent to the authors of each report for review and comment. On the basis of the comments received, we amended our methodological descriptions as appropriate. The authors of the Creighton/ABI report responded to written questions we submitted. Ernst & Young, Creighton/ABI, and EOUST provided additional details on their methodologies and assumptions that were not fully described in their reports. We did not verify the accuracy of the data used in any of these reports back to the original documents filed with the bankruptcy courts. However, the Creighton/ABI authors provided us with a copy of the database used in their analysis. Ernst & Young declined to provide a copy of their database, citing VISA's proprietary interest in the data. (VISA U.S.A. and MasterCard International sponsored the Ernst & Young reports.) We received the EOUST report in early April and, because of time constraints, did not request the database for the report. We reviewed the Creighton/ABI data and performed some analyses of our own to verify the authors' categorization of data used in their analyses. In our review, we found that the Creighton/ABI researchers prepared and analyzed their data in a careful, thorough manner.

The team that reviewed the reports included specialists in program evaluation, statistical sampling, and statistical analysis from our General Government Division's Design, Methodology, and Technical Assistance group. We did our work between February and May 1999 in Washington, D.C., in accordance with generally accepted government auditing standards. On May 18, 1999, we provided a draft of our report to Ernst & Young, the authors of the Creighton/ABI report, and EOUST for comment. Each provided written comments on the report. In addition, on May 28, 1999, we met with representatives from Ernst & Young to discuss their comments on the draft report. Ernst & Young and Creighton/ABI also separately provided technical comments on the report, which we have incorporated as appropriate. The Ernst & Young, Creighton/ABI, and EOUST written comments are summarized at the end of this letter and contained in appendixes III through V.

Mr. MCCAIN. Mr. President, just like the rest of our health care delivery system, our nation's military health care delivery system cries out for reform. While both systems are plagued with rising costs and barriers to full access, the military health care delivery system is facing some very unique challenges. I intend to submit the ''Contract With Our Service Members—Past and Present'' first thing next session. A principal objective of this Contract will be military health care reform.

One of the critical challenges is how best to reconfigure the military health care delivery system so that it might continue to meet its military readiness and peace-time obligations at a time of continuous change for our base and force structure.

This is a challenge with which I have been grappling for some time. In the process of deciding how to proceed, I have been meeting with, and hearing from, many military family members, veterans and military retirees from around the country. I was inundated with suggestions for reform. In every meeting and every letter, I encountered retired service men and women who have problems with every aspect of the military medical care system—with long waiting periods, with access to the right kind of care, with access to needed pharmaceutical drugs, and with the broken promise of lifetime health care for military retirees and their spouses. I heard these concerns expressed as I have traveled across the United States over the past several months.

One of the areas of greatest concern among military retirees and their families is the ''broken promise'' of lifetime medical care, especially for those over age 65.

I believe grappling with these issues presents a great challenge and demands our very best effort. Not lost on me is the urgent need to address the over-age 65 issue since there are reportedly 1,000 World War II and Korean veterans dying every day. It is imperative that as changes are made to our nation's military force and continue to be made in the future with regards to base structure, that Congress not only stay fixated on bringing health care costs under control, but that steps be taken

to retain the health care coverage so critical to our nation's active duty personnel, their families, retirees, and survivors. While the world situation necessitates a modified force and base structure transformed for the new millennium, it should not carry with it an abandonment of the responsibility that our nation has to assist those who have served our country to obtain access to the health care services they need.

Make no mistake, retiree health care is a readiness issue, as well. Today's servicemembers are acutely aware of retirees' disenfranchisement from military health coverage, and exit surveys cite this issue with increasing frequency as one of the factors in members' decisions to leave service. In fact, a recent GAO study found that ''access to medical and dental care in retirement'' was the number five career dissatisfier among active duty officers in retention-critical specialties.

Failure to keep health care commitments is hurting service recruiting efforts as well. Traditionally, retirees have been the services' most effective recruiters, and their children and those of family friends have had a high propensity to serve. Unfortunately, increasing numbers of retirees who have seen the government renege on its ''lifetime health care'' promises have become reluctant to recommend service careers to their family members and friends. Restoring their confidence in their health care coverage will go a long way toward restoring this invaluable recruiting resource.

One of the reasons that Congress has not implemented meaningful reform in the past is because of the cost of providing quality health care. Although Congress has increased the President's defense budget requests to attempt to meet our future needs, it has squandered billions each year on projects the military did not request and does not need. This year alone, Congress appropriated over $6 billion for wasteful, unnecessary, and low-priority projects that have absolutely no positive effect on preparing our military for future challenges.

Congress also continues to refuse to close military bases that are not essential to our security, permitting politics to outweigh military readiness, at a cost to the taxpayer of nearly $7 billion each year. If Congress would allow the Pentagon to privatize or consolidate depot and base maintenance activities, savings of $2 billion each year could be achieved. In addition, Congress refuses to eliminate anti-competitive ''Buy American'' restrictions, which could save almost $5.5 billion annually on defense contracts.

These common sense reforms alone would free up more than $20 billion per year, which could be used to begin remedying our readiness shortfalls and provide once-and-for-all a quality health care delivery system for our aged military retirees.

Additionally, most disgraceful is the fact that, while Congress wastes taxpayer money on obsolete infrastructure, unneeded weapons systems, and projects that have no meaningful value to the Armed Forces, it simultaneously refuses to adequately pay the nearly 12,000 enlisted military personnel who are forced to subsist on food stamps.

In October 1999, the Chairman of the Joint Chiefs of Staff and the rest of the Joint Chiefs testified before the Senate Armed Services Committee on the state of the military and universally declared the year 2000 to be the year of health care reform. Although this was a critical step for the senior uniformed military leadership to acknowledge this thinking in their testimony to the Senate, it must not become our military's Y2K problem and fall prey to election year politics.

On October 26, 1999 General Henry Shelton, Chairman of the Joint Chiefs of Staff, testified before the Senate Committee on Armed Services:

> Although we have done much over the past year to improve readiness, much more needs to be done to sustain the momentum. This year, for example, we intend to focus on another component that affects personnel readiness, the quality of our military medical system . . . . The Joint Chiefs are fully committed to supporting the Department of Defense efforts to improve both the fact and the perception of military health care for all the beneficiaries. Those who serve or have served proudly deserve quality care.

One of the critical pieces of the last several years' laws on military health care was the institution of several limited pilot projects in Medicare subvention and FEHBP. As important as the select locations was the cooperation that was achieved between several agencies who were responsible for implementing the pilot project legislation devised by the Republican Congress. These pilot projects serve as important interim measures for health care reform and as a valuable comparisons of the strengths and weaknesses of the military health care delivery system. Moreover, valuable lessons can be learned from comparing the current state of the military health care program with those available in the private sector system that may have applicability to the military system, to lay the groundwork for a more comprehensive reform effort.

The rush to implement military health care reform and the evaluation of current health care delivery pilot projects must be balanced with the need to provide critical health care to the over-65 military retirees and their families. Their angst towards losing any minimal health care they had from the time they retired to turning age-65 is multiplied on their 65th birthday. If this is to be the year of military health care, a key part of this effort must entail reassuring these older retirees that the Department of Defense will no longer deny or ignore their legitimate health care needs. By doing so, Congress also will be taking an essential step to reassure today's servicemembers that the government does, in fact, keep its recruiting and retention promises concerning health care and other career service benefits.

The legislation that I am working on in the Senate would be the next step down the road to meaningful reform of our Nation's military health care delivery system. This legislation would offer the military retiree and his family several health care delivery plans to choose from. Having the choice to decide which health care plan works well is important for two reasons. One to be able to control overall health care reform costs and secondly, each retirees needs are different. Some military retirees may not mind driving 100 miles to a military treatment facility for health care as long as they have access to a viable, quality pharmaceutical plan. Other military retirees and their families may not be able to drive long distances for their primary health care needs and instead require a health care delivery plan that is much closer to their home. Another objective of this health care reform plan, is that in the event of another base closure round, any plan be portable and less dependent on any military hospital system.

Some military retirees live near military installations and would be happy to use military care if they only had access to it. Others who live far from installations may be satisfied with the addition of a relatively low-cost prescription drug benefit. Still others desperately need full-coverage insurance such as FEHBP.

I am working on another key health care bill with cosponsors Representative NORWOOD from Georgia and Representative SHOWS from Mississippi. I have worked closely with my dear friend and Medal of Honor recipient, Colonel Bud Day, over the years and he has helped me to understand how unfair our health care system is to our military retirees and the governments' failure to keep its promise to them. I believe that if we are to restore the credibility in our government we must begin by keeping our promises to our men and women in uniform, past and present.

The health care reform plan that is enacted must also promote more efficiency in the military health care system. Right now our military health care system which offers limited health care benefits to those over-age 65 retirees is operating $800 million in the red. There are many efficiency practices that the beneficiaries have brought to my attention that would improve the military health care delivery system through: better billing practices, quality control of electronic forms processing, regular surveys of military health care beneficiaries, and bringing the various health care delivery systems under a single system could save hundreds of millions of dollars.

The federal government must not abandon the health care coverage needs of our nation's military retirees, their families, and survivors. I will continue

to work over the next couple of months with The Military Coalition and The Military Veterans Alliance, representing nearly 10 million members, to enact comprehensive reform of the military health care system, which fulfills our obligation to our military retirees, and bolsters retention and readiness among today's servicemembers by assuring them that retention promises will be fulfilled once their active service is over.

Mr. President, next year will be, in the words of the Joint Chiefs, the year of health care reform. I hope that my colleagues will join me in supporting the ''Contract With Our Service Members—Past and Present.'' A key objective of this Contract, legislation to reform our military health care system, must be successful if Congress is to restore the American people's faith in their government.

Thank you and I yield the floor.

Mr. REED. Mr. President, I would like to offer a few comments about H.R. 1693, a bill to amend the Fair Labor Standards Act of 1938 (FLSA) and clarify the overtime exemption for employees engaged in fire protection activities.

This bipartisan bill was passed on the House Suspension Calendar without objection on November 4, 1999, and just passed the Senate under a unanimous consent agreement.

Generally, under the Fair Labor Standards Act, workers are entitled to overtime compensation for hours worked in excess of 40 in a given week. The FLSA contains an exemption for overtime, under Section 7(k), for employees of public agencies who are engaged in fire protection activities. This exemption allows employees engaged in fire protection activities some flexibility in scheduling their work hours. It also recognizes the extended periods of time that firefighters are often on duty by allowing firefighters to work up to 212 hours within a period of 28 consecutive days before triggering the overtime pay requirement.

H.R. 1693 clarifies this firefighter exemption as it relates to emergency medical personnel. This bill provides that paramedics who are cross-trained/dual role firefighters, and work in a fire department and have the responsibility to perform both fire fighting and emergency medical services, be treated as firefighters for the purpose of Section 7(k) of the Fair Labor Standards Act. H.R. 1693 does not create a new exemption from the FLSA, it merely clarifies the definition of firefighter.

Supported by the International Association of Fire Fighters and the International Association of Fire Chiefs, H.R. 1693 ensures that unreasonable burdens are not placed on fire departments when accounting for hours worked. In effect, it elucidates the original intent of the Section 7(k) provision of the FLSA, the provisions that apply to firefighters who perform normal fire fighting duties, and hopefully the Senate's passage of this clarification addresses the concerns of the interested parties.

Mr. KENNEDY. Mr. President, this legislation is necessary to resolve the confusion in current law over whether firefighters who are also trained as paramedics are covered by the exemption in section 7(k) of the Fair Labor Standards Act.

This bill defines ''employee engaged in fire protection activities'' to make clear that fire fighters who perform fire fighting duties are covered by the exemption, regardless of the number of hours they spend in responding to Emergency Medical Services calls. This legislation restores the original intent of the 1986 law that created the section exemption.

Significantly, the legislation also states that in order to qualify for the exemption, an employee must have the ''legal authority and responsibility to engage in fire suppression.'' This phrase was added for the express purpose of assuring that single-role emergency medical personnel are not covered by the exemption. Simply sending paramedics to the fire academy will not automatically bring them under the exemption. Fire suppression must be an integral part of the responsibilities for all employees covered by the exemption.

Mr. COCHRAN. Mr. President, I am pleased to be a cosponsor and to support the passage of the Deceptive Mail Prevention and Enforcement Act, S. 335.

I congratulate the distinguished Senator from Maine, Ms. COLLINS, for her successful efforts to get this legislation adopted to curb deceptive mailings. She has provided strong leadership and sound guidance on this important issue. As Chair of the Permanent Subcommittee on Investigations, Senator COLLINS has worked effectively to examine the problems relating to sweepstakes and promotional mailings and develop this legislation to strengthen our laws. I applaud her work in crafting this bill and her continuing efforts to protect consumers.

The Deceptive Mail Prevention and Enforcement Act includes new safeguards to protect consumers against misleading and dishonest sweepstakes and other promotional mailings, including government look-alike mailings. The bill grants additional investigative and enforcement authority to the United States Postal Service to stop unscrupulous mailings and establishes standards for all sweepstakes mailings by requiring certain disclosures on each mail piece.

This bill is an important step toward the prevention of deception in sweepstakes and other promotional mailings. I compliment Senator COLLINS on her efforts, and I am pleased to support the passage of the Deceptive Mail Prevention and Enforcement Act.

Mr. FITZGERALD. Mr. President, I am pleased that the Senate is prepared to pass the Abraham Lincoln Bicentennial Commission Act of 1999. The year 2009 is the 200th anniversary of President Lincoln's birth, and this measure would establish a commission to study and recommend to the Congress activities that are appropriate to celebrate that anniversary.

It is most fitting that we make these arrangements to honor Abraham Lincoln, one of our nation's wisest and most courageous former Presidents, on the bicentennial of his birth. The son of a Kentucky frontiersman, Abraham Lincoln was born on February 12, 1809 in a log cabin. From these humble beginnings, he went on to become the sixteenth President of the United States. Today, he is perhaps best remembered for leading the Union through a turbulent Civil War and for issuing the Emancipation Proclamation, which freed the nation's slaves.

Few people have a greater appreciation for President Lincoln than the residents of my home state of Illinois. President Lincoln spent about eight years in the Illinois State Legislature, and he also represented Illinois in the U.S. House of Representatives for a term. The only home that Abraham Lincoln owned is located in Springfield, Illinois. Today, people from all parts of the United States travel to Springfield to see Abraham Lincoln's family home, tour the Old State Capital where Mr. Lincoln said ''a house divided cannot stand,'' and visit his final resting place in Springfield's Oak Ridge Cemetery.

The Abraham Lincoln Bicentennial Commission Act, which originated in the House of Representatives, provides for the establishment of a national commission to recommend ''fitting and proper'' activities to celebrate the bicentennial of Lincoln's birth. The commission would be composed of fifteen members, including at least one person appointed by the President on the recommendation of the Governor of Illinois.

Congress created a similar commission in anticipation of the centennial of Lincoln's birth in 1909. That year, this country celebrated President Lincoln's birthday in a big way: Lincoln's image appeared on a postage stamp, his birthday became a national holiday, Congress passed legislation which led to the Lincoln Memorial's construction, and the White House approved the minting of a Lincoln penny. It is appropriate that we again prepare for the anniversary of his birth by passing this measure to establish the Abraham Lincoln Bicentennial Commission.

I close by noting that the Abraham Lincoln Bicentennial Commission Act of 1999 has tremendous support in both chambers of Congress. The bill passed the House of Representatives by a vote of 411 to 2 last month. The Senate version is the product of cooperation among Senators HATCH, LEAHY, DURBIN and me. I also commend Judiciary Chairman HATCH, ranking member LEAHY, and their staffs for their efforts to help pass this important bill.

Mr. DODD. Mr. President, there are obviously many issues that one might

discuss in the context of the omnibus spending bill that is currently pending before the Senate. I would like to take a few moments to mention two very important issues that have been included in the pending legislation, the IMF debt initiative and payment of U.N. arrears.

I was extremely pleased that the House and Senate leadership were able to reach agreement earlier this week with Secretary of Treasury Larry Summers and other administration officials on legislative language that will permit the IMF's historic debt relief initiative to move forward. Just a few short days ago, it seemed unthinkable that the Congress and the Executive would reach a compromise to permit the United States to support the IMF debt initiative for highly indebted poor nations around the globe before the end of this session of Congress.

The provisions contained in the pending legislation authorize U.S. support for IMF participation in the international debt reduction initiative by permitting the United States to vote for the immediate non-market sale of the amount of gold necessary to generate profits of $3.1 billion; permit the use of 64% of the interest earned on the invested profits to be used for debt relief; authorize the U.S. share of a special reserve account at the IMF to also be used for debt relief purposes, and appropriate $123 million for FY 2000 bilateral U.S. debt reduction programs that will be undertaken in conjunction with the international debt initiative.

With the enactment of this bill into law, the United States will be able to make a major step forward toward achieving the commitments made by President Clinton and other so called G–7 heads of state at this year's Cologne Summit. Among other things, this will enable the IMF, for the first time, to utilize its own resources to participate in international efforts to reduce the mounting debt burden that has been a yoke around the necks of the most impoverished nations of the world—countries which are home to nearly half a billion people. With this debt relief and the economic reforms that will be an integral part of the IMF's multilateral initiative, the poorest countries in Africa and Latin America can now approach the next millennium with prospects for a brighter future. I am extremely pleased that bipartisanship ultimately won the day during negotiations of this important issue.

Another important issue with major international implications has also finally been successfully resolved, namely the authorization and appropriation of $926 million in long overdue U.S. payments to the United Nations. While I would have preferred to see this issue treated on its own merits, rather than linked to restrictions on bilateral funding for family planning programs of foreign private and international population organizations, at least this issue has been finally resolved, and the United States will not lose its vote at the United Nations.

I believe that extremist elements in the Congress jeopardized United States national security and foreign policy interests by holding up our payments to the UN for more than three years. They held this money hostage to the unrelated issue of international population programs. I am not happy with the compromise that had to be agreed to in order to resolve this issue. It is un-American in my view to legislatively seek to limit the free speech of foreign non-governmental organizations with respect to local family planning laws as a condition for receiving United States funding for their important family planning programs. Were I to have had the opportunity to vote on this language as a free standing amendment I would have certainly voted against it, as would a majority of the Senate. Unfortunately, because it has been included in the omnibus conference report we do not have that option. We must balance our distaste for this provision against the many positive programs that will be funded, including UN arrears, once this bill becomes law. Having done so, I will vote in favor of the pending legislation.

Mr. President, the IMF, the United Nations and its related specialized organizations—UNICEF, the International Labor Organization, the World Health Organization, the Commission for Human Rights el al.—have a daily impact of the lives of the world's people—and it is an impact for the better. Without doubt, these international organizations further United States national security and foreign policy interests through their programs and initiatives. Representatives of the United Nations are on the ground in the far comers of the world—in East Timor, Kosovo, Haiti, and Iraq to mention but a few ongoing missions of the United Nations. The United States is able to maximize its interests and advance its foreign policy agenda at much lower cost thanks to our participation in this important international organization.

There are clearly many reasons for voting to support this spending bill, despite its many flaws. The IMF Debt Relief Initiative and payment of UN arrears are two of the more compelling ones in my opinion. I urge my colleagues to support this bill when it comes to a vote later today.

Mr. LOTT. Mr. President, today, the United States Senate unanimously passed much needed legislation to protect some of America's most threatened historic sites, the Vicksburg Campaign Trail and the Corinth battlefield.

S. 710, the Vicksburg Campaign Trail Battlefields Preservation Act of 1999, is a bipartisan measure that authorizes a feasibility study on the preservation of Civil War battlefields and related sites in the four states along the Vicksburg Campaign Trail.

As my colleagues know, Vicksburg served as a gateway to the Mississippi River during the Civil War. The eighteen month campaign for the ''Gibraltar of the Confederacy'' included over 100,000 soldiers and involved a number of skirmishes and major battles in Mississippi, Arkansas, Louisiana, and Tennessee.

The Mississippi Heritage Trust and the National Trust for Historic Preservation named the Vicksburg Campaign Trail as being among the most threatened sites in the state and the nation.

S. 710 would begin the process of preserving the important landmarks in the four state region that warrant further protection. I appreciate the cosponsorship of Chairman MURKOWSKI, Chairman THOMAS, and Senators LANDRIEU, BREAUX, COCHRAN, HUTCHINSON, and CRAIG on this measure.

Mr. President, the Senate also approved S.1117, the Corinth Battlefield Preservation Act of 1999, a measure that establishes the Corinth Unit of the Shiloh National Military Park.

The battle of Shiloh was actually part of the Union Army's overall effort to seize Corinth. This small town was important to both the Confederacy and the Union. Corinth's railway was vitally important to both sides as it served as a gateway for moving troops and supplies north and south, east and west. The overall campaign led to some of the bloodiest battles in the Western Theater. In an effort to protect the city, Southern forces built a series of earthworks and fortifications, many of which remain, at least for now, in pristine condition. Unfortunately, the National Park Service in its Profiles of America's Most Threatened Civil War Battlefields, concluded that many of the sites associated with the siege of Corinth are threatened.

S. 1117 would give Corinth its proper place in American history by formally linking the city's battlefield sites with the Shiloh National Military Park.

Mr. President, I want to thank Senators ROBB, COCHRAN, and JEFFORDS for cosponsoring this measure.

I would also like to express my appreciation to Chairman THOMAS for his ever vigilant efforts on parks legislation, and in particular, for moving both the Vicksburg Campaign Trail and Corinth battlefield bills forward.

I would also like to take this opportunity to recognize Chairman MURKOWSKI for his continued stewardship over the Senate Energy and Natural Resources Committee.

Mr. President, I also want to recognize Ken P'Pool, Deputy State Historic Preservation Officer for Mississippi; Rosemary Williams, Chairman of the Siege and Battle of Corinth Commission; John Sullivan, President of the Friends of the Vicksburg Campaign and Historic Trail; and Terry Winschel and Woody Harrell of the United States Park Service for their support and guidance on these important preservation measures.

Lastly, I would like to recognize several staff members including Randy Turner, Jim O'Toole, and Andrew Lundquist from the Senate Energy

Committee, Darcie Tomasallo from Senate Legislative Counsel, and Stan Harris, Angel Campbell, Steven Wall, Jim Sartucci, and Steven Apicella from my office, for their efforts to preserve Mississippi's and America's historic resources.

Mr. President, as a result of the Senate's action today, our children will be better able to understand and appreciate the full historic, social, cultural, and economic impact of the Vicksburg Campaign Trail and the Siege and Battle of Corinth.

Mr. SESSIONS. Mr. President, I rise to ask my colleagues to join Senator JEFFORDS and me in supporting the enactment of the pending bill which clarifies the status of church welfare plans under state insurance law. These plans provide health and other benefits to ministers and lay workers at churches and church-controlled institutions. It is estimated that more than 1 million individuals rely on these programs for their health benefits.

Today, the status of these programs under state insurance laws is uncertain. This legislation merely provides that church welfare plans are not engaged in the business of insurance for purposes of state insurance laws that relate to licensing, solvency, or insolvency.

In addition, this legislation clarifies that a church plan is single employer plan for purposes of applying state insurance laws. The language in the bill is intended to eliminate concerns by network providers and insurance companies about the legal status of a church plan under state insurance law. By enacting this legislation, networks and insurance companies otherwise doing business in a state will be able to offer to church plans the same services they offer to corporate benefit programs.

Mr. President, I first became aware of the need for this legislation when I heard from Bishop Morris from my own state of Alabama. He explained that too frequently church plans are denied access to network providers that offer discounted rates. He also explained that from time-to-time questions arise about the legal right of church plans to provide coverage under state insurance law. He asked me to look into what I could do help clarify the legal status of health plans maintained by churches and synagogues. It seemed like a reasonable request since Congress has authorized churches to maintain denominational benefit programs. However, this is also a technical area of the law that involves constitutional issues of separation of church and state. It also involves technical issues regarding insurance and benefit laws.

This legislation has been carefully crafted with the help of the church benefits community represented by the Church Alliance, a coalition of more than 30 denominational benefit programs. While they may differ on questions of theology, it is obvious that they are united in their efforts to serve those who serve their respective churches and synagogues. I also want to commend the National Association of Insurance Commissioners for their assistance in helping to work out the language of this bill. It is obvious that State Insurance Commissioners respect the right of churches to maintain benefit programs that serve clergy and lay workers.

Mr. President, churches should be commended for the commitment they have demonstrated, in some cases for more than a hundred years, to offer comprehensive benefit programs to their employees. These programs have many unique design and structural features reflecting the fact that they are maintained by denominations. As we consider health care legislation in Congress, I believe that it is important for all of us to recognize these unique features and to be mindful of the important role these church-maintained programs perform within their respective churches.

In order to give my colleagues and the public a better understanding of this legislation, I ask unanimous consent that a section-by-section of the bill appear immediately after my remarks.

Mr. President, on behalf of ministers, rabbis, and church lay workers across this country who receive benefit coverage from church plans, I urge passage of this legislation.

CLARIFICATION OF CHURCH WELFARE PLAN STATUS UNDER STATE INSURANCE LAW

Section 1 provides a statement of purpose. This section provides that the only purpose of this Act is to clarify the status of church welfare plans under certain specified state insurance law requirements and the status of a church welfare plan as a plan sponsored by a single employer. This Act clarified the status of church plans under state law. It also addresses the problem of health insurance issuers refusing to do business with church plans because of concern that church plans could be classified as unlicensed entities.

Subsection 2(a) provides that a church welfare plan is deemed to be sponsored by a single employer that does not engage in the business of insurance for the purposes of state insurance laws described in subsection (b). This subsection permits network providers and insurance companies to establish the same contractual relationships with a church plan as they are allowed to establish with any single employer plan covered under the Employee Retirement Income Security Act (ERISA) in such state.

Subsection 2(b) describes state insurance laws that (1) would require a church welfare plan or an entity that can administer or fund such a plan (only to the extent that it engages in such activity) to be licensed; or (2) relate to solvency or insolvency (including participation in guaranty funds and associations). For example, state insurance laws that impose reserve requirements or require posting of security would be described in this subsection. Similarly the plan is deemed to satisfy the licensing requirements of state insurance law.

Subsection 2(c)(1) defines the term ''church plan.''

Subsection 2(c)(2) defines the term ''reimburses costs from general church assets.'' The affect of this definition is to provide that church welfare plans are not engaging in the business of insurance for certain state insurance law provisions otherwise described in this subsection 2(b).

Subsection 2(c)(3) defines the term ''welfare plan.'' This subsection clarifies that the term ''welfare plan'' only includes church plans and does not include HMOs, health insurance issuers and other entities doing business with church plans or organizations sponsoring or maintaining the plan.

Subsection 2(d) provides that while the Act exempts church welfare plans from state licensing requirements, states preserve authority to enforce state insurance law provisions that remain applicable to church plans. This subsection deems welfare plans to be licensed for purposes of all other insurance laws not specifically excluded in subsection 2(b). This subsection is necessary because under some state insurance laws, only entities that are actually licensed can be subject to enforcement action under any provision of such law.

Subsection 2(e) provides that while subsections (a) and (b) deem that a church plan reimburses costs or provides insurance from general church assets for the purpose of determining its status under certain state insurance laws, the rights of plan participants and beneficiaries, including those who actually make plan contributions, are not otherwise affected by the application of section 2.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the following newspaper article appear in the RECORD following my statement on H.R. 1180, Work Incentives/Tax Extenders Conference Report.

[From the New York Times, Nov. 12, 1999]

A BUDGET TOO FLUSH TO FIGHT ABOUT

(By Alice M. Rivlin)

WASHINGTON—The United States political system, arguably the most effective in the world, has an uncanny penchant for making its successes look like failures. The wrangling now going on in Washington over the federal budget is an ugly, confusing spectacle—long on finger-pointing and gotcha moves, short on conciliation and statesmanship. As the vetoes, gimmickry and accusations of ''raiding Social Security'' fly up and down Pennsylvania Avenue, it is hard to remember that the battle is over marginal adjustments in an increasingly responsible fiscal policy.

The federal budget is already in substantial surplus—revenues exceeded expenditures by about $120 billion in the fiscal year 1999, which would have seemed like a miracle only a few years ago—and the public, polls indicate, is pushing politicians to raise the bar. The new goal, harder but entirely appropriate, is an even bigger surplus, sufficient to reduce the debt and help the economy prepare for the rapid aging of the population.

Acrimony over small changes in a successfully balanced budget is a welcome change from the 1980's, when there was so much more to be acrimonious about. The huge deficits of that decade were clear evidence of policy failure.

The stunning success of this decade began when President George Bush and the leaders of Congress hammered out an agreement in 1990 that raised some taxes and set explicit caps on future discretionary spending. The effect was not immediately apparent because the recession the next year cut revenues, but the ground-work for a falling deficit had been laid.

The goal of President Clinton's budget plan in 1993, extended the caps and raised some taxes, was to cut the deficit in half in four years. The deficit for the fiscal year 1992 was $290 billion—a $50 billion surplus in Social Security, offset by a $340 billion deficit in the rest of the budget. No one thought that

getting to overall balance was a goal realistic enough to talk about, let alone reaching balance without counting the Social Security surplus.

But now that the overall budget has been balanced for two years, it's time to follow the public's leaning and adopt the more ambitious objective of balancing the budget without counting the Social Security surplus.

Paradoxically, although this raising of the bar is highly desirable, the reasons have little to do with Social Security.

Two or three decades from now, we will have a much higher ratio of retirees to workers, and the standard of living of both groups will depend on making the economy grow faster, so more goods and services are available to be consumed by everyone. Running a larger government surplus would help the economy grow. It would reduce the national debt, put downward pressure on interest rates and encourage new investment.

It doesn't matter much whether the surplus is in the Social Security fund or the rest of the budget; it is the debt reduction that helps the economy grow. Explaining the raising of the bar as ''not spending the Social Security surplus'' is a convenient way of suggesting a connection between the aging of the population and the need for growth. But the current budget debate does not affect the status of the Social Security fund or the rights of beneficiaries in any way. That's a debate for another (post-election) day.

If political discourse were more civil, Congress and the president would have settled their differences over the fiscal year 2000 budget long before now, probably by enacting modest increases in the spending caps and celebrating the fact that the surplus is larger than anyone expected. Then they would have gone on to explain why an even bigger surplus would be a good thing for future growth.

A growing surplus can only be achieved by restraining spending growth and avoiding a major tax cut. A tax cut would hurt prospects for economic growth by encouraging more consumer spending and forcing the Federal Reserve to raise interest rates to avoid inflation.

With any luck, the new budget will be wrapped up in a few days and Congress will go on to other business. The public will breathe a small sigh of relief but will not realize that it ought to be celebrating.

The good news is that the budget surplus is growing, no significant tax cut is being considered, and politicians are beginning to notice that the public wants them to act responsibly for the long term and reduce the federal debt.

That's a lot of good news. It's a shame the process is so ugly.

NOAA VESSEL RAINIER

Mr. STEVENS. Mr. President, during the last month of negotiations on the FY00 Commerce, Justice, State Appropriations conference report, there has been much discussion between the Alaska delegation and Commerce Department officials regarding where to homeport the *Rainier*. The *Rainier* is one of four hydrographic survey vessels currently homeported in Seattle. However, the *Rainier* spends nearly all of its time performing hydrographic surveys in Southeast Alaska, where the need for hydrographic surveys is great. Substantial amounts of time and money are wasted every time the *Rainier* transits the 650 miles between Seattle and Southeast Alaska.

Alaska has more than half of the United States' coastline, and no State is more dependent on marine transportation. Nonetheless, most of southeast Alaska lacks adequate hydrographic surveys. In fact, more than half of NOAA's critical backlog of survey areas is in Alaska. Much of that backlog is in southeast Alaska, where three cruise ships ran aground this summer. These ships ran aground in critical backlog areas and other areas that are literally not on the map. New coastline opens up every time a receding glacier creates a new inlet, giving vessels access to totally uncharted waters.

Chairman YOUNG of the House Resources Committee met personally with Commerce Secretary Daley on this issue recently. The Secretary agreed that Alaska was an appropriate home for the *Rainier*. The city of Ketchikan has offered to make space available for the *Rainier* and to provide $300,000 cash to offset the one-time cost of the move. Moving this vessel to Ketchikan makes good fiscal sense and good policy sense. I urge the Secretary to relocate the *Rainier* to Ketchikan at once.

PACIFIC SALMON TREATY

Mr. STEVENS. Mr. President, as Chairman of the Senate Appropriations Committee, I would like to explain the provisions relating to Pacific salmon and the Pacific Salmon Treaty included in the conference report for the fiscal year 2000 Commerce, State, Justice Appropriations bill. The conference report provides funding to implement the 1999 Pacific Salmon Treaty Agreement between the United States and Canada and for Pacific coastal salmon recovery efforts in Alaska, Washington, Oregon, and California. Section 623 of the conference report authorizes this funding and addresses other issues which are critical to the success of the 1999 Pacific Salmon Treaty Agreement.

Section 623(a) establishes the Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund and the Southern Boundary Restoration and Enhancement Fund. The 1999 Agreement requires the United States to capitalize these two funds at $75,000,000 and $65,000,000, respectively, over the next 4 years. Interest earned from these funds will be spent each year to develop better information to support resource management, to rehabilitate and restore marine and freshwater habitat, and to enhance wild stock production. This investment will complement a C$400,000,000 Canadian investment in habitat restoration and license buyback programs.

Each fund will be managed by a bilateral committee of three United States and three Canadian representatives. Appropriately, the three United States representatives on the Northern Fund Committee are Alaskans: Alaska's Commissioner and Deputy Commissioner to the Pacific Salmon Commission and the Regional Administrator of the Alaska Region of the National Marine Fisheries Service. Likewise, the three United States representatives on the Southern Fund Committee are from the Lower 48: one representative of the States of Washington and Oregon; one representative of the treaty Indian tribes; and the Regional Administrator of the Northwest Region of the National Marine Fisheries Service. I expect that the Northern Fund Committee will consult with the Northern Panel of the Pacific Salmon Commission on funding proposals prior to making its decisions. Likewise, the Southern Fund Committee should consult with the Southern Panel.

Section 623(b) implements the 1999 Agreement by addressing several conditions to that agreement. First, it provides that the $20,000,000 appropriated to capitalize the Northern Fund and the Southern Fund will not be made available until two events occur. First, the parties to the Boldt-related litigation must be sign and file stipulations staying that litigation for the duration of the 1999 Agreement. Second, the Secretary of Commerce must determine that the conduct of Alaska's fisheries under the 1999 Agreement, without further clarification or modification of the management regimes contained in the 1999 Agreement, do not cause jeopardy to salmon species listed under the Endangered Species Act. If the Secretary of Commerce requires alterations, modifications, or any other changes to the fishery management regimes contained in the Treaty, this condition is not satisfied.

The 1999 Agreement is expressly conditioned on both of these requirements being met. The document titled ''Understanding of United States Negotiators,'' signed June 22, 1999, by eight United States negotiators, describes the stipulations to be filed, extended, or otherwise addressed for the duration of the 1999 Agreement. Similarly, the transmittal letter which accompanied the 1999 Agreement, signed June 23, 1999 by the Chief Negotiators for the United States and Canada, states that the 1999 agreement is conditioned on whether the conduct of Alaska's fisheries under the Treaty violates the Endangered Species Act. It is important to note that Congress has every reason to believe Alaska's fisheries do not cause jeopardy to listed salmon stocks. Alaska's fisheries operated under a ''no jeopardy'' finding before our fishermen gave up 25 percent of their Chinook catch in order to get a deal on the 1999 Agreement. To address process concerns, this subsection requires the parties to request that the court enter the stipulations before the end of the year, and that the court enter the stipulations by March 1, 2000.

Sections 623(b)(3) and 623(b)(4) specify conditions under which the Secretary of Commerce may ''initiate or reinitiate'' consultation on Alaska Fisheries under the Endangered Species Act. Subsections (b)(3) and (b)(4) address any consultation on Alaska fisheries which is commenced after the initial consultation required in subsection (b)(1). By using the words ''initiate or

reinitiate,'' Congress has addressed both those species which are currently listed under the Endangered Species Act as well as any species listed under ESA in the future. Therefore, before the Secretary of Commerce may initiate consultation on any listed species, including any species listed after this Act has passed, and before the Secretary may reinitiate a previously conducted consultation, the conditions in subsections (b)(3) and (b)(4) of section 623 must be met.

Section 623(b)(3) requires the Secretary of Commerce to issue a jeopardy determination on Southern United States fisheries before he may initiate or reinitiate consultation on Alaska fisheries. Section 623(b) defines Southern United States fisheries as the directed Pacific salmon fisheries in Washington, Oregon, and the Snake River basin of Idaho that are subject to the Pacific Salmon Treaty. Subsection (b)(3) will also require the Secretary to develop the maximum sustainable yield (MSY) data or other escapement data necessary to make such a determination. The Secretary should work with the Pacific Salmon Commission to develop this information.

Section 623(b)(4) requires the Secretary of Commerce to provide the Pacific Salmon Commission a reasonable opportunity to implement the 1999 Agreement including, if necessary, the weak stock provisions in the 1999 Agreement, and to make a determination that the 1999 Agreement will not meet MSY goals before he may initiate or reinitiate consultation on Alaska fisheries under ESA. The phrase ''reasonable opportunity'' is intended to provide sufficient time for the 1999 Agreement to work. If the Pacific Salmon Commission implements the weak stock provisions, the phrase ''reasonable opportunity'' is intended to provide sufficient time for the weak stock provisions to work as well. A reasonable opportunity will encompass several life cycles of the salmon under consideration.

Subsection (b)(4) purposefully adopts the recovery standard contained in the Pacific Salmon Treaty. This standard requires that the weak stock provisions return escapements as expeditiously as possible to maximum sustainable yield or other biologically-based escapement objectives agreed to by the Pacific Salmon Commission. This subsection recognizes that conservation is the foremost tenet of the Pacific Salmon Treaty. The Treaty also recognizes the importance of the salmon fisheries to the social, cultural, and economic well-being of the West Coast. Therefore, the Treaty seeks to satisfy its conservation objective with minimum disruption to the commercial, tribal, and sport fisheries. Recognizing these, objectives, the determination of whether escapement objectives have been met as expeditiously as possible must be made over a reasonable period of time, likely encompassing several life cycles of the salmon species under consideration.

The most important feature of this law is that it requires the Secretary to delay the enforcement of the Endangered Species Act until the Pacific Salmon Commission has an opportunity to implement the Treaty and, if necessary, the weak stock provisions of the Treaty. This later-enacted law relieves the Secretary of his duty to apply the Endangered Species Act during the time the Commission is implementing the Treaty and the weak stock provisions. This is important because the Commission is better able to recover weak stocks using the Treaty than is the Secretary using the Endangered Species Act. The Commission can require harvest restrictions in Canada, where up to half of the coastwide Chinook harvest is caught. Unlike the Pacific Salmon Treaty, the Endangered Species Act does not apply in Canada. Subsection (b)(4) recognizes the important role the Pacific Salmon Commission should play in the recovery of weak stocks by ensuring that the Commission has the opportunity to fully implement the weak stock provisions of the Pacific Salmon Treaty.

Section 623(c) makes needed changes to the voting structure of the Pacific Salmon Commission. The Pacific Salmon Treaty Act of 1985 required the three voting United States Commissioners to reach unanimous agreement before making a decision on behalf of the United States. This requirement was put in place without knowing how disruptive it would prove to subsequent negotiations. In practice, it has allowed Canadian negotiators to leverage northern and southern U.S. interest against each other. Subsection (c) prevents this unintended consequence by providing that the southern U.S. interests represent the United States on southern fisheries and Alaska represents the United States on northern fisheries. In fact, the 1999 Agreement itself did not take shape until Alaska and Canada were able to negotiate northern fisheries issues without interference from southern interests. Chinook salmon, which can migrate through northern and southern jurisdictions, are exempt from this provision.

Section 623(d) authorizes $20,000,000 total to capitalize the Northern Fund and the Southern Fund. To meet a condition of the 1999 Agreement, these amounts will not be released until stipulations have been signed and court orders requested in certain litigation involving the application of tribal fishing rights. Subsection (d) also authorizes $58,000,000 for salmon recovery efforts in Alaska, Washington, Oregon, and California. Amounts appropriated to the four States are subject to a 25 percent non-federal match requirement. States may meet this requirement with cash or other in-kind contributions supported by existing state funding.

I understand Washington State and Oregon will use their shares of this funding to address the significant habitat issues they face in those States. Alaska has neither enjoyed the benefits nor suffered the consequence of extensive development inside its borders, although some would say that we have suffered the consequences of development elsewhere through the harvest restrictions our fishermen have endured over the years. I expect that in addition to habitat restoration, Alaska will participate in other programs consistent with Treaty implementation, such as marketing initiatives. Alaska also has the authority to participate in salmon initiatives in other States and on tribal, lands. Many of the tribes will likely use their funding to participate in demonstration projects on supplementation including the use of Mitchell Act hatcheries to increase production of wild stocks. A close analysis of NMFS's artificial propagation policy may lead to different policies which help meet the recovery goals outlined in the Pacific Salmon Treaty. I look forward to the results of the States and tribal efforts.

Mr. DORGAN. Mr. President, one of the bills that will pass today as part of an Energy and Natural Resources Committee package is S. 769, which provides a final settlement on certain debts owed by the city of Dickinson, North Dakota to the Bureau of Reclamation. The legislation, which was introduced by Senator KENT CONRAD and myself, is virtually identical to that introduced during the last Congress.

The Dickinson Dam Bascule Gates Settlement Act (S. 769) will afford long overdue relief to the citizens of Dickinson. Let me briefly explain why the debt liquidation is needed and appropriate. For one thing, the Bureau of Reclamation built a faulty project. The debt was incurred by the city of Dickinson for construction of a dam with gate structures which never worked properly. In addition, the need for the bascule gates as regulating structures to help provide a reliable local water supply was eclipsed by the construction of the Southwest Pipeline. The pipeline is part of the Garrison Diversion Project which is managed by the same Bureau of Reclamation.

Consequently, it makes no sense for the city of Dickinson to have two water supply systems when it needs only one—especially when the first system was a faulty one. The city has already repaid more than $1.2 million for the bascule gates, even though they now provide virtually no benefit to the city.

The legislation itself is actually quite simple. It would permit the Secretary of the Interior to accept one final payment of $300,000 from the city of Dickinson in place of a series of payments, totaling about $1.5 million, required by city's current repayment contract. The final payment may be adjusted for payments made after June 2, 1998.

The bill also clarifies that the city of Dickinson will be responsible for up to

$15,000 in annual operation and maintenance (O&M) costs. This amount represents the average costs for O&M on the gate structures over the past 15 years. The bill as introduced was not explicit on this point and Senator CONRAD and I have worked with the Energy Committee on an amendment that is part of the reported bill.

I want to thank Chairman FRANK MURKOWSKI, Ranking Member JEFF BINGAMAN, Subcommittee Chairman GORDON SMITH, and their staffs for their cooperation and assistance. I also want to underscore the leadership of Senator CONRAD in developing this legislation and the excellent work of his Deputy Legislative Director, Kirk Johnson. May I also commend Dickinson Mayor Fred Gengler and City Administrator Greg Sund for their help and persistence in seeking a fair resolution to this matter.

TECHNICAL EDIT TO H.R. 486

Mr. BURNS. Mr. President, as the prime sponsor of S. 1547, the Senate companion bill to H.R. 486, I would like to make remarks on a technical edit to H.R. 486. I believe Sec. 3(f)(1) of Sec. 5008 needs some clarification. Subsection (1)(D) states very clearly that the ''Commission shall act to preserve the contours of low-power television licensees pending the final resolution of a class A application.'' The Commission's function to preserve the protected contours is very clear. But creating separate subsections for the certification and application processes may have created some uncertainty regarding the timing of when the Commission should begin to provide this protection. I want to assure my colleagues that I agree with the prime sponsors of H.R. 486 that the front-end certification process is an integral first step in the application process. It is clearly our intent that as soon as the Commission is in receipt of an acceptable certification notice, it should protect the contours of this station until final resolution of that application. Of course, this provision does not exempt licensees from other provision of this act.

Thank you, Mr. President.

Mr. HELMS. Mr. President, for those who may wonder why H.R. 3427, which was deemed enacted as a separate law in H.R. 3194, the D.C. Appropriations bill is called the ''Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act for 2000 and 2001,'' it is because of our love, affection and respect for Admiral Bud Nance and Meg Donovan.

Bud Nance was Chief of Staff of the Foreign Relations Committee until he passed away on May 11.

Bud served his country his entire adult life—as an ensign aboard the USS North Carolina in the Pacific Theater during World War II and later as a test pilot and fighter pilot. Among his many honors, he earned two Distinguished Service Medals and capped off his distinguished 38-year navy career as skipper of the aircraft carrier USS Forrestal.

Bud went on to serve as President Ronald Reagan's Deputy National Security Advisor. And at my request in 1991 Bud became minority staff director for the Foreign Relations Committee. From January 1995 until his passing in May, he served as Chief of Staff for the majority. Bud refused to take the job until I agreed that he would not take a paycheck. Bud said that his country had been good to him and this was how he could give something back to his country.

Bud was my lifelong friend. We were born two months apart, two blocks apart in the little town of Monroe, North Carolina. I miss my friend; it was a blessing to know him.

I am pleased that the House and the Senate agreed to recognize Bud and his influence on this bill, which was the last bill on which he had the opportunity to work. In addition, Meg Donovan has been added to the bill's name. I know Bud would have been honored to share this bill with Meg for whom he had a deep affection.

Like Bud, Meg Donovan, who died at age 47 of cancer last October, had spent much of her life in government service and international affairs. She served as the Deputy Assistant Secretary for Legislative Affairs at the State Department at the time of her death, and before that was a longtime House International Relations Committee staff member.

Meg worked closely with the Senate on the confirmation of key foreign affairs nominations, including those of Secretary of State Warren Christopher, and later, Madeleine K. Albright. In the Congress, she worked primarily on issues dealing with political and religious dissidents, minorities and other persecuted groups, including Tibetans, Soviet Jews and women.

Both Bud and Meg are missed by the staffs of the Senate Foreign Relations Committee and the House International Relations Committee, and by me and countless others, all of whom are pleased that this legislation bears the names of these two fine Americans.

Mr. L. CHAFEE. Mr. President, I rise today to express my support for the extension of the Northeast Dairy Compact. I also wish to commend my colleagues from New England for all of their hard work on this issue. Senators JEFFORDS, SPECTER, LEAHY, and others all have worked diligently to protect the dairy farmers in our region. I thank them for their efforts.

As my colleagues know, the Northeast Dairy Compact was approved by Congress in 1996 as a part of the Freedom to Farm bill. It was implemented after the Secretary of Agriculture found that there was a ''compelling public interest'' for its creation.

A state-generated response to the decline in the New England dairy industry over the last decade, the Dairy Compact has preserved local milk supplies for the Northeast. In 1978, there were 6,439 dairy farms in New England. By 1992, the number of dairy farms fell to 3,974. During this same time, the number of dairy farms in my home state fell from 93 to 41—a 60 percent decrease. As I stand here today, there are only 30 dairy farms remaining. 93 to 30. This certainly is an alarming number.

Why is this alarming? Dairy farms are the essence of New England—independent and hard working—the very symbol of our region. They are not in far away rural areas such as those in other parts of the country. Most are close to fast growing areas which are ripe for development. It would be very easy for any one of our local dairy farmers to sell their land to area developers and settle for an easier lifestyle.

In New England, we value the contributions of our dairy farmers. As areas feel the pressure of population growth, and the resulting stress on the environment, it becomes more and more important to support dairy farming and the benefits we all reap from their existence. We do not want to see them disappear. To have them extinguished from the New England countryside would be the equivalent of the Liberty Bell leaving Pennsylvania, the Statue of Liberty leaving New York, and Mount Rushmore being torn down for townhomes in South Dakota.

The Northeast Dairy Compact works. It is only fitting that we are here today to extend its existence. To do otherwise would jeopardize the progress that has been made to preserve our lands and the farming economy in New England.

Again, I thank my colleagues for their attention, and I yield the floor.

Mr. ROBB. Mr. President, I'd like to commend the efforts of those of my colleagues who joined in the effort to make an important change to the Satellite Home Viewer Improvement Act of 1999. As initially drafted, the conference report on H.R. 1554 caused many of us great concern because it included two provisions which could have discriminated against Internet and broadband service providers by expressly and permanently excluding any ''online digital communication service'' from retransmitting a television signal or other audiovisual work pursuant to a compulsory or statutory license. Like many of my colleagues, I was deeply concerned that in the race to adjourn, Congress would neglect to fix these potentially damaging provisions.

Under the agreement which has been reached on this bill, these provisions have been deleted. This was the right thing to do: these two provisions had been added to the conference report late in the process, after agreement had been reached on the fundamental parameters of the bill, and without any public debate. Now that the provisions have been removed, the committees of jurisdiction will have an opportunity to consider the proper application of the compulsory and statutory licensing

provisions of the Copyright Act to Internet and broadband service providers.

Given the enormous importance of the Internet for enhancing consumer access to programming, it is essential that Congress give full attention to this issue early next year. I look forward to working with my colleagues to ensure that we take steps to further enhance the range of choices consumers have in the marketplace.

I also wanted to take a moment to commend Senator BAUCUS and others for their efforts in securing an agreement to address the problems that small-market and rural areas now face in obtaining satellite broadcasts of their local television stations. By my estimates, the only market in Virginia that will get local-into-local service with the current bill is the metropolitan D.C. area, leaving over 94% of satellite households in my state without this crucial service. All Virginians, however, and, indeed, all Americans, deserve quality local satellite service, and I intend to make this issue a top priority when Congress returns next year.

Mr. LOTT. Mr. President, today the Senate passed the Intellectual Property and Communications Omnibus Reform Act of 1999. This bill makes many needed and timely reforms to the Satellite Home Viewer Act which originally passed almost 12 years ago. I have said for many months I believed this was a measure that Congress should enact before adjourning this year, and am pleased that we have been able to move forward on this important piece of legislation.

For a number of years, great strides have been made by providers of direct broadcast satellite to compete for customers with cable, the traditional provider of multichannel video services. Congress recognized this marketplace development and the necessity to update the rules of the road to advance such competition.

Satellite television providers have a unique product to offer, and more and more consumers are opting for television via satellite, including my own son Chet. During a visit in his home, I learned firsthand just what this debate is all about. So I disagree with those who say this is just a broadcaster bill or this is just a satellite bill. Clearly, both sides had to compromise, and the end result is one that is fair to the various industry segments.

As always, when dealing with such contentious issues in the legislative process as were confronted in this measure, the competing interests of several parties had to be balanced. A number of compromises were reached, and the bill considered by the full Senate today will be good for consumers and good for competition.

This bill allows, for the first time ever, satellite providers to offer local signals in local markets. Consumers value their local signals. They want to see their local news, their local weather, their local sports. Promoting localism was a goal of the conferees, while at the same time giving the satellite industry the tools it needed to grow its business. This provision will go a long way toward freeing satellite providers to compete head-on with cable for customers who want their local signals, or to provide service in many areas where cable is not even an available option.

This measure will not only boost competition in the multichannel video marketplace, but will also ensure that consumers are not stranded in a catch-22, without service. I know many of my colleagues, myself included, heard from literally hundreds of thousands of constituents across the country. Constituents who had, in good faith, subscribed to satellite television. Constituents who were about to lose, or had already lost, their distant network programming channels, through no fault of their own. S. 1948 includes a reasonable, balanced approach to restore eligibility for many of these subscribers, while preventing further pending shutoffs.

Other consumer friendly provisions were adopted. An improved model to more accurately predict eligibility to receive distant network signals from a satellite provider. Increased certainty in the waiver process when dealing with their local broadcasters.

I feel very strongly that consumers should not be put in a bind again by being sold a service, only to have it taken away.

The revised rules of the road will help level the playing field for the direct broadcast satellite industry as well. Copyright rates are slashed. Existing satellite copyright compulsory licenses are extended for 5 years. A 90-day waiting period to begin serving current cable customers who want to switch to satellite is eliminated. And the FCC will be required to review the distant signal eligibility standard and recommend improvements to Congress. The compromise also allows for a phase-in period for obtaining permission to bring local signals into markets, so that consumers and local stations benefit from local-into-local as soon as possible.

Mr. President, the offering of local-into-local is an expensive undertaking. Many of my colleagues in Congress, particularly those who represent rural states, recognize that economics will drive local-into-local into larger, urban markets first. They wonder whether rural and small markets will receive this service.

While debating the merits of the overall bill, this legitimate concern was raised. A concern that I share as well. I want my constituents to be able to choose a satellite provider for television without having to sacrifice watching their local broadcast stations. The largest designated market area in my home state of Mississippi is Jackson, which ranks number 89 out of more than 200 designated market areas. Satellite providers have clearly indicated they are likely to offer this new service in the top 60 to 70 markets. This translates into a lack of comparable choices for my constituents, and for millions of other Americans across the country. So this is an important issue that deserves the attention of Congress.

From the beginning, Senator BURNS has been the champion of the idea of a loan guarantee program to foster the development of systems to deliver local-into-local in rural and small market areas. Although a number of Senators have stood up to talk about how important this program is for their respective states, it has been Senator BURNS who has stood firm and fought for this program.

It is Senator BURNS who is responsible for establishing the process for the full Senate to consider the loan guarantee proposal early next year.

I also want to thank Senator GRAMM, the distinguished Chairman of the Senate's Banking Committee, for his cooperation in moving this legislation forward.

Based on my conversations with him and other Members, I was pleased that a unanimous consent agreement was reached. This agreement requires that a loan guarantee bill be reported to the Senate by March 30, 2000. It is my intention to get this provision enacted into law soon thereafter.

Mr. President, I want to be clear. This unanimous consent agreement does not delay the implementation of the loan guarantee program. In fact, Senator BURNS' proposal, if passed today, would still be subject to Fiscal Year 2001 appropriations anyway. So the earliest this program could take effect under any scenario is in Fiscal Year 2001. The agreed upon schedule for consideration of the loan guarantee authorization is consistent with the appropriations timetable.

So, I believe the right incentives are in place to timely act on this matter when the Senate reconvenes next year. And I hope we can all work together, from both sides of the aisle. Without this kind of incentive, millions of Americans could be left behind.

Mr. President, the participation of Members was integral in bringing this bill to fruition. I want to commend Senator HATCH, Chairman of the Senate Judiciary Committee, for his leadership and determination to complete the Senate and House negotiations on this legislation. He worked diligently for weeks, dealing with major competing interests to achieve a balanced policy. Senator HATCH, Senator MCCAIN, Chairman of the Senate Commerce, Science, and Transportation Committee, Congressman Bliley, Chairman of the House Commerce Committee, and Congressman Hyde, Chairman of the House Judiciary Committee, along with all of the other Members of the conference, contributed greatly to the process, and I am grateful to them for their service.

This bill would not have been completed without the dedicated efforts

and countless long hours of negotiation among staff. Their hard work is very much appreciated, and I want to take a moment to recognize who they are: Monica Azare, Ed Barron, Pete Belvin, Renee Bennett, Shawn Bentley, Benjamin Cline, Tony Coe, Manus Cooney, Colin Crowell, Troy Dow, Jon Dudas, Julian Epstein, Paula Ford, Doug Farry, Bob Foster, Mitch Glazier, Jim Hippe, Tim Kurth, Jon Leibowitz, Peter Levitas, Andy Levin, Justin Lilley, Garry Malphrus, Maureen McLaughlin, Mark Monson, Ann Morton, Al Mottur, Mitch Rose, Jim Sartucci, Jonathan Schwantes, and Alison Vinson.

Mr. President, this bill is an improvement over the current state of play in today's multichannel video marketplace. It is not perfect, but it is a positive step forward in advancing competition among industries and choice for consumers.

Mr. GORTON. Mr. President, I would like briefly to address Section 2002 of the Intellectual Property and Communications Omnibus Reform Act of 1999, which is an amendment to the Omnibus package, to clarify its meaning with my colleague who drafted the provision.

There are a number of United States companies that have applied to the FCC for licenses to operate non-geostationary satellite systems in the so-called ''Ku-band.'' These firms are spending substantial amounts of private capital to develop satellite systems that will provide a host of telecommunications services to benefit the public. The satellite systems that have applied for licenses in the Ku-band are designed to operate globally on a primary basis, and already are treated as primary users of the Ku-band in the International Table of Frequency Allocations.

Mr. President, I bring this up because section 2002(a) directs the FCC to consider issuing licenses, possibly in the same bands, for new terrestrial communications services that provide local television to rural areas. Section 2002(b)(2) provides that the FCC must ensure that any new licensees for local television in rural areas do not cause harmful interference to primary users of the spectrum, presumably the Ku-band spectrum.

I want to clarify that Section 2002(b)(2) requires the FCC to prevent harmful interference not only with those who have been designated as primary users on the date of enactment of this Act, but also with prospective primary users of the Ku-band. If the FCC were to misinterpret this section, that is, if the FCC prevented only harmful interference with those who are primary users on the date of enactment, the public could be denied the substantial benefits of emerging satellite technologies.

Mr. McCAIN. I agree with my colleague that the authors of this bill did not mean to interfere with the expert technical and regulatory judgment of the FCC with respect to licensing applicants in the Ku-band. The term ''primary user'' in Section 2002 is intended to include primary users, regardless of whether these users are primary on the date of enactment or are later designated as primary. The provision in no way seeks to grant preferential regulatory treatment to terrestrial license applicants over satellite system applicants. While there appears to be an error in the report accompanying this legislation, which incorrectly states that the statute says that ''existing'' primary users must be protected, clearly the statute does not contain this qualifier, and it is our intent that the FCC protect primary users, whether designated now, or later.

Mr. CLELAND. Mr. President, on November 9, 1999, the House of Representatives overwhelmingly passed (411–8) the conference report on H.R. 1554, the Intellectual Property and Communications Omnibus Reform Act of 1999. Arriving at a conference report compromise was a long process. For months, conferees have been negotiating over these provisions. The bill the Committee produced was a good bill, and that is underscored by the overwhelming, bipartisan support the final version received.

However, the Senate will not act on this bill propr to adjourning for the year. Instead, Congress will recess without passing the complete Conference Committee version of H.R. 1554. In an attempt to achieve some of the gains from this bill, a modified version of the Satellite Home Viewers Act will be attached to the final omnibus appropriations bill and passed by Congress. However, it will be absent one important provision that would help ensure that rural citizens are not overlooked as they often are in other sectors.

The two major direct broadcast satellite (DBS) companies have stated to Congress that they will only serve the most popular markets with local broadcast channels once the statutory restriction prohibiting this action is removed. An incentive needs to be there for businesses to develop this same service for households in second tier markets and rural areas as well. The conference report to H.R. 1554 would have provided $1.25 billion in loan guarantees for satellite companies that seek to serve these often overlooked markets. It was an idea I strongly supported because it would have encouraged development of this service in second tier and rural markets in Georgia and elsewhere in the country.

Instead, a single Senator demanded the removal of this provision because of procedural issues and because, at the end of a legislative session it generally takes unanimous consent to expedite consideration of each measure, the bill presented to the Senate as part of the final appropriations bill reflects an acquiescence to this demand. To respond to those of us who supported the loan guarantee, the Chairman of the Banking Committee has promised to take up this provision and pass appropriate legislation by April 1, 2000. In the meantime, millions of satellite viewers who live in middle and rural America will not have the opportunity to view their local channels nor will they have the solace in knowing such service will be coming soon. This is very disappointing, and it is my sincere hope that the promise to act swiftly on the loan guarantees will be kept in an environment where promises and compacts are too often ignored.

As a member of the Commerce Committee, I have been closely following this bill throughout the entire process. At the heart of this debate is viewers' access to local broadcast television. I say to my colleagues that rural Americans deserve the same access to their local broadcast stations that urban and suburban DBS customers will soon enjoy. I will work next year to ensure that this loan guarantee program is acted upon swiftly.

Mr. HOLLINGS. Mr. President, this conference report represents a first step in promoting satellite as a competitor to cable. The conference was presented with two bills which approached a number of the major issues in very different ways. In order to reach an agreement, compromises were made. As a result, I believe consumers are better off with the passage of this bill, and satellite companies are now in a better position to compete with cable companies.

A number of provisions in particular will improve and expand satellite service to consumers. This conference report establishes a framework for satellite companies to deliver local network signals into local markets. This allows satellite consumers to receive their local network stations by satellite. The satellite companies have indicated that it is crucial that they are able to deliver local broadcast signals to satellite consumers if they are to compete with cable. I hope going forward, satellite companies embrace this provision and provide local signals to as many markets as possible, including those in rural areas.

In addition to these provisions, the conference report directs the FCC to establish a waiver process to allow satellite consumers who cannot receive their broadcast signals over an outdoor antenna, to obtain a waiver and be allowed to get distant network signals. This provision establishes a uniform waiver process and ensures that a consumer's request for a waiver will be addressed within 30 days. The conference report also requires the FCC to improve the accuracy of the methodology used to predict which consumers cannot receive their broadcast signals over the air, and therefore, can obtain distant network signals by satellite. Language also has been placed in the bill to improve the negotiating position of the satellite companies in their negotiations with broadcasters to obtain programming. Hopefully, this provision

will help satellite providers to obtain programming from broadcasters on fair and reasonable terms, and ultimately, provide consumers with service at a competitive price.

As noted previously, compromises were made. As the bill advanced through committee, I opposed the grandfathering of satellite customers who had been illegally provided distant network signals. At that time, I stated that illegal activities should not be rewarded. Satellite companies should not benefit from a grandfather of illegally provided distant broadcast signals to consumers. Nonetheless, the conference decided to allow satellite consumers who can receive their local network signals of Grade B intensity over an antenna, to continue to receive distant network signals by satellite. It also allowed satellite consumers who receive distant broadcast signals through big (C–band) dishes to continue receiving such service regardless of whether their distant broadcast signals have been cut-off or have been scheduled to be cut-off. In this bill, we have taken a number of steps to provide a better framework for the provision of satellite service. Therefore, I hope satellite companies will comply with the law going forward.

I expect the passage of this conference report will result in the delivery of better satellite service to consumers, and ensure that satellite companies can provide consumers with a competitively priced option to cable service.

Mr. BOND. Mr. President, as many of my colleagues know, the so-called ''patent reform'' act was placed in the Satellite Home Viewer Act in the waning hours of the conference. Even though this bill did not clear the Senate floor in regular order and never had a vote on the floor of the Senate and was highly controversial for three years the proponents had to resort to these tactics to secure passage. The Satellite Act was very important and many Americans were relying on its passage so it provided the leverage. This is an unfortunate development in this legislative battle. Over the strenuous objections of several members, the bill stayed in the conference report. The inventors never even got a debate on the floor of the Senate. I think the entrepreneurs of America deserve far better than this sort of treatment.

Special recognition should be given to the staff of the Alliance for American Innovation for their hard work on behalf of American Inventors, particularly Steven Shore and Beverly Selby. Also, Congresswoman Helen Bentley labored tirelessly on behalf of America's inventors, they deserve a great deal of recognition for their fight. As does Jim Morrison of the National Association of the Self Employed. They won many victories in this battle and the proponents had to resort to these sorts of tactics to defeat them. It is unfortunate how this bill was handled, the American inventors deserved a debate and a vote—for all that they do for America, they deserve better. We are going to be watching carefully the impact of this bill on innovation in America.

Mr. DEWINE. Mr. President, for the past several months I have served as a member of the House-Senate conference on H.R. 1554, the Satellite Home Viewer Improvement Act of 1999, which has been reported as a part of H.R. 3194, the District of Columbia Appropriations Act. The Satellite Home Viewer Improvement Act is a complicated and technical bill, but at its heart lies a simple premise—to protect interests of consumers by allowing more choices in the market for television providers. The conference agreement does this by allowing satellite companies the same opportunity to provide local signals that cable providers currently enjoy—and this increased competition should lead to better prices and better services for consumers. I hope my colleagues will join me in supporting the act.

As is to be expected in any complex piece of legislation, there were a number of difficult issues, and many public policy goals to be considered. The most important of these public policy goals is to protect the interests of consumers, and we needed to consider two factors in that regard—enhancing consumer choice in television service, and protecting the local television stations that so many rely on for their news, traffic, weather and sports. Accordingly, the conference agreement features a number of compromises that aim to protect both of these consumer interests.

Perhaps the best example of this is the so-called ''must carry'' provision. This provision requires that if a multichannel video provider (for example cable, or satellite) is carrying any broadcast signals in a given market, that provider must carry all broadcast signals in a given market. This requirement protects local television stations by assuring that their signals will be carried, whether consumers are purchasing satellite service or cable service. At first this may limit the number of markets that satellite providers can reach, but as technology and satellite capacity increase we are confident that satellite service, and the benefits of local signal competition, will reach more and more markets. This provision does not go into effect until January 1, 2002, in order to give the satellite companies time to further develop their technology and improve their product for consumers.

In the meantime, this act offers a number of other benefits to consumers. It sets the copyright rate for local signals at zero, and cuts the copyright rate for the so-called ''distant local signals'' by as much as 45 percent. It provides a ''grandfather'' clause for a large group of consumers already receiving satellite service, who might otherwise be cut off by a federal court ruling. And it makes it easier for consumers to determine what type of satellite service they are eligible for, a process which in the past has been somewhat difficult.

As many of my colleagues have noted, this act may not completely cure the competitive problems faced by consumers in the marketplace for video services. Certain provisions will require further action by the Federal Communications Commission and by Congress. But it is a good step in the right direction. I believe the Satellite Home Viewer Improvement Act of 1999 will increase competition in these markets, and it will increase consumer choice. In the short run, and in the long run, this act is good for competition, and good for consumers.

COMPULSORY LICENSING AND ONLINE SERVICE PROVIDERS

Mr. WARNER. Mr. President, I rise to explain to my colleagues an important change made to the Satellite Home Viewer Improvement Act of 1999, which was reintroduced as S. 1948 and included in the measure before us today. As my colleagues may know, I and other Senators had been very concerned that two sections of the legislation would unfairly have discriminated against Internet service providers. Many of my constituents were concerned that sections 1005(e) and 1011(c) of the legislation would be interpreted by the courts or the Copyright Office to expressly and permanently exclude any ''online digital communication service'' from retransmitting a transmission of a television program or other audiovisual work pursuant to a compulsory or statutory license under the Copyright Act.

I am pleased to report that these potentially damaging provisions were deleted from the bill before us. As my colleagues may know, these provisions originally were inserted in conference, even though the committees of jurisdiction had never held hearings on them, had never received any record evidence as to their need, and had never considered them in open debate. The committees of jurisdiction in the House and the Senate will now have an opportunity to carefully consider the application of the Copyright Act to the Internet and broadband service providers.

As someone proud to represent most of the major Internet service providers in the world. I have little doubt about the importance of the Internet and other online communications technologies for enhancing consumer access to information and programming. Online technology has transformed the way consumers receive information, including audiovisual works. It undoubtedly will bring other benefits, but only if Congress makes certain that it does not place unreasonable barriers in the way.

Because rapid technological changes are having an ever more significant impact on our economy, it is essential that the Congress give full attention to this issue early next year.

THE INTELLECTUAL PROPERTY AND COMMUNICATIONS ACT

Mr. KERRY. Mr. President, I am pleased that Sec. 2002 of S. 1948 directs the Federal Communications Commission to expedite its review of license applications to deliver local television signals into all local markets. it's my understanding that the FCC has had applications pending before it since January, which, if approved, would clear the way for nationwide deployment of an innovative digital terrestrial wireless system for multi-channel video programming. This new technology will benefit all Americans by providing robust competition to incumbent cable systems in Massachusetts and across the entire nation. Equally important, it will provide rural Americans with the same access to local signals as their urban and suburban counterparts. Under Sec. 2002(b)(2), the FCC shall ensure that licensees will not cause harmful interference to existing primary users of the spectrum. Moreover, the FCC, consistent with its mission to manage the spectrum in the public interest, will address, any coordination related to new users of a particular band.

Mr. DEWINE. Mr. President, I rise today in support of the American Inventors Protection Act of 1999, which is incorporated into the Satellite Home Viewers Act Conference Committee Report. I am a Member of that Conference Committee. Ultimately, the Satellite Home Viewers Act Conference Committee Report will be included in this year's omnibus appropriations bill, the District of Columbia Appropriations Act of 2000.

With regard to the American Inventors Protection Act, I am particularly pleased with the Act's inclusion of the first inventor or ''prior user'' defense, created by Subtitle C. Unfortunately, the fact that this Act is being considered by the Senate in the closing days of the legislative session has limited the Judiciary Committee's ability to include a complete legislative history on the Act. As a Member of the Judiciary Committee, my intent is that this statement supplement the Senate's legislative history with regard to Subtitle C of the American Inventors Protection Act.

The prior user defense to patent infringement is of great importance to the financial services industry. For years, the financial services industry developed ''back office'' methods and processes that are fundamental to the delivery of many financial services. The House Judiciary Committee Report refers to the breadth of the types of methods and processes used by the financial services industry: ''These financial services may embody methods or processes incorporated into any number of systems including, but not limited to, trading, investment and liquidity management, securities custody and reporting, balance reporting, funds transfer, ACH, ATM processing, on-line banking, check processing and compliance and risk management. In each of these systems, multiple processing and method steps are acting upon a customer's data without its knowledge.'' Minor changes in the bill since it was reported by the House Judiciary Committee do not affect the scope of methods to be considered under this Title.

Virtually no one in the industry believed that these methods or processes were patentable. Instead, the only legal protections believed to be available were those granted under trade secret laws. Last year, in State Street Bank & Trust Company v. Signature Financial Group, Inc., the financial services industry was dealt a blow when the Court of Appeals for the Federal Circuit held that business methods can be patented. Early this year, the Supreme Court denied certiorari in that case, making it official. After State Street, methods and processes that were developed by the financial services industry years ago are subject to patent. Some of these methods and processes are transparent to the end user of the services and can be ''reverse engineered'' and then easily copied. A later user of the method can now patent a method or process that another inventor had developed and put into use first. The actual inventor would then be prohibited from using his own invention, or be required to pay royalties to the subsequent inventor.

This situation is clearly unfair. Fortunately, Subtitle C of the American Inventors Protection Act partially corrects the unfortunate consequences of the State Street decision by adding a new section to the patent code establishing the ''prior user'' defense. Specifically, this provides a defense to a claim of patent infringement where a person has commercially used or made serious preparations to commercially use a process that later becomes the subject matter of a patent issued to another. Under this subtitle, an ''internal commercial use or arm's length commercial transfer of a useful end result'' includes a method or process, the subject matter of which may be directed to an information or data processing system providing a financial service, whether in the form of physical products, or in the form of services, or in the form of some useful results.

The term ''method'' should be interpreted broadly so that it includes any ''method of doing or conducting business,'' including a process. The method that is the subject matter of the defense may be an internal method of doing business, a method used in the course of doing or conducting business, or a method for conducting business in the public marketplace. It can be a method used in the design, formulation, preparation, application, testing, or manufacture of a product or service. A method is any systematic way of accomplishing a particular business goal. The defense should be applicable against patent infringement claims regarding methods, and to claims involving machines or articles of manufacture used to practice such methods (if such apparatus claims are included in the asserted patent). In the context of the financial services industry, methods would include financial instruments (e.g., stocks, bonds, mutual funds), financial products (e.g., futures, derivatives, asset-backed securities), financial transactions, the ordering of financial information, any system or process that transmits or transforms information with respect to eventual investments or financial transactions, and any method or process listed as examples by the House Judiciary Committee in its report.

Of course, the defense is not a general license; it extends only to the specific subject matter claimed in the patent. A person asserting the defense under this new section has the burden of establishing it by clear and convincing evidence. As used in this title ''person'' includes each parent, subsidiary, affiliate, division, or other entity related to the holder of the defense when they are accused of infringement of the relevant patent. If the defense is asserted by a person who is ultimately found to infringe a patent, and subsequently fails to demonstrate a reasonable basis for asserting the defense, then the court must award attorneys fees under section 285 of Title 35.

The first inventors defense is not available if a person has abandoned commercial use of the subject matter. In the context of this Act, abandonment means cessation of use with no intent to resume. In the financial services industry, certain activities are naturally periodic or cyclical. Intervals of non-use because of factors such as seasonal needs, or reasonable intervals between contracts, should not be considered abandonment.

Mr. President, subtitle C strikes a balance between the rights of the later inventor who obtains patent protection to enjoy his exclusive rights in the claimed subject matter, and the inherent fairness to the earlier user to continue to use its methods and processes to conduct and, even expand, its business. Thus, by creating a personal, prior user defense, subtitle C would give the patent owner its statutory patent rights enforceable against all except the earlier inventor and commercial user of common subject matter.

Mr. KOHL. Mr. President, I rise in support of the Satellite Home Viewer Improvement Act of 1999 which is now included as part of this year's Omnibus Appropriations Bill. Simply put, these changes in the law are long overdue.

It should come as no surprise that the final version of this legislation is the product of compromise. Certainly, no one received everything they wanted. However, at the end of the day, everyone can walk away and say they got something. That holds true for broadcasters, satellite companies and, most importantly and to the greatest degree, consumers.

The single most important thing that this bill will do is ''level the playing field'' so that satellite companies can better compete with cable. It does so by changing the anomaly in the law that prohibits satellite companies from broadcasting local signals to local people, lowering the royalty rates paid by satellite companies and, among other things, removing the unconscionable 90 day waiting period that a consumer must endure before switching from cable to satellite service. We also grant a six month ''grace period'' for ''local-into-local'' retransmission consent agreements. I am not so sure that this is quite the ''Holy Grail'' for consumers that some believe it is; however, I doubt the sky is going to fall down for the networks either.

To ensure that all local stations are carried and to keep the playing field as level as possible, this legislation imposes full ''must carry'' obligations by 2002 upon satellite providers, just as current law does on cable. That is, if a satellite company carries one local station in a market, then it must carry all the local stations. Now, reasonable people can disagree about ''must carry''—the Supreme Court upheld its constitutionality by a slim 5–4 vote—but it is only fair to apply it evenly to both cable and satellite companies.

This Conference Report also lays to rest many of the thorny disputes that have served only to hurt consumers. Both the Senate and the House have agreed to ''grandfather'' those consumers in the Grade B service area who currently receive ''distant network'' signals. To be sure, some satellite companies have been bad actors in this debate and so have some subscribers. Nonetheless, short of deposing each and every consumer, it's best to put these problems behind us and start off on a clean slate. We expect that going forward the letter of the law will be adhered to and respected—heavy penalties await those who would do otherwise, and rightfully so.

The matter of ''if and when'' a consumer should receive a waiver from a local broadcaster currently resembles a Sherlock Holmes mystery. So we order the FCC to draft ''consumer-friendly'' regulations to govern the waiver process. Our bill tells local broadcasters that if they fail to act on waiver requests within 30 days, the request will be ''deemed'' approved. We trust the FCC will improve and simplify this process even further.

Just as importantly, we ask the FCC to take a hard look at whether the Grade B standard is sufficient to determine what a good picture is in today's world. The truth is that if there's a fairer standard out there, then we should apply it. Rest assured, the Congress will get the last bite at the apple by requiring the FCC to report back to Congress with its findings, rather than allowing the Commission to ''self-execute'' its new study.

Let me make one final point regarding one of the most difficult matters in Conference: retransmission consent. The original House language was predicated on the belief that there exists unequal bargaining positions between the broadcasters and the satellite companies. Our Senate bill took precisely the opposite approach. But our law comes out somewhere in the middle: it will prohibit exclusive deals, ensure that parties negotiate in ''good faith'' when making these agreements, and put some teeth into ''good faith'' by adding the ''competitive marketplace considerations'' language.

That said, there may be some disagreement as to what exactly this new provision means. At the very least, ''competitive marketplace considerations'' may simply be interpreted as the normal, everyday jostling that takes place in the business world. At the very most, a ''competitive marketplace'' would tolerate differences based upon legitimate cost justifications, but not anti-competitive practices such as illegal tying and bundling. The answer probably lies somewhere between these two interpretations and we trust the sometimes confused FCC, as we often do, to properly divine the real intent of a somewhat confused Congress.

Again, this isn't a perfect bill. Far from it. But we can't let the perfect be the enemy of the good. This measure will allow satellite companies to compete more aggressively with cable; it will provide more choice for consumers; with luck, it may even discipline rising cable rates. So I urge my colleagues to support this bipartisan, fair, and comprehensive legislation that was the product of a great deal of hard work and negotiation. We owe consumers no less than that.

Mr. President, one final note: I ask unanimous consent to have printed in the RECORD the names of the Conference Committee staff to show my appreciation for their hard work. They are to be commended for putting in the long hours it took to get this bill done.

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

SATELLITE HOME VIEWER IMPROVEMENT ACT OF 1999 CONFERENCE STAFF

Shawn Bentley, Senate Judiciary Committee—Senator Hatch
Troy Dow, Senate Judiciary Committee—Senator Hatch
Pete Belvin, Senate Commerce Committee—Senator McCain
Mitch Rose, Senator Stevens
Paula Ford, Senate Commerce Committee—Senator Hollings
Al Mottur, Senate Commerce Committee—Senator Hollings
Maureen McLaughlin, Senate Commerce Committee—Senator McCain
Peter Levitas, Senate Judiciary Committee—Senator DeWine
Ed Barron, Senate Judiciary Committee—Senator Leahy
Jon Leibowitz, Senate Judiciary Committee—Senator Kohl
Jonathan Schwantes, Senate Judiciary Committee—Senator Kohl
Jim Hippe, Senator Thurmond
Jim Sartucci, Senator Lott
Renee Bennett, Senator Lott
Justin Lilley, House Commerce Committee—Representative Bliley
Ed Hearst, House Commerce Committee—Representative Bliley
Linda Bloss-Baum, House Commerce Committee—Representative Bliley
Mitch Glazier, House Judiciary Committee—Representative Hyde
Vince Garlock, House Judiciary Committee—Representative Coble
Monica Azare, House Commerce Committee—Representative Tauzin
Bob Foster, House Commerce Committee—Representative Oxley
Andy Levin, House Commerce Committee—Representative Dingell
Colin Crowell, House Commerce Committee—Representative Markey
Ann Morton, House Commerce Committee—Representative Boucher
Ben Cline, House Judiciary Committee—Representative Goodlatte
Garg Sampak, House Judiciary Committee—Representative Conyers
Bari Schwartz, House Judiciary Committee—Representative Berman
Tim Kurth, Office of the Speaker
Doug Farry, Office of the Majority Leader
Tony Coe, Senate Legislative Counsel
Steven Cope, House Legislative Counsel

Mr. HATCH. Mr. President, the Appropriations conference report before us contains most of the text of the Conference Report accompanying H.R. 1554, a reform of the Satellite Home Viewers Act. In addition to Satellite Home Viewers Improvement Act, this legislation contains two other major intellectual property bills, a major reform of the patent system and a bill to protect against the growing problem of ''cybersquatting,'' whereby the valuable names of businesses and individuals are registered by others in bad faith to either trade on those names or damage their value. These three pieces of legislation are major reforms that help American consumers and American businesses. I will briefly discuss these reforms in turn.

As the Chairman of the Conference Committee and sponsor of the original Senate copyright legislation underlying the Satellite Home Viewer Improvements Act, I am delighted that the conferees have been able to put together a comprehensive package of consumer-friendly reforms for satellite viewers. The bill reflects an enormous effort on the part of members and their staffs on both sides of Congress from both parties, and represents a major advance in copyright and communications law.

The world of video communication has changed enormously since television began some 70 years ago in the small home workshop of inventor and Utah native Philo T. Farnsworth, who, together with his wife and colleagues, viewed the first television transmission: a single black line that rotated from vertical to horizontal. At the risk of offending those who may disagree, I think TV programming has greatly improved since the Farnsworths' rotating black line. Since that day in the Farnsworths' workshop, television viewers have benefitted from steady advances in technology that have brought increased access to an ever more diversified range

of programming choices. The television industry has progressed from one or two over-the-air broadcast stations, to a full range of broadcast networks delivering local and syndicated national programming, to cable television delivering both broadcast and made-for-cable programming. And in the past decade, satellite carriers, delivering to customers with both large and, increasingly, small dishes are emerging as new and potent competitors in the television delivery business.

The legislation before us today will—for the first time —allow satellite carriers to provide local subscribers with their local television signals. This means every television viewer in Utah can have access to Utah news, weather, sports, and other locally-relevant programming, as well as national network programming. Emerging technology now makes this possible, and our bill will make it legal. The bill also reduces the copyright fees that are passed along to subscribers. As a result, eligible viewers in parts of Utah unserved by over-the-air television will enjoy access to network stations at lower prices.

Let me illustrate some of the benefits of this legislation for Utah and for Utahns. Similar benefits can accrue across the country if this legislation is fully utilized. Many areas of Utah are unserved by over-the-air television or even by cable systems. Satellite service has been the only television option for many Utahns. Up until the passage of this conference report, these Utahns were able to get network stations, but usually from cities outside of Utah, such as New York or Los Angeles. And, those Utahns who had satellite dishes but lived in areas which did receive local television over-the-air could not legally get any network television programming using their satellite dishes, but had to get them with an off-air antenna or by cable. Under the provisions of this conference report, every Utahn will be able to get local network programming, which includes both national network shows like ''ER'' and ''The X-Files'' and local news, weather, sports, and public affairs programming. And those people who live in the so-called ''white areas'' that are unserved by local television can get local programming from Salt Lake City, as well as keep their distant signals if they wish to. Making Utah information and entertainment available to all Utahns is a great benefit to us as a state, and helps bind us together as a community. And in 2002, the satellite carriers will be required to carry all the local television stations, just like cable. This means that viewers will have the same range of local programming as they have come to expect from cable, and that the viewers, rather than satellite carriers, will be able to choose which local stations to watch.

Making local television signals available to all Utahns, and citizens of similar communities across the country, is the most important reason for this legislation. But there are many other benefits to consumers: copyright rates for satellite signals are cut almost in half, and the local signals are free. The Federal Communications Commission will work to ensure that eligibility decisions for distant network signals are clearer and prompter. Some satellite subscribers have expressed frustration that they do not get prompt responses from local television stations to distant signal eligibility waiver requests, although the situation is better in Utah than in some other places. To remedy the problem, we included a provision that says if a subscriber asks a local station for a waiver to allow them to get distant network signals, this conference report requires a response in 30 days or the waiver is deemed approved. There was a provision in the previous law that required cable subscribers to wait 90 days after unhooking their cable before they could get satellite service. We removed that waiting period so that Utahns who want to switch from cable can do so immediately.

We heard from the owners of recreational vehicles that they wanted to be able to put satellite dishes on their RV's when they go camping or traveling. In this bill, we allow RV owners who comply with certain documentation requirements to get satellite service. So Utahns do not need to leave their satellite service behind when they travel. The same rules would apply to long-haul truckers.

Recent lawsuits enforcing the distant signal eligibility rules under the copyright act have put many satellite subscribers in danger of losing their distant network signal service. Let me be clear that I do not condone or support what appears to have been law-breaking by the satellite carriers. But I am concerned about subscribers being caught in the middle, especially those who are not clearly served by over-the-air television from their local broadcasters. So, in this legislation, we protect the eligibility for satellite service received by current subscribers have who do not get a city-grade or Grade A signal. In this way, we can protect those subscribers who may have been misled about their eligibility and who may be in an area that is not clearly served, so that they will not be out their investment. With regard to the signal intensity rules that make up the eligibility standard for distant signals, we have asked the FCC to give us their best judgment about how we should reform the law, so that we can have their best input before we consider any further major reforms on this issue.

I have talked about the benefits that will accrue to satellite subscribers if the satellite carriers take full advantage of these copyright license reforms. But the benefits are not just limited to satellite subscribers. There will be benefits to cable subscribers, too, that will come from a satellite industry equipped to compete with cable head on in the market. Satellite service consistently ranks high on consumer surveys for service satisfaction. It has a vast array of channels for viewers to choose from. As I mentioned earlier, the growth of the satellite television business has been phenomenal, even without the ability to deliver local television stations. Recent consumer surveys indicate that 85 percent of respondents said that the lack of local signals is the reason why consumers who considered buying satellite service decided not to. Imagine the growth in this industry now that they will be able to compete with cable with the offering of local programming. What does this all mean for cable subscribers? One of the reasons why many believe cable is rated low on customer satisfaction is that it usually does not have a real competitor. Many local cable systems know its customers have nowhere else to go, so they do not exert themselves as much to please the customer as they might with a competitor. Armed with local signals, as well as the rest of the benefits satellite offers, there should be a new spark of competition in those areas where local satellite service is available. That will lead to lower prices, increased choices, and happy customers for both satellite and cable, and all television viewers.

Today we are also considering a patent reform package which contains the most significant reforms to our nation's patent code in half a century. This bill, which Senator LEAHY and I introduced as the ''American Inventors Protection Act,'' is one of the most important high-tech reform measures to come before this body. It is widely supported by an overwhelming majority of members on both sides of the aisle, by the Administration, and by a broad coalition of industry, small businesses, and American inventors. Its consideration here today is imminently appropriate on the eve of a new millennium in which America's ability to compete and the strength of our economy will depend on the strength of the patent system and the protections it affords.

Intellectual property, and patents in particular, are among our nation's greatest assets. From semiconductor chip technology, to computer software, to biotechnology, to Internet and telecommunications technology, the United States remains the undisputed world-leader in technological innovation. In fact, according to Newsweek Magazine, the United States is home to seven of the world's top ten technology centers, which includes my own state of Utah. Moreover, American creative industries now surpass all other export sectors in foreign sales and exports. As the Internet, electronic commerce, and new innovative technologies increasingly drive the growth of our economy, the strength of our patent system and its ability to respond to the challenges of new technology and global competition will be more important than ever. This bill will enable our patent system to meet these challenges and to protect American inventors and American competitiveness into the next century.

As many of my colleagues know, this bill is a compromise bill that reflects years of discussion and extensive efforts to reach agreement on all sides. Since first introducing this bill as an omnibus measure in the 104th Congress, we have literally engaged in countless hours of discussions and adopted over 100 amendments to this bill in order to forge a consensus on a package of responsible patent reforms. The Senate made significant progress toward consensus in the last Congress when the Judiciary Committee reached several key compromises to strengthen the bill's protections for small businesses and independent inventors. I was pleased to see those efforts continued in the House this year, where the supporters and former opponents of the bill agreed to sit down and work through their differences in an effort to produce a constructive patent reform bill. As a result of these cooperative efforts in the House and Senate, the bill before us now enjoys overwhelming bipartisan, bicameral support, and it is now endorsed by the most vocal opponents of earlier reform measures.

This broad support is reflected in the several votes that have already occurred on this measure this year. The House has passed this bill three times this year, including by a 376–43 vote on the bill as stand alone measure in August and by a 411–8 vote on the bill as part of the conference report on the ''Intellectual Property and Communications Omnibus Reform Act.'' The Senate Judiciary Committee also passed the bill by an 18–0 roll call vote earlier this month.

Having touched upon some of the compromises that have brought people together on this bill, let me take just a minute to highlight what this bill will do for American inventors.

1. The bill protects against fraudulent invention promoters which prey upon novice inventors.

2. It reduces patent fees for only the second time in history, saving American inventors an estimated $30 million each year. The bill will also ensure that patent fees are not used to subsidize trademark operations and will require the PTO to study alternative fee structures to encourage maximum participation by small inventors.

3. It protects American companies and their workers from patent infringement suits as a result of recent policy changes that have allowed patents to begin to issue on internal business methods that were previously thought to be unpatentable and which have been used under trade secret protection.

4. It guarantees that every diligent inventor with a patentable invention will receive at least 17 years of patent protection (which is what they would have received pre-GATT); most will receive a great deal more.

5. It allows American inventors and innovators to see foreign technology at least 12 months earlier than today, while allowing American inventors to maintain protections of existing law that allow them to keep their inventions secret during patent pendency. It also gives American inventors new protections by given them provisional rights during the pendency of internationally published applications.

6. It creates a new optional administrative procedure in the Patent and Trademark Office to reduce litigation costs for patent owners and to allow members of the public to participate in testing the validity of patents, all while fully protecting patent holders against repetitive challenges.

7. It restructures the Patent and Trademark Office to eliminate red tape and provide greater oversight by the American inventing community, especially by small businesses and independent inventors.

8. It protects our national security by requiring the PTO to maintain a program with the Office of Personnel Management to identify national security positions at the PTO and by protecting strategic information from disclosure.

9. Finally, it restricts the ability of the PTO Commissioner to exchange U.S. patent data with certain foreign nations.

In short, this is one of the most important technology-related bills to come before Congress in recent memory. It has been years in the making and reflects the input of many, many people from all sides. The time to act on this package of reforms has clearly come, and I am pleased that the Senate is finally taking this measure up.

I am also pleased that the Senate will complete action on the ''Anticybersquatting Consumer Protection Act'' and send that legislation to the President. In short, this is another key high-tech bill that will curb the harmful practice of ''cybersquatting''—a term used to refer to the deliberate and bad-faith registration of Internet domain names in violation of the rights of trademark owners. Cybersquatting is a very serious threat to consumers and the future growth of electronic commerce. For example, we heard testimony in the Judiciary Committee of consumer fraud being perpetrated by the registrant of the ''attphonecard.com'' and ''attcallingcard.com'' domain names, who set up Internet sites purporting to sell calling cards and soliciting personally identifying information, including credit card numbers. Sammy Sosa had his name cybersquatted and used for a website that implied his endorsement of the products being sold. There are countless other similar examples of so-called ''dot-con'' artists who prey on consumer confusion and trade on the goodwill of others.

The fact is that if consumers cannot rely on brand-names online as they do in the world of bricks and mortar store-fronts, few will be willing to engage in e-commerce. Those who do will bear substantial risks of being confused or even deceived. Few Internet users would buy a car, fill a prescription, or even shop for books online if you they cannot be sure who they are dealing with.

This legislation will go a long way to ensure this sort of online brand-name protection for consumers. At the same time, the bill carefully balances these interests of consumers and trademark owners with the interests of Internet users and others who would make fair or otherwise lawful uses of trademarked names in cyberspace.

As with trademark cybersquatting, cybersquatting of personal names poses similar threats to consumers and e-commerce in that it causes confusion as to the source or sponsorship of goods or services, including confusion as to the sponsorship or affiliation of websites bearing individuals' names. In addition, more and more people are being harmed by people who register other peoples names and hold them out for sale for huge sums or money or use them for various nefarious purposes. I am particularly troubled at the prospect of what someone might do with websites bearing the name of such people as Mother Teresa, which I understand are currently being offered for $7 million by a cybersquatter.

For this reason, I was pleased that the House amendments to the Senate bill clarified that famous names that enjoy service mark status, such as celebrity actors and very likely Mother Teresa, are included. As I have said, however, this bill should not be just about protecting celebrities. I am thus pleased that the legislation in this conference report goes further to protect those whose names don't meet the relatively high threshold of a famous mark, but who are nonetheless targeted by cybersquatters. For example, ESPN has reported that a number of cybersquatters have targeted the names of high-school athletes in anticipation that they may some day become famous. Earlier versions of the House and Senate bills would not have protected these individuals, but this legislation will. Furthermore, this bill directs the Commerce Department to report to Congress on ways to better protect personal names against cybersquatting and to work in conjunction with the Internet Corporation for Assigned Names and Numbers (ICANN) to include personal name disputes in the ICANN dispute resolution policy.

This a key measure to promote electronic commerce and to protect consumers and individuals online. While I recognize the global nature of the cybersquatting problem, I believe this legislation is an important start to a worldwide solution—as evidenced by the fact that the latest ICANN dispute resolution policy reflects a number of the policies embodied in the Senate bill. I appreciate Senator ABRAHAM's effort to move this bill through Congress, and I am pleased we will pass it today.

These are important intellectual property reforms that are helpful to American consumers and American

businesses. They are the product of the hard work of many people. Mr. President, I would like to thank many people who have worked hard to get this conference report agreed to and passed. First, let me thank and personally congratulate each of my colleagues on the Conference Committee for their diligent work in achieving this goal, especially my distinguished Ranking Member and original co-sponsor Senator LEAHY, as well as Chairman MCCAIN, and Senators THURMOND, STEVENS, DEWINE, HOLLINGS, and KOHL, all of whom made important contributions. On the House side, I extend my gratitude and congratulations to Chairman HYDE and Chairman BLILEY and to Representatives COBLE, TAUZIN, GOODLATTE, OXLEY, DINGELL, CONYERS, MARKEY, BERMAN, and BOUCHER. Of course, this successful result is also the product of tireless efforts by our capable staffs, who have worked through many late nights and weekends, to make this successful resolution possible. Among the many Senate staff members who have made critical contributions are Manus Cooney, Shawn Bentley, and Troy Dow of my staff; Bruce Cohen, Ed Barron, Beryl Howell of Senator LEAHY's staff; and from the other Senate conferees, Mitch Rose, Pete Belvin, Maureen McLaughlin, Paula Ford, Al Mottur, Gary Malphrus, Jim Hippe, Pete Levitas, Jon Leibowitz, John Schwantes, and many others on the Senate side. Let me congratulate each of them on their work. Tony Coe of Senate Legislative Counsel and Bill Roberts of the Copyright Office both put in many long hours to provide technical assistance. I know I speak for all of the Senate conferees in expressing my gratitude to all these first-rate staff members, as well as to the fine staff on the House side. The leadership staff from both houses, particularly Jim Sartucci and Renee Bennett from Senator LOTT's staff and Doug Farry from Representative ARMEY's office were key liaisons in this process.

On patent reform, let me note my very sincere appreciation to the Ranking Member on the Judiciary Committee, Senator LEAHY, with whom I have worked for the better part of three Congresses to bring about these important reforms. His leadership on the Democratic side has been a key part to getting this bill done. I want to also recognize the extraordinary efforts of our House colleagues on this bill. Chairman COBLE, who is the bill's primary sponsor in the House, along with the Ranking Member on the Subcommittee on Courts and Intellectual Property, Congressman BERMAN, as well as Chairman HYDE and Ranking Member CONYERS, have all dedicated tremendous time and effort over the last four years to moving this legislation forward. Their able leadership is reflected in the support this bill received in the House. But I want to mention in particular Congressman ROHRABACHER and Congressman CAMPBELL who in years past had led the opposition in the House to this bill. It is because of their efforts to work cooperatively with the proponents of this legislation in the House to craft a package of truly responsible reforms on behalf of American inventors that we have a bill before us today. I want to recognize them for their leadership, and for their good faith both in the House and in the Senate this year.

Finally, with respect to cybersquatting legislation, I want to again commend the Senator from Michigan, Senator ABRAHAM, for his sponsorship of this legislation, as well as the Ranking Member, Senator LEAHY, with whom I have again worked hand in hand to bring this bill to final passage.

All of these people and others were instrumental in the success of this legislation, but let me express an especially warm thanks to Senator LEAHY, with whom I have worked closely on these and so many other intellectual property matters, and to the Chairman of the Appropriations Committee, Senator STEVENS. We worked particularly closely in the satellite reform conference, and he played a unique and crucial role in the ultimate passage of this package of important intellectual property legislation. I thank him for his leadership and his steadfast support. And let me single out the efforts of Mitch Rose of Senator STEVENS' staff who worked along with my staff and Steve Cortese of Senator STEVENS' Appropriations Committee staff, under Senator STEVENS' leadership, to ensure that these important intellectual property matters were ultimately enacted into law despite the difficulties encountered in the process. They are superb public servants and they work for one of the finest members of this August body with whom I have had the pleasure of working. Finally, let me mention Bruce Cohen, Ed Barron, and Beryl Howell of Senator LEAHY's staff, who, along with Senator LEAHY, work with me and my staff with exceptional cooperation on intellectual property matters. We have had a particularly productive relationship on these important matters, and I look forward to continuing that relationship. On my own staff, I express my appreciation for the work of Shawn Bentley and Troy Dow, who have labored long and hard to successfully enact this legislation, and I thank their families for their support of their efforts on behalf of American innovators, creators, and consumers. Finally, let me thank my Chief Counsel, Manus Cooney, for overseeing all of this fine work, and putting in countless hours of strenuous effort to ensure its completion. He is a consummate leader, and I thank him for his stellar service.

I ask unanimous consent that the statements of Senators LEAHY, DEWINE, and KOHL, followed by a number of colloquies between myself and a number of different senators on diverse matters included in the satellite conference report, be included in the RECORD at this point as though read, together with supporting documents, and I yield the floor.

Mr. LEAHY. Mr. President, the Judiciary Committee is about to achieve an end-of-the-session high technology sweep that comes on the heels of landmark Internet and intellectual property reforms that our committee achieved in the 105th Congress.

Others are observing that this is the most productive and forward-looking two years of achievement in updating intellectual property laws of this or any previous era. I believe they are right.

We may never have another such set of opportunities where we are able to provide so many benefits to consumers, innovators and to the high technology innovators in the business community in such a short span of time.

In one fell swoop we are providing consumers with local-into-local television, protecting patent terms, spurring innovation and enhancing electronic commerce and protecting trademarks.

One of the challenges we face at this early stage of the Information Age is to bring the order of intellectual property law to the Wild West of the Internet and to other burgeoning information technologies. That challenge is at the heart of these three bills.

I want to make just a couple points about each of them. The patent bill is long overdue. It will put American innovations on a more equal footing with European and Japanese inventors. It also helps protect inventors against invention promotion scams and against needless PTO delay in approving patents.

The anti-cybersquatting bill protects merchants who want to be able to control where their names and brands are being displayed and protect them from abuse. More than 200 years ago Ben Franklin said that a person's honor and good name is like fine china—easily broken but impossible to mend. This is still the case today and the bill protects the rights of trademark holders against malicious abuse. It arms online merchants and consumers with new tools to derail these ''squatters'' who try to create bad waves for honest cybersurfers.

And then there is the satellite bill, which is a charter for a new era of television service competition that will benefit consumers in several tangible ways. It sets the stage for the first real head-to-head competition between cable and satellite TV that will be a brand new experience for hundreds of communities.

It will contribute a new unifying influence and greater sense of community in states like Vermont, where citizens in most of the state for the first time will have access to all Vermont stations. It will avert further waves of programming cutoffs to satellite TV customers, including what would have been the largest cutoff of all, in December.

The satellite bill will, over time, mean that some families will be able to

get local network television for the first time ever. I believe that making local television signals available throughout much of a state will be a unifying force and enhance public participation in state and community issues. It will remove the artificial isolation caused by mountain ridges or distance from broadcast towers. It will also prevent these infuriating and seemingly mindless cutoffs and promote direct head-to-head competition with cable.

We have had some major bumps in the road in getting here with these three bills.

I want to mention the rural satellite TV provisions. I know that we had preliminary discussions about this six months ago and that Department of Agriculture attorneys and program experts met with our staffs to go over the details months ago.

I proposed that USDA handle this loan guarantee program because they have 50 years of experience with financing rural telephone and rural electric cooperatives. Vast areas of this nation were able to get electric and telephone service solely because of these programs.

It is hard to believe in this day and age, but thousands of Americans still remember when these USDA loan programs gave them electricity for the first time.

I am disappointed that the final bill does not include this provision that we worked on—but I am pleased that the Senate leaders have worked out an arrangement with us so that this matter will be resolved early next year.

Without this loan guarantee program I am convinced that rural areas—75 percent of the U.S. landmass—might not receive local-into-local satellite TV until 10 or 20 years after urban areas do.

Another major hurdle concerned a request by AOL and YAHOO for changes to the bill. This concerned whether or not they should receive a compulsory license to show regular TV programming over the Internet. Chairman HATCH and I resolved this by agreeing to have hearings on this important matter of convergence of technology and the protection of copyrighted material—converging TV, data, telephone, messages and other transmissions through broadband technologies while protecting ownership rights to copyrighted material.

A third bump in the road was over the GAO study Senator HATCH and I proposed of current practices regarding the patent protection for business methods resulting from the State Street case. In the end, we took out that language but agreed that we would ask the GAO to look into this for us. This issue will test the limits of what is proper subject matter to be patented and what is not. I can easily see Senator HATCH and I having more than one hearing on this issue.

So here we are in the death throes of this session of Congress. It is satisfying to know that some of the farthest-reaching achievements of this session are the products of the work of the Judiciary Committee, and of my partnership with Chairman HATCH.

I am delighted that as Conferees on the satellite bill that we have been able to put this complex and important legislation, which originated with the Hatch-Leahy Satellite Home Viewers Improvements Act in the Senate, into final form.

We worked closely with a number of Senators and members of the other body on this important legislation. Any time that you work with four Committees in a Conference there are a lot of members and staff who do very creative and important work late into the night, night after night after night.

I want to single out just a few staff even though I know I am leaving out many who deserve equal praise. Shawn Bentley with Chairman HATCH displayed enormous poise and breath of knowledge regarding satellite TV issues. He balanced, as did his Chairman, a variety of complex issues very carefully and very well.

Troy Dow similarly was extremely helpful regarding patent and cybersquatting issues and deserves a great deal of credit.

I want to also thank Ed Barron of my staff regarding the satellite TV and patent bills and Beryl Howell on cybersquatting. They both worked very diligently on these and other issues and did a great job.

Subcommittee Chairman DEWINE and ranking Member KOHL were also Conferees, along with Senator THURMOND, and played a major role regarding satellite TV issues.

This bill will provide viewers with more choices and will greatly increase competition in the delivery of television programming, while ensuring minimal interference with the free market copyright system that serves our country so well.

For years I have raised concerns about the lack of competition with cable TV and escalating cable rates. This bill will allow satellite TV providers to compete directly with cable in offering local stations and will give consumers a wider range of choice. It also protects local TV affiliates while postponing certain cutoffs of satellite TV service.

Most promisingly, the bill will permit local TV signals, as opposed to distant out-of-state network signals, to be offered to viewers via satellite. Vermont is a state in which satellite dishes play a very important role, and I know that Vermont viewers eagerly await the day when their local stations will be available by satellite.

It is absurd for home dish owners—whether they live in Vermont, Utah, or California—to have to watch network stations imported from distant states instead of local stations. They should have a choice. I expect the satellite industry to do everything in its power to extend local-to-local coverage beyond the biggest cities and into important smaller markets such as those in Vermont, and the satellite industry should not expect further Congressional largesse if it fails to do so.

One satellite company called Capitol Broadcasting has already committed to serve Vermont once its spot beam technology satellites have been launched and other technological requirements have been put in place. I am counting on that happening over the next two or three years.

I was very pleased to have met with the moving force behind Capitol Broadcasting—Jim Goodmon. This company was formed by his grandfather, A. J. Fletcher, in 1937. Under Jim Goodmon's management, Capitol Broadcasting has expanded into satellite communications, the Internet and high definition television. In April, Jim received the Digital Television Pioneer Award from Broadcasting and Cable magazine. One of their stations, CBC, was the first broadcaster to transmit a high definition television digital signal. I look forward to helping inaugurate their local-into-local service into Vermont.

I expect that others will compete in Vermont. I understand the EchoStar, under its CEO, Charlie Ergen, and DirecTV, are also looking at providing service to Vermont.

Providing local TV stations to Vermont dish owners will lead to head-to-head competition between cable and satellite TV providers which should lead to more services for Vermonters at lower prices. Also, the bill will allow households who want to subscribe to this new satellite TV service to receive all local Vermont TV stations over the satellite.

The goal is to offer Vermonters with more choices, more TV selections, but at lower rates. In areas of the country were there is this full competition with cable providers, rates to customers are considerably lower.

Over time this initiative will permit satellite TV providers to offer a full selection of all local TV channels to viewers throughout most of Vermont, as well as the typical complement of superstations, weather and sports channels, PBS, movies and a variety of other channels.

This means that local Vermont TV stations will be available over satellite to many areas of Vermont currently unserved by satellite or by cable.

I have gotten lots of letters from Vermonters who complained about the current situation where local TV stations challenged their right to receive that signal.

Under current law, it is illegal for satellite TV providers to offer local TV channels over a satellite dish when you live in an area where you are likely to get a clear TV signal with a regular rooftop antenna at least half of the time.

This means that thousands of Vermonters living in or near Burlington cannot receive local signals over their satellite dishes.

Under current law, those families must get their local TV signals over an antenna which often does not provide a clear picture. This bill will remove that legal limitation and allow satellite carriers to offer local TV signals to viewers no matter where they live in Vermont.

Presently, Vermonters receive satellite signals with programming from stations in other states—in other words they would get a CBS station from another state but not WCAX, the Burlington CBS affiliate.

By allowing satellite providers to offer a larger variety of programming, including local stations, the satellite industry would be able to compete with cable, and the cable industry will be competing with satellite carriers. Cable will continue to be a very effective competitor with its ability to offer extremely high-speed Internet connections to homes and businesses.

As mentioned earlier, the second major improvement in this initiative is that satellite carriers that offer local Vermont channels in their mix of programming will be able to reach Vermonters throughout Vermont. The system will be based on regions called Designated Market Areas, or DMAs. Vermont has one large DMA covering most of the state and part of the Adirondacks in New York—the Burlington-Plattsburg DMA—and parts of two smaller ones in Bennington County (the Albany-Schenectady-Troy DMA) and in Windham county (the Boston DMA).

This new satellite system is not available yet, and may not be available in Vermont until two to three years from now. Companies such as Capitol Broadcasting are preparing to launch spot-beam satellites to take advantage of this bill. Using current technology, signals would be provided by spot-beam satellites using regional uplink sites throughout the nation to beam local signals up to one or two satellites. Those satellites could use 60 spot beams to send those local signals, received from the regional uplinks, back to satellite dish owners. High definition TV would be offered under this system at a later date.

Under this bill, Vermonters will have more choices. I want to point out that those who want to keep their current satellite service can do just that.

In addition, we have protected the C-Band dish owners who have invested a lot of money in this now out-dated, but still used, technology. I did not think it was fair to pull the plug on them.

Those who want to stick with cable, or with regular broadcast TV, are welcome to continue to participate that way.

Since technology advances so quickly, other systems could be developed before this bill is fully implemented that would provide similar service but using a different technology.

The bill will also extend the distant signal compulsory license in Section 119. In almost all respects, the distant signal license will apply in the same way in the future as it applies today. The most important exception is that the bill will allow continued delivery of distant network stations to thousands of Vermonters and residents of other states who would otherwise have distant network satellite service terminated at the end of the year (or who have had such service terminated by court order since July 1998).

The purpose of this temporary ''grandfathering'' is not to reward satellite carriers that have broken the law. Rather, the purpose of the grandfathering is to assist certain subscribers in Vermont and elsewhere who might have been misled by satellite companies into believing that they were eligible to receive distant network programming by satellite. The purpose is also to aid in achieving a smooth transition to local-into-local programming which avoids many of these issues.

The subscribers who will be grandfathered are those who are not predicted to receive a signal of Grade A intensity from any station affiliated with the relevant network, along with certain additional C-band subscribers.

I want to make clear that I do not condone lawbreaking by satellite companies or anyone else, and nothing that Congress is doing today should be read in that light. Satellite companies remain liable for every other remedy provided by the Copyright Act or other law for any infringements they have committed. Satellite carriers should not be heard to argue for any grandfathering beyond what Congress has expressly approved, or to contend that they should be relieved of any other available remedy because of Congress' actions.

The second change to Section 119 is that there will no longer be a 90-day waiting period for cable subscribers that is currently part of the definition of ''unserved household.'' This change will help to make the satellite industry more competitive with cable, an objective I know every member of this body shares. Third, the bill will limit to two the number of distant signals that a satellite carrier may deliver to unserved households.

Except with respect to these specific changes in Section 119, nothing in the law we are passing today will take away any of the rights and remedies available to the parties to copyright infringement litigation against satellite carriers. Nor does anything in this bill suggest any criticism of the courts for enforcing the Copyright Act. It is their job to apply the law to the facts.

It is crucial to our system that all players in the marketplace, including satellite carriers, be required to obey the law and held accountable in the courts for the consequences of their own lawbreaking. Indeed, if a particular satellite carrier has engaged in a willful or repeated pattern or practice of infringements, it should be held to the statutory consequences of that misconduct.

The addition of the word ''stationary'' to the phrase ''conventional outdoor rooftop receiving antenna'' in Section 119(d)(10) of the Copyright Act merits a word of discussion. As the Ranking Member of the Senate Judiciary Committee, which has jurisdiction over copyright matters, and one of the original sponsors of this legislation, I want to emphasize that use of this word should not be misunderstood.

The new language says only that the antenna is to be ''stationary''; it does not say that the antenna is to be improperly oriented, that is pointed in way that does not obtain the strongest signal. The word ''stationary'' means, for example, that testing should be done using a stationary antenna, as the FCC has directed.

Satellite companies must not be encouraged to urge consumers to point antennas in the wrong direction to qualify for different treatment.

As to antenna orientation, the relevant guidance is provided in Section 119(a)(2)(B)(ii)(II) of the bill, which specifies that the FCC's procedures (requiring correct orientation) be followed. Since satellite dishes must be properly oriented to receive a picture at all, it would make no sense to specify misorientation of over-the-air antennas.

Permitting misorientation would also be inconsistent with the entire structure of the definition of ''unserved household,'' which looks to whether a household is capable of receiving a signal of Grade B intensity from a particular type of affiliate, that is an ABC station or a Fox station, not whether it is capable of receiving all of the stations in the market.

As I mentioned before, the Copyright Act amendments direct courts to continue to use the accurate, consumer-friendly prediction and measurement tools developed by the FCC for determining whether particular households are served or unserved. If the Commission is able to refine its so-called ''ILLR'' predictive model to make it even more accurate—as I hope it will—the courts should apply those further refinements as well.

In fact, the Copyright Act amendments in the bill specifically address the possibility that the FCC may be able to modify its ILLR model to make it even more accurate. Specifically, the Act provides in new Section 119(a)(2)(B)(ii)(I) of the Copyright Act that if the FCC should later modify the ILLR model to make it still more accurate, courts should, under Section 119(a)(2)(B)(ii)(I), use the even more accurate version in the future for predictive purposes.

Whether a proposed modification to the ILLR model makes it more accurate is an empirical question that the Commission should address by comparing the predictions made by any proposed model against actual measurements of signal intensity. The Commission's analysis should reflect our

policy objective: to determine whether a household is—or is not—capable of receiving a signal of Grade B intensity from at least one station affiliated with the relevant network.

The FCC has properly recognized that reducing one type of errors, underprediction, while increasing another type of errors, overprediction, does not increase accuracy, but simply puts a thumb on the scale in favor of one side or the other. The issue under Section 119(a)(2)(B)(ii) is the overall accuracy of the model, as tested against available measurement data, with regard to whether a household is, or is not, capable of receiving a Grade B intensity signal from at least one affiliate of the network in question.

The conferees and many other members of this body have worked hard to achieve the carefully balanced bill now before the Senate. I urge my colleagues to give it their full support. Most of all, I thank and congratulate my distinguished colleague and good friend, Chairman HATCH, for his outstanding work over many months on this important bill, which will provide lasting benefits for my constituents in Vermont and for citizens in every other state.

I'm also pleased that the Conference Report directs the Federal Communications Commission to take expedited action on getting new technologies deployed that can deliver local television signals to viewers in smaller television markets. We've known all along, if we pass legislation authorizing local-into-local, the DBS carriers would readily deliver local channels to those subscribers who are fortunate enough to live in the largest markets. There are 210 local television Designated Market Areas in our country, and most Vermonters live in the 91st-ranked DMA. That is why it is so important for the FCC to expedite review of alternative technologies, such as the digital terrestrial wireless system developed by Northpoint Technology, which are capable of delivering local signals into all markets on a must carry basis.

I want to briefly mention the patent bill.

This patent bill is important to America's future. I have heard from inventors, from businesses large and small, from hi-tech to low-tech firms—this bill will give American inventors and businesses an improved competitive edge now enjoyed by many European countries.

We should be on a level playing field with them.

This bill reduces patent fees for only the second time in history. The first time that was done was in a Hatch-Leahy bill passed by the Senate in the 105th Congress.

All the concepts in this bill—such as patent term guarantees, domestic publication of patent applications filed abroad, first inventor defense—have been thoroughly examined. Indeed, they have been included in several bills that the Congress has carefully studied.

I wish to point out that the Senate Judiciary Committee last year also developed a strong bill—S. 507—which contained many of the same concepts and approaches found in H.R. 1907 and S. 1798.

American business needs this patent bill, American technology companies need this patent bill, American inventors and innovators need this patent bill.

The Administration says that we must have the reforms in this bill. It will: reduce legal fees that are paid by inventors and companies; eliminate duplication of research efforts and accelerate research into new areas; increase the value of patents to inventors and companies; and facilitate U.S. inventors and companies' research, development, and commercialization of inventions.

In Vermont, we have a number of independent inventors and small companies. It is, therefore, especially important to me that this bill be one that helps them as well as the larger companies in Vermont like IBM.

Over the past several years, Congress has held eight Congressional hearings with over 80 witnesses testifying about the various proposals incorporated in the bill. Republican and Democratic Administrations alike, reaching back to the Johnson Administration, have supported these similar reforms.

I also want to thank Secretary Daley and the Administration for their unflagging support of effective patent reform.

The ''American Inventors Protection Act'' was designed to make targeted improvements to the patent code in order to enable the American patent system to meet the challenges of new technology and new markets as we approach the next millennium.

The bill builds upon compromises forged in the Senate Judiciary Committee in the 105th Congress, as well as additional compromises in the House of Representatives in the 106th Congress, to achieve these goals while protecting and promoting the interest of American inventors at home and abroad.

I also want to discuss the comments of Senators SCHUMER and TORRICELLI regarding the patent bill and the State Street decision. I look forward to working with both of those Senators on the issues they raise. I expect that the Committee will have hearings on this matter next year. Also, the Conference Report on the bill contains a detailed analysis of these important issues which was accepted by all Conferees.

The FY 2000 Omnibus Appropriations bill also includes provisions that Senator HATCH and I and others have crafted to address cybersquatting on domain names. We have worked hard to craft this legislation in a balanced fashion to protect trademark owners and consumers doing business online, and Internet users who want to participate in what the Supreme Court has described as ''a unique and wholly new medium of worldwide human communication.'' Reno v. ACLU, 521 U.S. 844.

Trademarks are important tools of commerce. The exclusive right to the use of a unique mark helps companies compete in the marketplace by distinguishing their goods and services from those of their competitors, and helps consumers identify the source of a product by linking it with a particular company. The use of trademarks by companies, and reliance on trademarks by consumers, will only become more important as the global marketplace grows larger and more accessible with electronic commerce. The reason is simple: when a trademarked name is used as a company's address in cyberspace, customers know where to go online to conduct business with that company.

The growth of electronic commerce is having a positive effect on the economies of small rural states like mine. A Vermont Internet Commerce report I commissioned earlier this year found that Vermont gained more than 1,000 new jobs as a result of Internet commerce, with the potential that Vermont could add more than 24,000 jobs over the next two years. For a small state like ours, this is very good news.

Along with the good news, this report identified a number of obstacles that stand in the way of Vermont reaching the full potential promised by Internet commerce. One obstacle is that ''merchants are anxious about not being able to control where their names and brands are being displayed.'' Another is the need to bolster consumers' confidence in online shopping.

Cybersquatters hurt electronic commerce. Both merchant and consumer confidence in conducting business online are undermined by so-called ''cybersquatters'' or ''cyberpirates,'' who abuse the rights of trademark holders by purposely and maliciously registering as a domain name the trademarked name of another company to divert and confuse customers or to deny the company the ability to establish an easy-to-find online location. A recent report by the World Intellectual Property Organization (WIPO) on the Internet domain name process has characterized cybersquatting as ''predatory and parasitical practices by a minority of domain registrants acting in bad faith'' to register famous or well-known marks of others—which can lead to consumer confusion or downright fraud.

Enforcing trademarks in cyberspace will promote global electronic commerce. Enforcing trademark law in cyberspace can help bring consumer confidence to this new frontier. That is why I have long been concerned with protecting registered trademarks online. Indeed, when the Congress passed the Federal Trademark Dilution Act of 1995, I noted that:

Although no one else has yet considered this application, it is my hope that this

antidilution statute can help stem the use of deceptive Internet addresses taken by those who are choosing marks that are associated with the products and reputations of others.

The Federal Trademark Dilution Act of 1995 has been used as I predicted to help stop misleading uses of trademarks as domain names. One court has described this exercise by saying that ''attempting to apply established trademark law in the fast-developing world of the Internet is somewhat like trying to board a moving bus. . .'' Bensusan Restaurant Corp. v. King, 126 F.3d 25. Nevertheless, the courts appear to be handling ''cybersquatting'' cases well. As University of Miami Law Professor Michael Froomkin noted in testimony submitted at the Judiciary Committee's hearing on this issue on July 22, 1999, ''in every case involving a person who registered large numbers of domains for resale, the cybersquatter has lost.''

For example, courts have had little trouble dealing with a notorious cybersquatter, Dennis Toeppen from Illinois, who registered more than 100 trademarks—including

''yankeestadium.com,''

''deltaairlines.com,''

marcus.com''—as domain names for the purpose of eventually selling the names back to the companies owning the trademarks. The various courts reviewing his activities have unanimously determined that he violated the Federal Trademark Dilution Act.

Similarly, Wayne State University Law Professor Jessica Litman noted in testimony submitted at the Judiciary Committee's hearing that those businesses that ''have registered domain names that are confusingly similar to trademarks or personal names in order to use them for pornographic web sites * * * have without exception lost suits brought against them.''

Even as we consider this legislation, we must acknowledge that enforcing or even modifying our trademark laws will be only part of the solution to cybersquatting. Up to now, people have been able to register any number of domain names in the popular ''.com'' domain with no money down and no money due for 60 days. Network Solutions Inc., the dominant Internet registrar, recently announced that it was changing this policy, and requiring payment of the registration fee up front. In doing so, NSI admitted that it was making this change to curb cybersquatting.

In addition, we need to encourage the development of alternative dispute resolution procedures that can provide a forum for global users of the Internet to resolve domain name disputes. For this reason, I authored an amendment that was enacted last year as part of the Next Generation Internet Research Act authorizing the National Research Council of the National Academy of Sciences to study the effects on trademark holders of adding new top-level domain names and requesting recommendations on inexpensive and expeditious procedures for resolving trademark disputes over the assignment of domain names. Both the Internet Corporation for Assigned Names and Numbers and WIPO are also making recommendations on these procedures. Adoption of a uniform trademark domain name dispute resolution policy should be of enormous benefit to American trademark owners.

We should encourage the sensible development of case law in this area, the ongoing efforts within WIPO and ICANN to build a consensus global mechanism for resolving online trademark disputes, and the implementation of domain name registration practices designed to discourage cybersquatting. The legislation we pass today as part of the Omnibus Appropriations bill for the upcoming fiscal year is intended to build upon this progress and provide constructive guidance to trademark holders, domain name registrars and registries and Internet users registering domain names alike.

This legislation has been significantly improved since it was first introduced. As originally introduced by Senator ABRAHAM and others, S. 1255, the ''Trademark Cyberpiracy Prevention Act'', proposed to make it illegal to register or use any ''Internet domain name or identifier of an online location'' that could be confused with the trademark of another person or cause dilution of a ''famous trademark.'' Violations were punishable by both civil and criminal penalties.

I voiced concerns at a hearing before the Judiciary Committee that, in its original form, S. 1255 would have a number of unintended consequences that would have hurt rather than promoted electronic commerce, including the following specific problems:

The definition was overbroad. As introduced, S. 1255 covered the use or registration of any ''identifier,'' which could cover not just second level domain names, but also e-mail addresses, screen names used in chat rooms, and even files accessible and readable on the Internet. As one witness pointed out, ''the definitions will make every fan a criminal.'' How? A file document about Batman, for example, that uses the trademark ''Batman'' in its name, which also identifies its online location, could land the writer in court under that bill. Cybersquatting is not about file names.

The original bill threatened hypertext linking. The Web operates on hypertext linking, to facilitate jumping from one site to another. The original bill could have disrupted this practice by imposing liability on operators of sites with links to other sites with trademark names in the address. One could imagine a trademark owner not wanting to be associated with or linked with certain sites, and threatening suit under this proposal unless the link were eliminated or payments were made for allowing the linking.

The original bill would have criminalized dissent and protest sites. A number of Web sites collect complaints about trademarked products or services, and use the trademarked names to identify themselves. For example, there are protest sites named ''boycott-cbs.com'' and ''www.PepsiBloodbath.com.'' While the speech contained on those sites is clearly constitutionally protected, as originally introduced, S. 1255 would have criminalized the use of the trademarked name to reach the site and made them difficult to search for and find online.

The original bill would have stifled legitimate warehousing of domain names. The bill, as introduced, would have changed current law and made liable persons who merely register domain names similar to other trademarked names, whether or not they actually set up a site and used the name. The courts have recognized that companies may have legitimate reasons for registering domain names without using them and have declined to find trademark violations for mere registration of a trademarked name. For example, a company planning to acquire another company might register a domain name containing the target company's name in anticipation of the deal. The original bill would have made that company liable for trademark infringement.

For these and other reasons, Professor Litman concluded that, ''as introduced, S. 1255 would in many ways be bad for electronic commerce, by making it hazardous to do business on the Internet without first retaining trademark counsel.'' Faced with the risk of criminal penalties, she stated that ''many start-up businesses may choose to abandon their goodwill and move to another Internet location, or even to fold, rather than risk liability.''

Domain name cybersquatting is a real problem. For example, whitehouse.com has probably gotten more traffic from people trying to find copies of the President's speeches than those interested in adult material.

While the problem is clear, narrowly defining the solution is trickier. The mere presence of a trademark is not enough. Legitimate conflicts may arise between companies offering different services or products under the same trademarked name, such as Juno Lighting Inc. and Juno online services over the juno.com domain name, or between companies and individuals who register a name or nickname as a domain name, such as the young boy nicknamed ''Pokey'' whose domain name ''pokey.org'' was challenged by the toy manufacturer who owns the rights to the Gumby and Pokey toys. A site may also use a trademarked name to protest a group, company or issue, such as pepsibloodbath.com, or even to defend one's reputation, such as www.civil-action.com, which belongs not to a motion picture studio, but to W.R. Grace to rebut the unflattering portrait of the company as a polluter

and child poisoner created by the movie.

There is a world of difference between these sorts of sites and those which use deceptive naming practices to draw attention to their site for example, whitehouse.com, or those who use domain names to misrepresent the goods or services they offer, for instance, dellmemory.com, which may be confused with the Dell computer company.

We must also recognize certain technological realities. For example, merely mentioning a trademark is not a problem. Posting a speech that mentions AOL on my web page and calling the page aol.html, confuses no one between my page and America Online's site. Likewise, we must recognize that while the Web is a key part of the Internet, it is not the only part. We simply do not want to pass legislation that may impose liability on Internet users with e-mail addresses, which may contain a trademarked name. Nor do we want to crack down on newsgroups that use trademarks descriptively, such as alt.comics.batman.

In short, it is important that we distinguish between the legitimate and illegitimate use of domain names, and the cybersquatting legislation that we pass today does just that.

Due to the significant flaws in S. 1255, the Senate Judiciary Committee reported and the Senate passed a complete substitute to that bill. On July 29, 1999, Senator HATCH and I, along with several other Senators, introduced S. 1461, the ''Domain Name Piracy Prevention Act of 1999.'' This bill then provided the text of the Hatch-Leahy substitute amendment that the Senate Judiciary Committee reported unanimously to S. 1255 the same day. This substitute amendment, with three additional refinements contained in a Hatch-Leahy clarifying amendment, was passed by the Senate on August 5, 1999.

This Hatch-Leahy substitute provided a better solution than the original, S. 1255, in addressing the cybersquatting problem without jeopardizing other important online rights and interests.

Following Senate passage of the bill, the House passed a version of the legislation, H.R. 3208, the ''Trademark Cyberprivacy Prevention Act'', which has been modified for inclusion in the FY 2000 Omnibus Appropriations bill.

This legislation, now called the ''Anti-Cybersquatting Consumer Protection Act'', would amend section 43 of the Trademark Act by adding a new section to make liable for actual or statutory damages any domain name registrant, who with bad-faith intent to profit from the goodwill of another's trademark, without regard to the goods or services of the parties, registers, traffics in or uses a domain name that is identical or confusingly similar to a distinctive trademark or dilutive of a famous trademark. The fact that the domain name registrant did not compete with the trademark owner would not be a bar to recovery. This legislation also makes clear that personal names that are protected as marks would also be covered by new section 1125.

Furthermore, this legislation should not in any way frustrate the global efforts already underway to develop inexpensive and expeditious procedures for resolving domain name disputes that avoid costly and time-consuming litigation in the court systems either here or abroad. In fact, the legislation expressly provides liability limitations for domain name registrars, registries or other domain name registration authorities when they take actions pursuant to a reasonable policy prohibiting the registration of domain names that are identical or confusingly similar to another's trademark or dilutive of a famous trademark. The ICANN and WIPO consideration of these issues will inform the development by domain name registrars and registries of such reasonable policies.

Uses of infringing domain names that support liability under the legislation are expressly limited to uses by the domain name registrant or the registrant's authorized licensee. This limitation makes clear that ''uses'' of domain names by persons other than the domain name registrant for purposes such as hypertext linking, directory publishing, or for search engines, are not covered by the prohibition.

Other significant sections of this legislation are discussed below:

Domain names are narrowly defined to mean alphanumeric designations registered with or assigned by domain name registrars or registries, or other domain name registration authority as part of an electronic address on the Internet. Since registrars only register second level domain names, this definition effectively excludes file names, screen names, and e-mail addresses and, under current registration practice, applies only to second level domain names.

The terms ''domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name'' in Section 3002(a) of the Act, amending 15 U.S.C. 1125(d)(2)(a), is intended to refer only to those entities that actually place the name in a registry, or that operate the registry, and would not extend to other entities, such as the ICANN or any of its constituent units, that have some oversight or contractual relationship with such registrars and registries. Only these entities that actually offer the challenged name, placed it in a registry, or operate the relevant registry are intended to be covered by those terms.

Liability for registering a trademark name as a domain name requires ''bad faith intent to profit from that mark''. The following non-exclusive list of nine factors are enumerated for courts to consider in determining whether such bad faith intent to profit is proven:

(i) the trademark or the intellectual property rights of the domain name registrant in the domain name;

(ii) whether the domain name is the legal name or the nickname of the registrant;

(iii) the prior use by the registrant of the domain name in connection with the bona fide offering of any goods or services;

(iv) the registrant's legitimate noncommercial or fair use of the mark at the site accessible under the domain name;

(v) the registrant's intent to divert consumers from the mark owner's online location in a manner that could harm the mark's goodwill, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the site;

(vi) the registrant's offer to sell the domain name for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of goods or services or the registrant's prior conduct indicating a pattern of such conduct;

(vii) the registrant's intentional provision of material, false and misleading contact information when applying for the registration of the domain name, intentions, failure to maintain accurate information, or prior conduct indicating a pattern of such conduct;

(viii) the registrant's registration of multiple domain names that are identical or similar to or dilutive of another's trademark; and

(ix) the extent to which the mark is or is not distinctive.

Significantly, the legislation expressly states that bad faith shall not be found ''in any case in which the count determines that the person believed and had reasonable grounds to believe that the case of the domain name was a false use or otherwise lawful.'' In other words, good faith, innocent or negligent uses of a domain name that is identical or confusingly similar to another's mark or dilutive of a famous mark are not covered by the legislation's prohibition.

In short, registering a domain name while unaware that the name is another's trademark would not be actionable. Nor would the use of a domain name that contains a trademark for purposes of protest, complaint, parody or commentary satisfy the requisite scienter requirement.

Bad-faith intent to profit is required for a violation to occur. This requirement of bad-faith intent to profit is critical since, as Professor Litman pointed out in her testimony, our trademark laws permit multiple businesses to register the same trademark for different classes of products. Thus, she explains:

Although courts have been quick to impose liability for bad faith registration, they have been far more cautious in disputes involving a domain name registrant who has a legitimate claim to use a domain name and registered it in good faith. In a number of cases,

courts have refused to impose liability where there is no significant likelihood that anyone will be misled, even if there is a significant possibility of trademark dilution.

In civil actions against cybersquatters, the plaintiff is authorized to recover actual damages and profits, or may elect before final judgment to an award of statutory damages of not less than $1,000 and not more than $100,000 per domain name, as the court considers just. In addition, the court is authorized to forfeit, cancel, or transfer the domain name to the plaintiff. To reduce frivolous litigation and the risk of reverse domain name hijacking, the court is authorized to award courts and attorneys' fees to the prevailing party.

In Rem Actions. The bill would also permit an in rem civil action to be filed by a trademark owner in the judicial district in which the registrar, registry or other domain name authority that actually registered or assigned the domain name is located. Such an action may be filed only in circumstances where the domain name violates the owner's rights in the trademark and where the court finds that (1) the trademark owner was not able to obtain in personam jurisdiction over the domain name registrant; or (2) the owner through due diligence was not able to find the domain name holder to bring an in personam civil action by sending notice to the registrant at the postal and email address provided to the registrar and publishing notice as the court may direct promptly after filing the action.

The remedies of an in rem action are limited to a court order for forfeiture or cancellation of the domain name or the transfer of the domain name to the trademark owner. To protect the domain name registrant, the registrar or registry shall not transfer, suspend, or modify the domain name during the pendency of the action except as the court may order. By contrast to the House-passed version of this legislation, under the legislation passed today, a trademark holder would be permitted to file an in rem action only when in personam jurisdiction cannot be exercised.

In Porsche Cars North American Inc. v. Porsche.com, 51 F. Supp. 2nd 707, the court dismissed an in rem action against a domain name, even though Network Solutions Inc. had surrendered the underlying domain name registration documents to the court to give it control over the ''res.'' The court held that in rem actions against allegedly diluting marks are not constitutionally permitted without regard to whether in personam jurisdiction may be exercised, The court explained:

Porsche correctly observes that some of the domain names at issue have registrants whose identities and addresses are unknown and against whom in personam proceedings might be fruitless. But most of the domain names in this case have registrants whose identities and addresses are known, and who rightly would object to having their interests adjudicated in absentia. The Due Process Clause requires at least some appreciation for the difference between these two groups, and Porsche's pursuit of an in rem remedy that fails to differentiate between them at all is fatal to its Complaint.

This legislation does differentiate between those two different categories of domain name registrants and limits in rem actions to those circumstances where in personam jurisdiction cannot be obtained.

Liability Limitations. The bill would limit the liability for monetary damages and, in certain circumstances, for injunctive relief of domain name registrars, registries or other domain name registration authorities for any action they take to refuse to register, remove from registration, transfer, temporarily disable or permanently cancel a domain name, where the action is taken pursuant to a court order or in the implementation of reasonable policies prohibiting the registration of domain names that are identical or confusingly similar to another's trademark, or dilutive of a famous trademark.

Prevention of Reverse Domain Name Hijacking. Reverse domain name hijacking is an effort by a trademark owner to take a domain name from a domain name registrant who registered the domain name legitimately and in good faith. There have been some well-publicized cases of trademark owners demanding the take-down of certain web sites set up by parents who have registered their children's names in the .org domain, such as two year old Veronica Sam's ''Little Veronica'' website and 12 year old Chris ''Pokey'' Van Allen's web page.

In order to protect the rights of domain name registrants in their domain names, the legislation provides that registrants may recover damages, including costs and attorney's fees, incurred as a result of a knowing and material misrepresentation by a person that a domain name is identical or similar to, or dilutive of, a trademark. Moreover, should the domain name registrant prevail in a suit for cybersquatting, the registrant as the prevailing party is authorized to award costs and attorneys' fees.

In addition, a domain name registrant, whose domain name has been suspended, disabled or transferred, may sue upon notice to the mark owner, to establish that the registration or use of the domain name by the registrant is lawful. The court in such a suit is authorized to grant injunctive relief, including the reactivation of a domain name or the transfer or return of a domain name to the domain name registrant.

Personal Names. Commercial sites are not the only ones suffering at the hands of domain name pirates. This issue has struck home for many in this body. The Congress is not immune: while cspan.org provides detailed coverage of the Senate and House, cspan.net is a pornographic site. Moreover, Senators and presidential hopefuls are finding that domain names like bush2000.org and hatch2000.org are being snatched up by cyber poachers intent on reselling these domain names for a tidy profit.

This legislation addresses this problem by making liable a domain name registrant in a civil action for injunctive relief, including forfeiture, cancellation, or transfer of a domain name for registering the name of another living person with the specific intent to profit by selling the domain name for financial gain to that person or any third party. This provision applies only prospectively.

In addition, the legislation directs the Commerce Department in consultation with PTO and the Federal Election Commission to study and report to Congress on procedures for resolving disputes over personal names registered as domain names and to collaborate with ICANN on these procedures.

Cybersquatting is an important issue both for trademark holders and for the future of electronic commerce on the Internet. Any legislative solution to cybersquatting must tread carefully to ensure that authorized remedies do not impede or stifle the free flow of information on the Internet. In many ways, the United States has been the incubator of the World Wide Web, and the world closely watches whenever we venture into laws, customs or standards that affect the Internet. We must only do so with great care and caution. Fair use principles are just as critical in cyberspace as in any other intellectual property arena. In my view, this legislation respects these considerations.

Mr. HATCH. Mr. President, I am pleased to rise today as the Senate finishes its consideration of the last in a package of four very important intellectual property related ''high-tech'' bills that Senate LEAHY and I introduced earlier this year. Three of those bills—the ''Trademark Amendments Act of 1999,'' the ''Patent Fee Integrity and Innovation Protection Act of 1999,'' and a Copyright Act technical corrections bill—were passed by the House and Senate and signed into law in August of this year. The fourth of those bills—the ''Digital Theft Deterrence and Copyright Damages Improvement Act'' (S. 1257)—was passed by the House with an amendment and returned to the Senate. Each of these bills is designed to promote the continued growth of vital sectors of the American economy and to protect the interests and investment of the entrepreneurs, authors, and innovators who fuel their growth.

Technology continues to be the driving force in the American economy today, and American technology is setting new standards for the global economy, from semiconductor chip technology, to computer software, Internet

and telecommunications technology, to leading pharmaceutical and genetic research. In my own state of Utah, these information technology industries contribute in excess of $7 billion each year to the State's economy and pay wages that average 66 percent higher than the state average. Their performance has placed Utah among the world's top ten technology centers according to Newsweek Magazine. Similar success is seen in areas across the country, with the U.S. being home to seven of the world's top ten technology centers and with American creative industries now surpassing all other export sectors in foreign sales and exports.

Underlying all of these technologies are the intellectual property rights that serve to promote creativity and innovation by safeguarding the investment, effort, and goodwill of those who venture into these fast-paced and volatile fields. Strong intellectual property protections are particularly critical in the global high-tech environment where electronic piracy is so easy, so cheap, and yet so potentially devastating to intellectual property owners—many of which are small entrepreneurial enterprises. In Utah, 65 percent of these companies have fewer than 25 employees, and a majority have annual revenues of less than $1 million. Intellectual property is the lifeblood of these companies, and even a single instance of piracy could drive them out of business. What's more, without adequate international protection, these companies would simply be unable to compete in the global marketplace.

That is why we enacted a number of measures last year to provide enhanced protection for intellectual property in the new global, high-tech environment. For example, the Digital Millennium Copyright Act (DMCA) implemented two new World Intellectual property Organization Treaties setting new global standards for copyright protection in the digital environment. We also paved the way for new growth in online commerce by providing a copyright framework in which the Internet and other new technologies can flourish.

The ''Digital Theft Deterrence and Copyright Damages Improvement Act'' builds upon those protections by raising the Copyright Act's limit on statutory damages to make it more costly to engage in cyber-piracy and copyright theft. Section 504(c) of the Copyright Act provides for the award of statutory damages at the plaintiff's election in order to provide greater security for owners, who often find it difficult to prove actual damages in infringement cases—particularly in the electronic environment—and to provide greater deterrence for would-be infringers. The current provision caps statutory damages at $20,000 ($100,000 in cases of willful infringement), which reflects figures set in statute in 1988 when the United States joined the Berne Convention. The combination of more than a decade of inflation and revolutionary changes in technology have rendered those figures largely inadequate to achieve their aims. The bill before us updates these statutory damage provisions to account for both these factors.

Under the bill, the cap on statutory damages is increased by 50 percent, from $20,000 to $30,000, and the minimum is similarly increased from $500 to $750. For cases of willful infringement, the cap is raised to $150,000. This will not mean that a court must impose the full amount of damages in any given case, or even that it will be more likely to do so. In most cases, courts attempt to do justice by fixing the statutory damages at a level that approximates actual damages and defendant's profits. What this bill does is give courts wider discretion to award damages that are commensurate with the harm caused and the gravity of the offense. At the same time, the bill preserves provisions of the current law allowing the court to reduce the award of statutory damages to as little as $200 in cases of innocent infringement and requiring the court to remit damages in certain cases involving nonprofit educational institutions, libraries, archives, or public broadcasting entities.

The House of Representatives amend the bill to include an amendment to the ''No Electronic Theft (NET) Act.'' The NET Act—enacted to curb digital piracy by expanding criminal copyright infringement to include certain electronic infringements done without an intent to profit—directed the U.S. Sentencing Commission to revise the sentencing guidelines for crimes against intellectual property to ensure that the applicable guideline range is sufficiently stringent to deter such crimes and to provide for consideration of the retail value and quantity of the infringed upon items with respect to which the crime against intellectual property was committed. This directive, and its specificity, reflected the concern on the part of Congress that the existing guidelines' reliance on the value of the infringing items (i.e., the street value of a bootlegged video) both underestimates the true economic harm inflicted on copyright owners and results in penalties that are so disproportionately low that U.S. attorneys are simply unwilling to prosecute such cases. Despite Congress' directive, the old guidelines remain in place unamended. The result is that today, nearly two years later, there has been only one case brought under the NET Act, and electronic piracy continues as a significant and growing concern.

The House amendment to S. 1257 would revise the outstanding NET Act directive to require the Sentencing Commission to amend the sentencing guidelines to provide an enhancement based upon the retail price of the legitimate items that are infringed upon and the quantity of the infringing items, as well as to require the Commission to act within a set time. While the proposed revision is consistent with Congress' intent to strengthen the sentencing guidelines applicable to intellectual property-related crimes and to better reflect the economic harm in cases of electronic piracy, there was some concern that the amended guidelines would overstate economic harm or have other unintended consequences with respect to infringements not involving digital reproductions.

The amendment Senator LEAHY and I are offering today—which is the result of many hours of discussions and the subject of widespread agreement—will leave the existing NET Act directive unchanged, but will require the Commission to act on that directive within the later of 120 days from the bill's enactment or 120 days from the first date on which there are sufficient voting members of the Sentencing Commission to constitute a quorum. I expect that the Sentencing Commission will move expeditiously once its commissioners are in place to complete revision of the applicable sentencing guidelines as directed by the NET ACT, and that it will do so in a manner that is consistent with Congress' intent to provide improved deterrence in this area.

In sum, this bill is an important high-tech measure that will spur creativity and enhance protection for American copyrighted works at home and abroad. I want to thank Senator LEAHY for his assistance, cooperation, and leadership in this process, and I look forward to the Senate swiftly passing this bill with the Hatch-Leahy Amendment.

Mr. BAYH. Mr. President, For years the American people have become increasingly cynical about our federal government and apathetic about political participation. There are many reasons for this unfortunate state of affairs. This year's budget exemplifies several.

One reason is our inability to do what every family and business must do, balance our budget. After years of large, chronic deficits, last year we finally, if barely, balanced the federal budget. If great care is not taken, the budget will not be balanced for long.

Another reason is Washington's unwillingness to be honest with the American people. This budget is only the latest example. Proponents claim it is balanced. It is not. They say it does not raid social security, but it does. It purports to meet certain ''emergencies'', when no reasonable person could possibly consider them such. It's time we ended this ''business as usual'' in Washington and began to regain the trust of the American people.

I oppose this bill because it spends too much and uses gimmicks that will make future budgets even more difficult. It ignores the greatest financial challenge facing our nation, entitlement reform, and makes matters even worse by taking money from the Social Security Trust Fund to pay for spending today. It foreshadows a return of

chronic deficits. If we must resort to such foolishness when times are good, what will happen when times are tough? It makes the prospect of meaningful tax cuts much more remote because it spends the surplus and then some.

There are circumstances that could justify my support for this budget and some of the items that I object to. But none exist now. If meaningful entitlement reform had been included. If the economy were weak and the gimmicks were only temporary expedients, not the permanent fixtures they promise to be. If we had a few more years, not just one, of balanced budgets under our belt. There are several good things in this budget, things I strongly support: funding for 100,000 additional teachers in our classrooms, putting 50,000 additional police officers on our streets, relief for hospitals and other providers from excessive Medicare cuts, enhanced Land and Water Conservation funds, expanded biomedical research through NIH, expanded Head Start and increased After School Care.

All of these have merit. All should be done. But we must have the honesty and integrity to pay for them, or the restraint to wait until we can, and not just perpetuate the cynicism created by annual budget charades.

I look forward to voting for a future budget. One that preserves and strengthens the foundation of financial security so important to our nation's well-being. Even more, I look forward to that day when this Congress enjoys the respect and admiration of our fellow citizens. This budget will not hasten that day.

Mrs. LINCOLN. Mr. President, today is a historic day in the United States Senate. With the inclusion of the Superfund Recycling Equity Act in the 1999 Omnibus Appropriations Bill, we have righted a wrong to the recycling industry of this Nation. We have removed the Superfund bias against recycled materials and set this country back on a path to promoting reuse of all recyclable materials. The Superfund Recycling Equity Act of 1999 will finally place traditional recyclable materials which are used as feedstocks in the manufacturing process on an equal footing with their virgin, or primary feedstock, counterparts. Traditional recyclables are made from paper, glass, plastic, metals, batteries, textiles, and rubber.

Mr. President, we have been working to right this wrong for over six years. During the 103d Congress, I first introduced a bill to relieve legitimate recyclers of scrap metal from unintended Superfund liability. The bill was developed in conjunction with the recycling industry, the environmental community, and the Administration. We worked closely together and consistently agreed that liability relief for recyclers is necessary and right. The language in this bill is the culmination of a process that we have been working on since 1993.

As I'm sure you can see, Mr. President, the push to relieve these legitimate recyclers of this unintended liability has received broad, bipartisan support. This bill has received 67 cosponsors in the Senate this year and thanks to the strong leadership of Senators LOTT, DASCHLE, CHAFEE, and WARNER, we have successfully brought this important piece of legislation to the floor.

Mr. President, as the sponsoring member of this legislation when I was a member of the House of Representatives, I would like to make a couple of important points. First, this Superfund Recycling Equity Act is both retroactive and prospective. Slightly different standards must be met for recyclers to be relieved of Superfund liability for recycling transactions that occurred prior to the date of enactment than for those that occur after the date of enactment. But in either scenario, legitimate recyclers of paper, glass, plastic, metals, textiles, and rubber will no longer be treated as if they were ''arranging for the disposal'' of materials containing hazardous substances each time they sell their materials as manufacturing feedstocks. Rather, they will be treated as if they were selling a product, which is the same standard to which suppliers of virgin materials are held. Virgin materials are in direct competition with recyclables and this legislation will help to increase recycling in our nation.

Recognizing that this issue has been the focus of much litigation, the Congress intended that the recycling situation be clarified through the Superfund Recycling Equity Act. That is why we have written this legislation in such a fashion that virtually all lawsuits that deal with recycling transactions of paper, glass, plastic, metals, textiles, and rubber are extinguished by this legislation. Only those lawsuits brought prior to enactment of this legislation directly by the United States government against a person will remain viable. All other lawsuits brought by private parties, or against third party defendants in lawsuits originally brought by the U.S. Government will no longer proceed under this legislation. This will resolve the inequities suffered by recyclers in a quick, fair, and equitable manner.

It should also be reiterated that this bill addresses the product of recyclers, that is the recyclables they sell which are utilized to make new products. This does not affect liability for contamination that is created at a facility owned or operated by a recycler. Neither does it affect liability related to any process wastes sent by a recycler for treatment or disposal. In order to assure that only bonafide recycling facilities benefit from this bill, a number of tests have been established within the bill by which liability relief will be denied to sham recyclers.

With the passage of this important legislation, we have taken a bold step in the right direction for America. We have taken a step to promote legitimate recycling and to put recycled materials on an equal footing with new materials.

Thank you, Mr. President.

Mr. DEWINE. Mr. President, as original co-sponsors of the Safe Senior Assurance Study Act of 1999 (S. 818), Senator REID and I wish to express, for the record, our gratification for the language contained in the conference report on H.R. 3194 concerning physician supervision of anesthesia services under Medicare's Conditions of Participation.

We read the report as calling upon the Secretary of Health and Human Services to base her determination as to appropriate supervision standards on sound scientific outcome data—a principle which is at the core of S. 818, which was to assure that Medicare beneficiaries will continue to receive the highest quality medical care—one which I am sure is shared by every member of this body—and the Senator from Nevada and I think adoption of the report will help us attain this objective.

Preliminary data from recent outcome research has suggested that supervision of anesthesia care by physicians trained in that discipline represents an important factor in anesthesia safety, and we want to be certain that the Secretary takes the final results of this research into account. Medicare beneficiaries have resoundingly said, in response to recent national surveys, that they favor retention of the current supervision rule, and in our view, any change in that rule must be supported by scientific data showing that anesthesia safety for our nation's seniors would not be impaired. We congratulate the committees with jurisdiction over Medicare in the House and Senate for their clear commitment to this view.

Mrs. MURRAY. Mr. President, as the Senate finally concludes its work for the legislative year, I want to outline my position on a few of the final issues. Unfortunately, I needed to travel back to Washington state to attend the funeral of my good friend and mentor, Pat McMullen, and missed three votes.

Before leaving, I voted in favor of the ''motion to proceed'' to the omnibus appropriations bill, which also included fixes to the Balanced Budget Act of 1997 and the tax extenders package. With that vote, I registered my support for this important funding and corrections bill. I also would have voted in favor of the Work Incentives Act.

First, I would like to address just some important provisions in the omnibus appropriations bill. There are many things that we do here that have little direct impact on the lives of real people and real families. However, this legislation is one of those times when we act to provide real help and real hope to working families, children and our senior citizens.

The package that we are about to enact, provides an additional $2 billion

investment in the National Institutes of Health (NIH). There are few people in this country who are not touched in some way by the research supported by NIH. An additional $2 billion keeps us on track to doubling our investment in medical research. Research that saves lives and prevents human suffering. Our investment has already brought us closer to finding a cure for devastating diseases like Parkinson's, leukemia, heart disease, and breast cancer. We must continue this commitment as this investment is about saving dollars and lives. The impact on Washington state is also significant. I am proud of the fact that Washington state is one of the top recipients of NIH grants. The outstanding research being conducted at research institutions like the University of Washington and the Fred Hutchinson Cancer Research Center are known throughout the world. We are truly a world leader in medical research.

This appropriations package will also provide additional resources to improve access to quality health care for the uninsured and the most vulnerable. The additional funding for the Centers for Disease Control (CDC) and the additional $100 million provided for Community Health and Migrant Health Care Centers provide a critical health care safety net for those working families who simply cannot afford insurance. There are more than 80 clinics in Washington state providing quality, affordable health care services who will be able to expand and meet the growing needs of the uninsured populations.

I am pleased we have been successful in providing, for the first time, a direct appropriation to support poison control efforts and education and training for Children's Hospitals. I have been a long time proponent of these efforts and recognize the importance of this investment in our children.

Overall, this appropriations package includes a $34.5 billion investment in health care programs. This investment will strengthen the public health infrastructure, provide essential prevention and treatment services to individuals with mental illness and ensure that our senior citizens are not forgotten. The additional $45 million provided to support Older Americans Act programs ensures that we can honor our commitment to our nation's elderly by providing important services like nutritional assistance, employment training, respite care, in-home care, and abuse prevention.

In addition, as part of this appropriations bill, we have succeeded in saving quality health care for millions of Medicare beneficiaries. The corrections to the Balanced Budget Act address the unintended consequences of the reductions called for in 1997. Then, we anticipated a total of $100 billion over five years to ensure Medicare's solvency. Unfortunately, our estimates have proven incorrect and we were facing well over $200 billion in reductions which are impacting quality care for millions of seniors and the disabled. The BBA97 corrections provide additional resources for home health care, skilled nursing facilities, nursing homes, hospitals, cancer treatment centers, teaching hospitals like the University of Washington, community health care centers, rehabilitation services, and health maintenance organizations. This one time correction will prevent the closing of facilities or home health care agencies and does not jeopardize our goal of solvency for the Medicare Trust Fund. I know from my own health care providers and my own hospitals what this fix means. I also know that without it, rural health care was in real jeopardy. I told my constituents that I would not leave for the year until we acted to address the looming crisis. This has been accomplished in a bipartisan and comprehensive manner.

I would also like to address the tax extenders package included in this bill. I generally support the tax extenders package. It includes the expansion of some tax credits that I have strongly supported over the years. First, the research and experimentation tax credit represents a critical investment for our nation. If we are to continue creating more and higher-paying jobs for American workers, we must encourage the business community to invest in research and development. This bill does just that. I have cosponsored two bills to make the R&E tax credit permanent, so I look forward to working with my colleagues to make that happen.

I am also pleased this legislation includes extensions of the Welfare-to-Work Tax Credit and the Work Opportunity Tax Credit, which help us move toward our goal of ensuring that all Americans benefit from the new economy.

This extenders package also includes an extension of employer provided educational assistance. I am disappointed the package does not include compensation for graduate school assistance. I believe this commission is short-sighted. At a time when the American economy is so rapidly changing, we need to ensure that our workforce is able to meet the demands of the new economy.

Our tax code should also reflect our commitment to cleaner energy. While this package extends the wind and biomass tax credit, it does not expand the definition of biomass to include open loop biomass. Meanwhile, it expands the code to include incentives for the production of energy from chicken waste. I have no doubt that some of my colleagues are trying to address legitimate animal waste issues in their states. However, if the code is to be expanded, it should be expanded to include open loop biomass. If Congress considers major tax legislation next year, this should be a top priority.

While the efforts I have mentioned above help businesses and the poor, the bill also helps middle class Americans. In 1997, we passed important non-refundable tax credits, like the child tax credit, that have greatly benefitted the middle class. This legislation will ensure families can continue to use these credits without being affected by the alternative minimum tax.

Finally, the Senate passed another piece of important legislation today: the Work Incentives Act. The WIA bill rewards those disabled individuals who want to go back to work but face the prospect of falling off the so called ''health care cliff.'' We have been successful in treating many illnesses and injuries that once permanently disabled workers. They may not be cured but can be productive. Unfortunately, if they do try and return to work they lose their link to life, their health insurance. This legislation, of which I am proud to have been an original cosponsor, will allow workers to return to work and continue to receive Medicare. It will also allow many to buy-in to Medicaid. This legislation is not just about giving people the chance to return to some kind of productive life. It is about saving precious dollars as well. Workers who give up their Social Security disability payments to go back to work will be paying taxes and contributing to the Social Security and Medicare Trust Fund. This is a win-win for all of us. It is also the kind of policy that simply makes sense. People should not be penalized for trying to go back to work.

Mr. President, I have voted in support of the motion to proceed to this omnibus appropriations, B.B.A. of '97, and tax extenders package. I am particularly pleased we have been able to secure yet another year of commitment to our children by helping reduce class sizes in the early grades. I will be working hard to ensure this important program is authorized in the Elementary and Secondary Education Act next year. I must also note extreme disappointment in the decision to pit United Nations dues against women's reproductive health care. I remain committed to family planning throughout the world and will be working with the administration to ensure the United States continues to lead the way in protecting women's health, including our reproductive health.

Mr. ABRAHAM. Mr. President, I rise today to voice my strong support for this final Appropriations package. This is a good package that protects the Social Security surplus from being raided to pay for non-Social Security spending, that provides sufficient funds for important national programs, and which addresses critical issues specifically for Michigan. I trust that the President will be able to sign this quickly and get these Fiscal Year 2000 funds to the programs that will disburse them to Michiganians as soon as possible.

Mr. President, I am confident that this package will not raid the Social Security surplus as has been the norm for almost 30 years. The Congressional Leadership and the Administration

have crafted a package of appropriations and offsets that will not touch the Social Security surplus The precise bookkeeping agreed upon by the Administration and Congress used in this bill will help regulate how these funds are actually spent by the government, so that we don't spend the Social Security surplus. These aren't gimmicks, but finely crafted tools necessary for the Office of Management and Budget to ensure that bureaucrats don't spend their funds faster than Congress intended, so as to protect the Social Security surplus.

However, for those that are concerned that such tools could potentially be insufficient to control the rate of spending, and may in fact lead to the government dipping into the Social Security surplus, I will carefully track the revenue and outlay totals for the Federal Government over the next few months. And if it appears that we are falling behind in maintaining a sufficient buffer to protect the Social Security surplus, then I will immediately introduce and push for as large of a rescission package as necessary to prevent that from occurring. But that, in my opinion, will not be necessary. Already for the first month of Fiscal Year 2000, the Congressional Budget Office is reporting that we are running $6.4 billion ahead of last year, or almost $77 billion more in net revenue than last year. Considering the CBO estimated that net revenues would actually drop by $1 billion between Fiscal Years 1999 and 2000, I believe we will have more than enough of a non-Social Security surplus buffer to accommodate even the worst case assumptions that CBO may put forward.

As a specific note, Mr. President, one of the tools used to control spending in this package is an across-the-board 0.38 percent cut in discretionary spending. Although I would rather see specific cuts to achieve the $1.3 billion in fiscal discipline provided by this cut, such as cutting in half the funding for the Space Station, this is a modest enough cut to be palatable, especially considering the significant latitude given the executive agencies in finding these cuts. However, because of the vagaries of the budget process, the pay of Congressional Members has been exempted from this cut. I cannot support such unequal treatment, and declare that I will return an equal proportion of my Senatorial pay to the Department of Treasury. Nothing else would be fair.

But this package is not just about what it does not do. Mr. President, this appropriations package does a great deal of good as well. It increases funding for Head Start by over 10%, while providing over $35 billion for education in general, including funds for 100,000 new teachers while also significantly expanding the discretion local school districts will have to use that money for teacher testing and quality training. It will put 50,000 more police on our streets as well as providing over $2.1 billion for assistance programs to local law enforcement agencies. The National Institute of Health will see its funding increased by 15% to almost $18 billion, while important high-tech legislation that I sponsored to stop the poaching of corporate and identifiable World Wide Web address names by unscrupulous profiteers and carpetbaggers does not continue unimpeded.

And maybe most significantly, the unintended effects upon Medicare and Medicaid of the Balanced Budget Act of 1997, as well as the onerous additional regulations levied by the Health Care Financing Agency in implementing that Act, will be softened through the provision of over $27 billion in additional health care funds over the next 10 years. This will provide specific relief for Michigan's hospitals by easing the reductions in the reimbursements they receiving for treating our Medicare beneficiaries in Michigan, and thereby expanding the access for quality medical care. It will also increase the unrealistically low reimbursement rates set for Skilled Nursing Facility care, while also ensuring that the arbitrary $1,500 per patient cap on physical and rehabilitative therapy set by the Administration is not allowed to deny our seniors the help they need to recover from such debilitating conditions as strokes and severe heart conditions. It improves the ability of women to receive pap smear tests, provides greater access to renal dialysis treatment, while also making immunosuppressive drugs more readily available. And it provides very much needed protection for Rural Health Clinics and Federally Qualified Health Centers from capricious reductions in their reimbursements, thereby allowing them to protect the uninsured and Medicare dependent population that they overwhelmingly serve.

But, Mr. President, this package is good for Michigan is well as our nation. A number of issues that significantly affect my constituents are addressed in this package. Our unique Great Lakes environment is protected through the continued funding of the Great Lakes Environmental Research Laboratory, increased funding for the Great Lakes Fishery Commission, Sea Lamprey control, and Sea Grant Research funds, as well as funding for a new simulator at the Great Lakes Maritime Academy in Traverse City to ensure our commercial shipping maintains its peerless safety record. This appropriations package funds worthy projects such as Detroit's Focus:HOPE information technology training program for the city's poorest residents, Central Michigan's charter school and education performance institute, Northern Michigan's Olympics Training Facility, and almost $2.5 million in funding to protect and preserve Isle Royale National Park and Keweenaw National Historical Park. This bill brings new Tribal funding for a new band of the Pottawatomi Indians and $15 million more in PILT (Payment in Lieu of Taxes) funds which are desperately needed by Michigan's more rural counties. And on the international front, this package provides almost $2 million to support the Middle East Peace Process through the Wye River Accord agreement, as well as a number of policy and funding initiatives overseas such as continued support for Armenia in its dispute over Nagorno-Karabakh and the further development of education and infrastructure in Lebanon.

Mr. President, many will try to make political hay out of opposing this bill for this or that various reason. But on the whole, this final appropriations package achieves three very important goals: it stops the 30-year raid by big Washington spenders on the Social Security Trust Fund, it adequately funds important national priorities, and it addresses several specific programs in Michigan important to my constituents. We were sent to Washington to govern, Mr. President, and at this point in the session, I asked myself if I was going to be an effective legislator, or simply a politician. I'm glad I chose the former in supporting this bill.

Mr. President, I yield the floor.

Mr. BINGAMAN. Mr. President, the appropriation for the Department of Education includes an additional $134 million, added during final negotiations over the bill, to promote school accountability and improvement under Title I of the Elementary and Secondary Education Act of 1965, which funds educational services to educationally disadvantaged children. These funds will provide critical resources to schools most in need—those in need of improvement and identified for corrective action under Title I.

Dedicated funds are necessary to develop improvement strategies and to hold schools accountable for continuous student improvement. The federal government directs over $8 billion dollars of federal funding to provide critical support programs for disadvantaged students under Title I, but the accountability provisions in Title I have not been adequately implemented due to insufficient resources. Title I authorizes state school support teams to provide support for schoolwide programs and to provide assistance to schools in need of improvement through activities such as professional development or identifying resources for changing instruction and organization. In 1998, only eight states reported that school support terms have been able to serve the majority of schools identified as in need of improvement. Less than half of the schools identified as being in need of improvement in 1997-98 reported that this designation led to additional professional development or assistance. Schools and school districts need additional support and resources to address weaknesses soon after they are identified, promote a progressively intensive range of interventions and continuously assess the results of interventions.

The money provided in this appropriations bill can be used to ensure

that school districts have necessary resources available to implement the corrective action provisions of Title I, by providing immediate, intensive interventions to turn around low-performing schools. The types of intervention that the school district could provide using these funds include:

(1) Purchasing necessary materials such as up-to-date textbooks, curriculum, technology;

(2) Providing intensive, ongoing teacher training.

(3) Providing access to distance learning;

(4) Extending learning time for students—after school, Saturday or summer school—to help students catch up;

(5) Providing rewards to low-performing schools that show significant progress; and

(6) Intensive technical assistance from teams of experts outside the school to help develop and implement school improvement plans in failing schools. The terms would determine the causes of low-performance—for example, low expectations and an outdated curriculum, poorly trained teachers, unsafe conditions) and assist in implementing research-based models for improvement.

The portion of the bill relating to these additional funds also requires that school districts give students in Title I schools the option of transferring to another public school if the schools they attend have been identified as in need of improvement. This requirement applies only to districts that receive a portion of this additional money, and not to districts that do not accept these additional funds. While I have a bill that is supportive of right to transfer at the corrective action stage of the Title I accountability system, it is my understanding that the language in this appropriation bill apples only to schools accepting funding from this new funding source of $134 million.

Mr. BAUCUS. Mr. President, it is very unfortunate that the Senate finds itself in virtually the same position as we did last year with appropriations matters. As my colleagues will recall, we voted on a giant omnibus appropriations bill which contained eight appropriations bills, plus numerous other authorizing legislation. It ran on for nearly 4,000 pages and weighed in at some 40 pounds. It was called a ''gargantuan monstrosity'' by the distinguished Senator from West Virginia, Senator BYRD.

But it was a monstrosity not just because of its length. It was also in the size of its insult to the democratic process, to individual Senators, and to the people they represent.

It was bad enough that no Senator was able to read the bill before they were required to vote on it. Worse still was the fact the bill was presented to the Senate in a ''take it or leave it'' form. No amendments were permitted. Every Senator was effectively muzzled.

I voted against that bill. Not because it didn't contain good provisions, good for the country, and good for my State of Montana. It did. I opposed that bill because writing such an important piece of legislation should not be done behind closed doors among a small group of people with no recourse for the others. I said at the time that the process dangerously disenfranchised most Senators, House Members, and the American people.

Many of my colleagues agreed with my sentiments then. And there were statements that this would not happen again. But it has.

True, this bill is somewhat shorter. It covers only five appropriations bills, not eight. It has fewer authorizing bills attached to it.

However, it still was written largely by a relatively few people, members of the majority, representatives from the Administration, a few members of the minority. And all behind closed doors, again.

But the bigger danger this year is that we are passing major bills by reference. The text of four appropriations bills and four authorizing bills appears nowhere in this bill. Instead, this bill provides for their enactment by referring to them by number and date of introduction, which just so happens to be less than 48 hours ago.

Members of the Senate do not have this language before them. Even if we could offer amendments, how would we do it? How can you amend a bill that is included only by reference? Even more fundamentally, will bills that are enacted into law ''by reference'' withstand a Constitutional challenge that they violate the presentment clause?

The courts will have to decide the Constitutional issues. But it is one more reason why I believe this is a very dangerous process. It further erodes the rights of the minority, indeed the rights of all Senators. Coming, as I do, from a state with a small population, we depend greatly on the Senate to protect our states' interest, something that cannot always be done in the House of Representatives, where population determines voting power.

Mr. President, we already face a population that is increasingly cynical of government and those who serve it. People believe more and more that government does not look after their interests, but only after special interests. And the more we operate behind closed doors, without an open, public process, the more we feed that cynicism. And the more we encourage mistrust.

That is not healthy for our democracy or our people. One of the best things Montanans did when we rewrote our State constitution in 1972 was to require open government, at all levels. It has helped keep government officials honest and helped the people have faith in that government. I wish this process were as open.

Someday, I hope that the Congress will return to the open process on appropriations bills and authorizing bills we had not so long ago. We could debate issues, offer amendments, make compromises, win, lose. But all in front of the people.

But this bill goes too far in the other direction and therefore, I cannot support it.

Mr. ROBB. Mr. President, as we near the end of this session of Congress, there are some accomplishments we should celebrate and some disappointments we should work to remedy in the next session of the 106th Congress. While there are many items in the appropriations and tax bills that benefit our nation, there are a few I'd like to highlight. This year's final budget package will continue to provide more crime reduction and school safety funding so our children are safer in their neighborhoods and in their schools. It will continue our efforts to reduce class size so our children get more individualized attention from a top-quality teacher. And it will provide what I hope will be the first installment of school modernization funding so that our children's schools are safe and equipped for the future.

With the passage of the appropriations and tax measures this session, Congress will uphold its commitment to continue reducing crime on our streets and in our schools. We've come a long way from the original Senate committee bill that would have killed the COPS initiative, which has placed 100,000 new police officers in our communities since 1994. This year's appropriations bill provides enough funding to hire another 50,000 officers over the next few years, and it sets aside $225 million in Department of Justice funding for school safety initiatives. The first obligation of government is to provide for the safety of every man, woman, and child, and I believe our funding levels for COPS and school safety programs live up to that obligation.

We will also be living up to the commitment we made last year to hire 100,000 new teachers so our children's class sizes are smaller and their individual time with their teachers is greater. We made a down payment last year and hired 29,000 teachers. This year, we will provide $1.3 billion to states so we can keep those teachers in the classroom and hire even more. But as we all know, school systems can't hire new teachers if they don't have the extra classrooms. So, I'm especially pleased that we have finally recognized the school infrastructure crisis in America.

The tax package we will pass today will provide an additional $800 million in zero interest bonds under the Qualified Zone Academy Bond Initiative. These bonds will help our neediest schools renovate buildings that are relics of the past and turn them into schools of the future. It will help them purchase new equipment—from classroom computers to new, safe school buses. It will help them train teachers and develop challenging curricula to raise expectations and achievement scores of our nation's students.

The continuation of this school renovation initiative is just one component of the school modernization bill I introduced with many others in July, and I am grateful to so many education, labor, and professional organizations for their unwavering support. I thank my colleagues who co-sponsored the legislation, Rep. Charlie Rangel for his work on similar legislation, and the administration's commitment to ensuring that our schools are safe and modern havens for learning. We're sending the right message to our nation's school boards, teachers, parents, and students: that we see the leaky roofs, that we see the cracked walls, that we see all the trailers—and that we're willing to help.

But there remains much unfinished business. Over 14 million children attend schools in need of extensive repair or complete replacement. Twelve million children attend schools with leaky roofs, and 7 million children attend schools with safety code violations. Our schools are on average over forty years old. They're overcrowded, they're under-equipped with technology, and many are unsafe. In Virginia alone, there are over 3,000 trailers being used to hold classes. In short, our national renovation needs total $112 billion and our new construction needs total $73 billion. Given these tremendous needs, I view the $800 million in the this year's tax package as the first installment of the nationwide renovation and modernization of our children's schools.

Mr. President, the other major disappointment of this session concerns one of our nation's most important transportation arteries. I am quite dismayed that this Congress has not lived up to its responsibility to fund the replacement of the Woodrow Wilson Bridge. This is the only federally owned bridge in the entire country. It is a major gateway in the Washington metropolitan area, and a critical route for commerce along the entire east coast. We have an obligation to support its replacement.

I worked closely with the administration to advance this project, and I was gratified by the fact that funding was among the administration's top priorities during the budget negotiations. Unfortunately, however, Congress declined to provide funding, so we will revisit the issue next year, when construction is scheduled to begin. We have become all too familiar with the devastating effects of traffic jams in this area—on our economy, on our environment, and most importantly, on our quality of life. The unresolved matter of funding for the Woodrow Wilson Memorial Bridge project continues to threaten the region, and I intend to continue the fight next session to be fiscally responsible and responsive to our region's biggest transportation need.

Mrs. BOXER. Mr. President, the two bills we passed today—the tax extenders bill and the Omnibus Appropriations Act—like this entire session of Congress, can be summarized by four words: the good, the bad, the missing, and the undone.

Let me begin with the good, because we have achieved victories on several important Democratic priorities. Funding for after-school programs was more than doubled. As a result, there will be spaces for 675,000 young people.

In another priority of mine, the days of the sweet deal for the big oil companies will be over next March 15. At that time, the Interior Department will finally be allowed to issue a regulation to ensure that oil companies pay their fair share of oil royalties to the federal government when they drill on federal land, ending the $66 million annual loss to the taxpayers.

I was also pleased to see a 42 percent increase in funding for the lands program, known as the Lands Legacy Initiative. Most of this money will be used to acquire lands and historical sites so that they can be preserved for future generations.

There are other good things as part of the budget agreement: funding to reduce elementary school class sizes; putting 6600 cops on the streets and in the schools; paying the arrears the United States owes to the United Nations; debt relief for developing countries; full funding for the Middle East Peace Agreement; a $2.3 billion increase in funding for the National Institutes of Health; correcting problems with Medicare funding that were part of the Balanced Budget Act of 1997, so that we ensure seniors continue to have access to health care, particularly home health care and nursing home care; a $108 million increase in funding for nutrition assistance for pregnant women and infants; extension of some important tax credits, including the Research and Experimentation Tax Credit, employer-provided educational assistance, and trade adjustment assistance; and most of the anti-environmental riders were stripped out of the bill or were significantly weakened.

But, Mr. President, despite these good things, I am voting against the bill because of the bad things as well as the things that are missing.

First, let me comment on the process. If the Republican controlled Congress had done its work and passed the appropriations bills by October 1, which is what is supposed to happen, we would not have needed these protracted and secretive negotiations that gave undue power to just a handful of people. As my colleague from Nebraska said, this whole process turned government ''of the people, by the people, and for the people'' into ''government of and by four people''.

I want to mention three specific provisions of this bill that I oppose. First, the funding for international family planning is inadequate. We have had level funding for this program for four years now. And on top of that, the omnibus appropriations bill reinstates the so-called Mexico City policy that prevents organizations from using their own, privately-raised money to provide abortion services or to lobby against draconian abortion laws. Under the provisions of this bill, the President could waive this restriction, but if he does, the funding would be cut $12.5 billion, which could deny contraception to over 40,000 women for an entire year.

I was also extremely dismayed to find in this bill a provision that would allow pharmacists to deny women in federal health plans prescriptions for contraceptive drugs, if they claim a sort of ''conscientious objector'' status. This is an outrageous assault on the right of women to receive the full range of health benefits.

Also, this bill contains an absolutely unnecessary—and potentially dangerous—across the board spending cut. This cut will affect funding for education and health care and medical research and veterans. It is a silly way to do business, and it is unnecessary. Congress should have done its job and made the decisions about what is important and what is not.

There are also a lot of holes in this legislation, a lot of things missing. These are things that were in there at one point or on the table for discussion, but for some reason were taken out. I am talking about the lack of hate crimes legislation, which passed the Senate. I am talking about my amendment, which also passed the Senate unanimously, to ban the sale of guns to people who are intoxicated. There is once again no long-term, large-scale commitment to repair America's schools. There is no prescription drug benefit under Medicare, so that millions of senior citizens will not have to make a choice between medicine and food. There is not enough money for after-school programs. And the rural loan guarantee program for satellite TV—something that is crucial to rural communities around the country—was taken out of the bill at the request of one senator.

In the category of the undone, this Congress will go home for the year without having acted on several issues of enormous importance to all Americans—things that the people have said over and over again they want us to do. This includes: a real patients bill of rights, common sense gun control, campaign finance reform, and an increase in the minimum wage.

Some will say that we could not do these things because we did not have the money. Let me point out that if this Republican-controlled Congress had not insisted on increasing the defense budget by about $8 billion more than the President said we needed, then we would have had plenty of money to pay for both the well-deserved pay raise for our servicemen and women and the priorities I have just talked about.

So, Mr. President, I regret that this bill was not all it could have been and that this Congress did not accomplish all that it should have. But, I look forward to the next session in the hope

that we finally address the priorities of the American people.

Mr. GRAHAM. Mr. President, to quote Yogi Berra, it's deja vu all over again. A little less than a year ago Congress passed an Omnibus Appropriations bill for fiscal year 1999. That legislation combined eight separate appropriations bills and included $200 billion in discretionary spending. Last year's Omnibus spending bill also included $21 billion in emergency spending—$13 billion of which directly reduced the surplus for Fiscal Year 1999 and $5 billion of which reduced the surplus for Fiscal Year 2000. Members decried the process that led to last year's bill, threw themselves on the mercy of the American public asking forgiveness, and vowed that it would never happen again.

One senior Republican, speaking on condition of anonymity about the level of frustration with last year's budget process, said earlier this year: ''We are looking for ways to avoid what happened last year. We are determined not to go through that again this year.'' Unfortunately, Mr. President, here we are again—only worse. This year's bill clearly demonstrates that Congress has not learned from its past mistakes.

What makes this bill even more insidious is that we not only repeat last year's mistakes, but in fact, build upon them with even more creative ways to flaunt fiscal discipline. For that reason, I will oppose it.

Mr. President, I am not alone. I ask unanimous consent immediately after my remarks an editorial which appeared in today's Washington Post titled ''. . . And Brought Forth a Mouse'' be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

I fully understand, Mr. President, that we work with budget projections that are subject to revision as economic factors change. We must base our decisions, however, using reasonable assumptions of what will occur, not rosy expectations of what the future might bring. The beginning of this congressional session was filled with opportunity—opportunity brought about by 5 years of fiscal discipline. That discipline helped to fuel a strong economy and produce the first budget surplus in more than a generation. Indeed, budget surpluses are projected far into the future.

Instead of seizing this opportunity to use those resources in improving our long-term fiscal future, Congress seems content to fritter them away on short-term political giveaways. A strong economy and favorable budget outlook give Congress a wonderful opportunity to make important investments for our future. What are some of those investments?

Early in 1999, Democrats and Republicans stated that saving Social Security and strengthening Medicare were the first items of business on this year's legislative agenda. The President made this statement during his State of the Union Address earlier this year:

''Now, last year we wisely reserved all of the surplus until we knew what it would take to save Social Security. Again, I say, we shouldn't spend any of it—not any of it—until after Social Security is truly saved. First things first.''

My colleagues may remember that we followed the President's statement with a considerable amount of applause. Both commitments—extending the solvency of Social Security and strengthening Medicare—have been ignored. Both American political parties are identified co-conspirators in this unsavory result. There will be no structural changes to extend the solvency of the Social Security program. In fact, the most positive Social Security achievement we can cite underscores our failure to solve this important problem.

The only meaningful step Congress has taken to improve Social Security is an agreement not to spend the Social Security surplus—an agreement, I might add, that we have violated to the tune of $17 billion. The culmination of these negotiations will result in a budget that reduces the federal debt by $130 billion. That debt reduction, however, would have been $168 billion had we remained true to our commitment to save Social Security first. We could have reduced the Federal debt by an additional $38 billion had we not spent the full $21 billion on-budget surplus and $17 billion of the Social Security surplus. But even had we kept this promise, it would have done nothing to extend the program's insolvency date of 2034. Accomplishing that goal will require additional resources—resources that could come from the on-budget surpluses as long as they can be preserved.

Mr. President, we must hold true to our commitment to ensure Social Security's solvency until 2075. Our actions on Medicare are even more deplorable. We started this year with the goal of extending the solvency of the Medicare Trust fund and possibly expanding the benefits for beneficiaries, such as providing a prescription drug benefit. Instead, however, we've gone backwards. The Medicare benefit package has not been modernized. Efforts to rationalize the program have been rejected.

Finally, and perhaps most disappointingly, the solvency of the Hospital Insurance Trust Fund has been reduced by 1 year. Estimates at the beginning of this year placed the date of insolvency for the Hospital Insurance Trust Fund in Fiscal Year 2015. As a result of the unfunded additional Medicare spending included in this bill, the insolvency date has moved forward to Fiscal Year 2014.

Not only were we unfaithful to the commitments we made regarding Social Security and Medicare, we missed other opportunities to make constructive use of the on-budget surplus.

Mr. President, we could have further strengthened the economy by pursuing tax reform. We could have made critical investments to protect our national treasures such as the National Park system. Or we could have reduced the disgraceful number of Americans, particularly children, who don't have access to health care. These proposals have one thing in common—a bold, coherent vision. This final appropriations bill and its blizzard of special interest handouts reflects no such vision. It contains no bold initiatives worthy of the 21st century. Instead it fritters away a substantial portion of the surplus—squandering resources that could instead be used to build a better future.

Mr. President, how did we get here? At the beginning of the year, CBO projected the FY 2000 on-budget surplus to be $21 billion. In May Congress passed a supplemental appropriations bill providing $15 billion for reconstruction aid for Central America and the Caribbean, assistance to Jordan pursuant to the Wye River accords, farm loan assistance, and funding for our operations in Kosovo. Much of the May supplemental bill was designated as an emergency and thus was not offset with corresponding spending reductions or revenue increases.

The consequence of that legislation was a $15 billion reduction in the non-Social Security surplus—$7 billion of which reduced the FY 2000 on-budget surplus. Passage of the May Supplemental transformed a $21 billion surplus into a $14 billion surplus. In August, Congress passed the fiscal year 2000 Agriculture appropriations bill that included more than $8 billion of ''emergency'' spending. Like the Supplemental before it, these ''emergency'' funds were not offset with corresponding spending reductions or revenue increases.

Therefore, this spending directly reduced the FY 2000 surplus. A $14 billion on-budget surplus quickly shrunk to $6 billion.

In October, Congress considered the appropriations bill covering the Defense Department. Incredibly, that legislation designated funding for routine operations and maintenance as an emergency. That designation, as with those proceeding it, means that the no offsets were required. No offsets, however, does not mean that the spending does not have a real economic effect. The emergency spending included in the Defense Appropriations bill further reduced the Fiscal Year 2000 on-budget surplus by $5 billion, which the next column in my chart illustrates.

Mr. President, by the end of October Congress' voracious spending reduced the on-budget surplus from $21 billion to $1 billion. With passage of this Omnibus appropriations bill, Congress will not only complete its assault on the on-budget surplus but also begin its raid on the Social Security surplus.

The $21 billion on-budget surplus projected for FY 2000 has vanished. In addition, this Omnibus bill spends $17 billion of the FY 2000 Social Security surplus.

Mr. President, no amount of budget trickery or accounting slight of hand can hide these facts. Those attempting to obscure this reality will soon be exposed. At the end of the year the Congressional Budget Office will total up the cost of our actions and tell us how they affected the national debt. The debt will no doubt be reduced in Fiscal Year 2000. Because of these budgetary tricks and shenanigans, however, we will miss the opportunity to make an even more substantial reduction in the national debt and the burden it imposes on our Nation. Worse yet, we have already staked claims against the on-budget surpluses projected beyond next year.

For example, at the beginning of the fiscal year the discretionary spending limit was $572 billion. With this bill, actual spending will be closer to $610 billion. If we assume that Congress maintains this level of spending—$610 billion—for each of the next ten years, CBO's projected on-budget surplus of $996 billion shrinks by $145 billion. These are the on-budget surpluses CBO projected in July assuming we would adhere to the discretionary spending caps.

The orange bars show the surpluses we can expect if we hold freeze spending at the levels established for Fiscal Year 2000 for each of the next four years.

As my colleagues can see, it is increasingly unlikely that the large on-budget surpluses over which we salivated throughout the summer will materialize.

In addition, this budget agreement contains other items—Medicare spending and tax breaks—which are not offset by either spending reductions or additional revenues.

The Omnibus appropriations bill includes changes to the Medicare reimbursement rules which increase Medicare spending by $1 billion in Fiscal Year 2000 and $27 billion over the next ten years.

That increased spending will come directly out of the Social Security surplus in Fiscal Year 2000 and from the on-budget surplus in later years.

This afternoon we will consider a bill to extend certain expired provisions of the Internal Revenue Code.

Earlier this month, the Senate passed legislation that extended these provisions on a fiscally responsible basis.

That bill was fully offset, and as such, would not have jeopardized the on-budget surplus.

I regret that the product coming out of the Conference is not as responsible.

The ''extenders'' bill before us today will reduce the on-budget surplus over the next ten years by $18 billion.

These spending commitments—a higher discretionary spending baseline as a result of the Fiscal Year 2000 appropriations bills, the extenders bill and the BBA addbacks—will spend almost 20 percent of the $996 billion on-budget surplus projected for the next ten years.

In fact, Mr. President, the additional spending as a result of the BBA addbacks and the lost revenue from the extenders bill are likely to completely wipe out the Fiscal Year 2001 surplus.

CBO projects that Medicare spending will increase by $6 billion in Fiscal Year 2001 as a result of this bill.

The Joint Committee on Taxation estimates that the ''extenders'' legislation will reduce revenues in Fiscal Year 2001 by $3 billion.

That $9 billion cost is greater than the $3 billion on-budget surplus that will remain in Fiscal Year 2001 assuming spending for that year is frozen at this year's levels.

Mr. President, what did we buy with this torrent of spending?

Certainly some positive things are included in this legislation.

I am deeply concerned, however, with many of the provisions in this gargantuan bill and their implications for our future.

Let me give you two examples.

YELLOWSTONE

Many of the decisions reflected in this agreement were made in isolation and will have unexpected negative consequences.

The individual operating budgets for the national parks have not been adjusted to accommodate the full 4.8 percent federal employee pay raise.

Instead, their budgets reflect only a pay raise of 4.4 percent.

The additional 0.4 percent must be absorbed through reductions in the remainder of their budgets—principally operations and maintenance.

The parks must absorb an additional 0.4% reduction as a result of the across-the-board cut included in this bill.

Yellowstone National Park's budget is $24 million—90 percent of which goes to pay salaries.

The combination of the pay raise shortfall and the across-the-board cut will force a reduction of $200,000 from the operations and maintenance accounts.

Why is this important?

Yellowstone National Park was included as one of this year's ten most endangered parks by the National Parks and Conservation Association.

It has been referred to as ''the poster child for the neglect that has marred our national parks.''

The policies established in this bill, combined with the previously adopted pay raise, raise serious concerns that the quality of our national parks will continue to decline.

I do not allege that anyone started out with this goal, but the consequences of this budget agreement may have that result.

I suspect this example of Yellowstone National Park will be repeated throughout the federal government.

BBA ADDBACKS

This bill also represents a triumph of special interests.

Having previously beaten back the Patient's Bill of Rights legislation, the managed care industry uses this bill to further advance its financial position.

$8.7 billion of the $27 billion of additional Medicare spending in this bill will go to the HMO industry.

Mr. President, what this means is nearly one-third of the Medicare money in this bill will go to the managed-care industry even though they only cover one-sixth of the beneficiaries.

This comes at a time when the General Accounting Office and Medpac say that HMOs are being overpaid, not underpaid, by Medicare.

I find it strange, Mr. President, that lobbyists for the managed care industry came to Capitol Hill crying for help when they tell their shareholders a very different story.

Let me read excerpts from a few HMOs' recent press releases.

For example, Pacificare said this in its press release announcing its third quarter earnings: ''We posted strong revenue growth * * * due to membership growth and favorable premium pricing. Our confidence in and outlook on the future is very positive.'' (Oct. 27, 1999)

Aetna had this to say: ''This is the seventh consecutive quarter of growth in operating earnings per share for Aetna * * * Aetna U.S. Healthcare continued to post solid commercial HMO membership increases.'' (Oct. 28, 1999)

United Health Group made the following bold proclamation: ''Our strong results continue to be driven by a balanced combination of growth, operating margin expansion, and capital structure enhancement. We look for ongoing progression in these key areas as we move into and through the year 2000.'' (Nov. 3, 1999)

These are surprisingly upbeat statements coming from an industry that came to Congress crying the blues.

The Medicare section of this bill has other deficiencies.

An opportunity for reform through competitive-bidding of the HMO industry was cut off at the knees in a midnight assault.

This bill includes language prohibiting the Secretary of HHS to negotiate with durable medical equipment providers to secure better prices for the Medicare program and Medicare beneficiaries.

By putting off the implementation of these provisions, possibly for years, we are taking millions of potential savings out of the pockets of Medicare beneficiaries.

The question members of Congress must ponder over the coming holidays is how to avoid a repeat of this awful process next year.

I hope that the FY 2001 budget will be one that I can support.

In order for that to occur, next year's budget must start with a bipartisan process.

This first 10 months of this year were spent with the President and Congress ignoring each other's existence.

Only during the past ten days—fully 40 days after the fiscal year end—did the two sides begin negotiating a conclusion to this year's budget clash.

We must break the cycle of end-of-the-year budget showdowns that produce nothing but partisan rancor.

We must also press for budget reforms that will ensure the bad habits of the past two years do not become institutionalized.

While there are many targets for reform, at the top of the list is the need to change the manner in which we designate certain spending as an ''emergency''.

Two-thirds of the reduction of this year's surplus—more than $25 billion—happened because Congress overrode fiscal discipline by using ''emergency'' designations.

Senator SNOWE of Maine and I have introduced legislation that would establish permanent safeguards to protect the surplus from questionable ''emergency'' uses.

Specifically, that legislation would do the following:

1. Create a 60-vote point of order that prevents non-emergency items from being included in emergency spending bills.

2. Create a 60-vote point of order that allows members to challenge the validity of items that are designated as ''emergencies.''

3. Require a 60-vote supermajority in the Senate for the passage of any bill that contains ''emergency'' spending.

Given that next year is a Presidential election year, it is unlikely that much will be accomplished.

An issue that will receive a great deal of attention in next year's election will be how best to use the on-budget surplus.

Several Presidential candidates have already outlined proposals that envision using the on-budget surplus for larger goals.

Vice President GORE supports the President's proposal for using some of the on-budget surplus to extend the solvency of the Social Security program.

He has also outlined a series of steps to expand health care coverage to the uninsured.

Senator BRADLEY has championed a plan to extend health care coverage to 95% percent of the nearly 45 million uninsured adults and children.

Governor Bush supports cuts in marginal tax rates, reductions in the so-called marriage penalty, and the elimination of the estate tax.

Senator MCCAIN would dedicate a portion of the surplus to tax cuts and transitioning the Social Security program to one that incorporates individual accounts.

Incidentally, Senator MCCAIN characterized this deal as ''a scathing, unconscionable depiction of the way we do business in Washington.''

Other candidates have proposals—transitioning to a flat tax, education reform—most of which look to the on-budget surplus as a means of financing.

These are all significant ideas, but if Congress continues this year's pattern in Fiscal Year 2001, they will be ideas starved for the resources to make them a reality, whomever the people elect.

Ultimately, the American people will provide their input on this matter through the decision they make next November.

Next year's budget should not short-circuit those ideas.

Instead, the goal for next year's budget should be to protect the surplus and therefore preserve the options available to the next President.

We must avoid a last minute, unfunded spending spree like that contained in the bill before us today.

Mr. President, it is a major disappointment that we didn't exercise this kind of fiscal discipline in 1999.

But when we return to inaugurate the second session of the 106th Congress, we will have the benefit of a new century, a new millennium, and a fresh start.

I hope that we can use that opportunity to seize the future rather than repeating the mistakes of the past.

This session began with great opportunities. We had a budget surplus. We had a strong economy. We had an opportunity to make decisions that have long-ranging positive effects on our economy. We have largely frittered away all of those opportunities.

The President and the congressional leadership began the year by joint commitment that our first priority was going to be to save Social Security and to strengthen Medicare. What happened after we finished the applause at the State of the Union? What has happened is we have ignored both of those commitments.

Social Security: No structural change. We have not extended by a second the solvency of the Social Security program. Yes, as the Senator from New Mexico said, we have reduced the national debt by $130 billion as a result of funds from the Social Security trust fund. That is the good news. The bad news is we should have reduced it by $168 billion, which is what we would have done had we preserved all of the surplus for strengthening Social Security and Medicare. His statement admits the fact that $17 billion of Social Security surplus has, in fact, been spent for purposes other than reducing the national debt and saving Social Security.

Medicare: We have made no structural changes in Medicare. Medicare, in fact, has 1 year less solvency as a result of what we are doing than it did when we started this process in January.

How did we get here? We got here because we have frittered away $168 million surplus down to $130 billion by a series of, first, emergency spending, and then an avalanche of budget gimmickry at the end of the session, much of which is in the bill we are about to vote on which has chewed up all of the non-Social Security surplus and $17 billion of the Social Security surplus.

What is the long-term consequence? The long-term consequence is we have already spent $190 billion of our 10-year non-Social Security surplus of $996 billion. One out of every $5 that we had in January for the non-Social Security surplus we have either spent or committed in the fiscal year. In fiscal year 2001, we have already spent all but $3 billion of the over $40 billion of the non-Social Security surplus. And with the actions we are about to take, we are going to be into Social Security for the next fiscal year by over $6 billion. That is what we have done with all the opportunities that were available.

I hope we will have learned from these lessons that we will apply some basic principles for next year, that we will try to be more bipartisan, that we will try to adopt some processes that will constrain us against the kinds of actions that have led to this sorry state of affairs this year, that we will commit we will exercise real fiscal discipline so the American people, based on who they elect as President in November of next year, will have an opportunity to make some fundamental decision.

Do they want our surplus to be used for Social Security? Do they want it to be used for Medicare? Do they want it to be used for tax cuts? Do they want it to be used to reduce the number of Americans who do not have health care coverage? What are their priorities? We are spending the money like drunken sailors and the American people are being denied the opportunity to state their opinions as to what we should be doing with their money.

It is with regret, as we have repeated against what we did last year, I must vote no on the legislation that will soon come before the Senate as the concluding fiscal act of 1999 and hope we will do better next year.

EXHIBIT 1

[From the Washington Post, November 19, 1999]

. . . AND BROUGHT FORTH A MOUSE

It is fitting that this legislative year should end with an almost imperceptible across-the-board spending cut that will not be across the board. It is hard to think of a single aspect of the budget that has not been seriously misrepresented in the past nine months of debate. There is always a certain amount of straying from the truth in regard to budgets. This year it has reached Orwellian proportions.

The final agreement on which the House was to vote last night and the Senate thereafter was touted yesterday by both sides as a major achievement. The major achievement consisted of no more than passage six weeks into the fiscal year of the last five of the 13 regular appropriations bills on which the operation of the government depends. Those 13 ordinary bills are the only fiscal accomplishment of a Congress that began with lofty talk on the part of the president as well as the leadership of both parties of solving long-range fiscal problems. They solved

none. The only consolation is that, by virtue of incompetence, they managed not to make any seriously worse, either.

The Republicans crow that they came through the year without using the Social Security surplus to help finance the rest of government. But (a) that's a non-accomplishment, in the sense that the same IOUs are put in the trust fund whether the surplus is used to finance other programs or pay down debt. And (b) it didn't happen. They achieved the result on paper only, by use of gimmicks. In some cases, they simply denied that spending for which they voted—and which they busily called to the voters' attention as evidence of why they should be re-elected—would actually occur. They disappeared it. In other cases, they simply kicked it over into next year. It will hugely compound their problems then. There has been much talk that a new fiscal standard has been obliquely adopted, whereby the rest of government, meaning all but Social Security, will hereafter have to live within its own means. That would be fine with us, but what this year's record suggests is not a new standard to be adhered to so much as a new one to be systematically lied about.

Meanwhile, they did what they always do in writing end-of-session bills. They stuffed it full of goodies, using public funds or power to curry favor with the folks back home. There is fine print in the legislation meant to benefit Sallie Mae, the giant and decidedly non-needy Student Loan Marketing Association; dairy farmers; the recycling industry; transplant surgeons; and who knows who else. Most of these are provisions that, for good reason, could not pass on their own. The president called the agreement a ''hard-won victory for the American people.'' In fact, it's a shabby, showy end to perhaps the least productive, nastiest and most duplicitous session of Congress in modern memory. They should hang their heads as they scurry home.

Mr. FEINGOLD Mr. President, I don't know if many of my colleagues have actually taken the time to read the bill before us.

If they have, they would have found some interesting provisions.

For example, Section 1001, titled ''PAYGO Adjustments.''

It appears at the very end of the printed text of H.R. 3194.

There are three subsections to this provision, and from what I can tell, this is what they do.

The first subsection declares that the mandatory spending that was folded into this bill—I believe mostly the provisions that restore Medicare funding—are not to be scored against the discretionary spending caps.

The second subsection then declares that the Medicare funding shall not be scored on the PAYGO ledger.

In other words, Mr. President, the roughly $16 billion in mandatory spending provided in the Medicare portions of this bill over the next 5 years will be completely excluded from the statutory budget rules that require such spending to be offset.

The last subsection, Mr. President, then zeroes out the PAYGO ledger entirely.

This means that no spending in this bill and none of the net cost of the tax expenditures in the tax extenders bill—none of it—will be counted on the PAYGO ledger.

It won't have to be offset this year, next year, or ever.

Mr. President, what is going on here?

Why is this language needed?

It is needed, Mr. President, if you don't want to pay for the mandatory spending done in this bill or the net revenue losses in the tax extenders bill.

The proponents of this language may wish to argue that they are using the budget surplus to pay for all of this.

Mr. President, let me ask them: ''What surplus is that?''

We did not have a surplus this past fiscal year.

And given the track record of this Congress, when September 30, 2000 rolls around, there is an excellent chance we won't have a surplus then, either—at least not without counting the Social Security Trust Fund revenues.

Mr. President, yesterday I was pleased to add my name to a measure the senior Senator from Texas was circulating honoring among others the Nobel Prize winning economist Milton Friedman.

As many know, Professor Friedman made famous the phrase: ''There is no free lunch.''

Well, Mr. President, I must tell my colleagues that passing a law declaring a free lunch will not make it so.

Congress can declare that the Medicare provisions of this bill will not cost anything, but that doesn't make it true.

Congress can declare that the tax extenders bill will not result in any lost revenue, but again, that will not make it true.

Mr. President, the PAYGO Adjustments section isn't the only one that tries to declare a free lunch.

We see it in the indefensible use of the so-called emergency designation.

I'll take just one example, the decennial census.

Mr. President, we have known for many years that there would be a census taken next year.

In fact, it's provided for in our Constitution.

In a very real sense, we have known for over 200 years that there would be a census next year.

It comes as no surprise.

But you wouldn't know that if you read this bill, Mr. President.

This measure provides that nearly $4.5 billion in funding for the census is to be declared an emergency.

An emergency, Mr. President.

Who are we kidding?

Next year's census is an emergency?

This is nothing more than a budget gimmick to avoid having to make tough choices.

Mr. President, I have no doubt there are other examples of the misuse of the emergency designation in this bill.

Over the next few weeks we will probably see news stories about just what Congress views as an emergency.

Mr. President, as must be painfully obvious to my colleagues by now, the dairy provisions alone in this bill make it completely unacceptable to me, and I will be voting against the bill for that reason.

However, even if those provisions were not included in the legislation, I would still oppose it, and I would oppose it in part for the budget gimmicks that are strewn throughout it.

Mr. President, I yield the floor.

Mr. McCAIN. Mr. President, I cannot support this budget deal because it spends the budget surplus, breaks our pledge to reduce the size and intrusiveness of the government, fails to deliver the tax relief American families deserve, and further imperils the Social Security system upon which so many Americans depend for their retirement security.

The ''budget crisis'' has become an annual, end-of-the-year ritual in which closed-door deals produce even more fodder for public cynicism about their government. This budget deal short-changes American taxpayers and benefits special interests, illustrating once again that the President and a majority of the Congress would rather spend the budget surplus on big government, special interest giveaways, and pork-barrel spending.

This deal makes a mockery of our obligation to responsibly exercise the ''power of the purse'' conferred on the Congress by the Constitution.

It busts the budget caps set just two years ago by more than $20 billion.

It obscures the true cost of the deal by using $36 billion in budget gimmickry.

It contains nearly $14 billion in everyday, garden-variety pork-barrel spending.

It spends every dime of the non-Social Security surplus, instead of setting that money aside to provide tax relief to American families, and shore up Social Security and Medicare.

It resorts to an across-the-board budget cut to avoid dipping into the Social Security surplus, rather than making the hard choices among spending priorities.

Some people have said this year's deal is not as bad as last year's deal. Looking at some statistics, that could be true to a certain extent:

Last year, the omnibus appropriations bill was 4,000 pages long and weighed over 40 pounds; this year's stack of bills is only about 1,500 pages long but it's almost a foot high.

Last year's deal was done 21 days late and covered 8 of the regular appropriations bill that funded 10 federal agencies; this year's deal covers only 5 of the regular spending bills for 7 agencies, but it's 50 days overdue—more than twice as late as last year.

Last year, the negotiators added more than $20 billion in extra spending; this year, they only added a little more than $6 billion.

And last year, the whole deal was wrapped up in a single bill that included the text of 7 spending bills and a host of other legislation; this year, we are casting one vote, but it will count as a vote on each of 10 separate bills.

I guess one could legitimately claim, based on those statistics, that this year's deal is not as bad as last year's deal. But like last year, this year's budget-busting behemoth is not amendable by any Member of Congress not involved in the negotiations over the past several weeks. Like last year, the process was deliberately designed to prevent any Member of Congress from changing any aspect of this back-room deal. What a farce.

Mr. President, like last year, this non-amendable budget deal is loaded down with pork, its true cost is obscured by budget gimmickry, and it is weighed down by policy ''riders'' that have no place in budget bills.

Before this deal was cut, the Senate had already passed spending bills containing over $13 billion in wasteful, unnecessary, and low-priority spending that was added without benefit of consideration in the normal, merit-based review process. That's more than the $11 billion added by Congress for Fiscal Year 1999, and almost twice the $7 billion wasted in Fiscal Year 1998. On my website, I have published 264 pages of pork-barrel spending projects in the appropriations bills that passed the Senate earlier this year.

The bill before the Senate today contains even more everyday, garden-variety pork-barrel spending—almost half a billion dollars more than in the original bills. Some items which agencies were ''encouraged'' or ''urged'' to fund in earlier versions of these appropriations bills have now been earmarked for funding. Other projects that were earmarked in report language are now included in the bill language. Presumably, these further clarifications of Congressional intent were included to improve upon the already near certainty that these pork-barrel projects will be funded ahead of other projects of possibly higher priority or more deserving of the taxpayers' support.

Just a few examples of new earmarks and special interest items in this bill include:

$2 million for the University of Mississippi for a phytomedicine project.

$1 million for the Noble Army Hospital of Alabama bio-terrorism program.

$300,000 for the Vasona Center Youth Science Institute.

$5 million for the International Law Enforcement Center for the Western Hemisphere in Roswell, New Mexico

$160,000 for a Mason City, Iowa, bus facility

$250,000 for the New York Hall of Science in Queens, New York

$100,000 for the Philadelphia Orchestra's Philly Pops to run a jazz-in-the-schools program in Philadelphia

$2.5 million for the Dante-Fascell North-South Center

$1,840,000 for Kansas buses and bus facilities (in addition to the $1.5 million already provided).

Mr. President, as my colleagues know, over $7.4 billion of the pork-barrel spending in this year's budget is in the defense budget, including almost $1 billion in low-priority military construction projects. This waste is disgraceful at a time when the Army's most recent assessments of its forces show none of the Army's divisions is rated at the highest state of readiness, or C–1. Not one of our Army divisions has the resources and training to undertake the wartime missions for which they are ordered to be ready. Shortfalls in personnel, parts, and funding, combined with extended deployments on peacekeeping and other contingency operations, have contributed to a serious decline that puts our soldiers at greater risk if a conflict were to erupt, and threatens the ability of our forces to prevail. This is a disgrace and an abomination that the American people will not tolerate.

Mr. President, for those who wonder how these projects are paid for, let's look at the clever budget gimmicks that are included in this deal.

First, there is the ''emergency'' spending designation, which most reasonable people assume should be used only for disasters, emergencies, and other unforeseeable happenings. Well, in this deal, the Congress has expanded somewhat the definition of ''emergency'' to include: the 2000 census, which we've known about since the Constitution was written, routine military training and base operations, and even the Head Start program.

So-called emergencies in this year's spending bills add up to $24 billion. Some of the uses of these funds are truly emergencies, such as alleviating severe economic hardship on small farmers or assisting those devastated by hurricanes. But over half of the emergency funds are designated as such in a blatant effort to avoid the discipline of the budget caps. The reality, however, is that ''emergency'' spending must still be paid for by tax revenues. And the tax revenues that will pay for most of these emergencies are those generated by Social Security taxes, that are supposed to be reserved to pay benefits for retirees.

Another gimmick is the use of ''forward-funding'', whereby money is appropriated for projects or programs, but it cannot be spent until the first day of the next fiscal year. This money is not counted against this year's budget caps, but again, it is real spending that must be paid for next year, within even more stringent budget caps.

Using the ''forward funding'' gimmick, a staggering $10 billion for job training, medical research, and education grants is pushed into next year, potentially impairing the management and effectiveness of these programs. In addition, the Department of Defense is directed to delay timely payments on its contracts to save $2 billion. This gimmick will result in higher costs for the Pentagon because of late payment fees and disruption in programs under contract.

Mr. President, most disgraceful, however, is a new gimmick that will delay paychecks for all military personnel and federal civilian employees for three days from September 29 to October 2, 2000. For the sake of a few billion dollars worth of pork, the Congress is withholding hard-earned pay from those who volunteer to serve their nation in the military or as a civil servant.

The potential impact on these men and women and their families is immeasurable. Many may have to pay late fees on rent or other bills and penalties and higher interest on credit cards. Some families, especially those who already are forced to subsist on food stamps, will have to struggle doubly hard to put food on the table while they wait for the Congress to pay them for their service.

Mr. President, I find it absolutely outrageous that the Congress would attempt to balance this pork-laden budget deal on the backs of our men and women in uniform. Is this the way we show our respect and appreciation for those who are willing to put their lives at risk for all of our freedoms? Is this the way we repay the families of our service men and women who spend many months and years separated from their loved ones during wars and overseas assignments? This is disgraceful, and I am ashamed that the Congress would take this action against those whose duty and sacrifice we should honor, not abuse.

Mr. President, I think it is important that the American public know that this paycheck slip gimmick—a gimmick that denies our proud men and women in the military, and hard-working people who work for the government the pay they have worked for and deserve—this gimmick does not affect the Congress. No one who works on Capitol Hill will get their paychecks even a day late. No one who was involved in negotiating this abominable deal—not Senators or Congressmen or their staffs—will get their paychecks late. Clearly, this demonstrates to the American people the Congress' opinion of its own importance.

Several other gimmicks abound in this deal—transferring surplus funds from the Federal Reserve into general revenues, improved collection of student loans, and more rescissions of funding from various programs, totaling several billion dollars in claimed savings.

And finally, in order to get closer to balancing the books on this budget deal, the negotiators picked and chose among the cost estimates provided by the competing budget scorekeepers for the Congress and the Administration, taking the lowest estimate they could find for each program so that they could squeeze more pork into the deal. The negotiators claim that their deal costs about $17 billion less the Congressional Budget Office estimates. What this means is that, despite vehement claims to the contrary, $17 billion of the Social Security surplus will be used to pay for the waste and largesse in

this budget deal. Taking another $17 billion from an already financially unstable Social Security system will only exacerbate the fears of many Americans about their retirement security.

Ironically, Mr. President, none of these specific gimmicks yielded enough ''savings'' to bring the budget deal back under control and keep our hands out of the Social Security cookie jar. And since no one was willing to volunteer cuts in any of their special interest programs, the negotiators took the easy way out. Rather than setting budget priorities, like any American family must do to make ends meet, the negotiators resorted to an across-the-board cut of about $2 billion.

At first glance, one would think that the President, who so stridently objected to this indiscriminate cut when he vetoed an earlier bill, would have objected to its inclusion in this deal. But it seems that the negotiators decided to give the President a whole lot of flexibility in choosing the programs that will be cut. For example:

If the President doesn't want to cut the White House travel budget by four-tenths of a percent, he can instead cut funding for the National Security Council staff.

If he doesn't want to cut the staff budget of the Attorney General, he can instead cut the funding for the Waco investigation or take a million dollars out of programs to prevent violence against women.

If he doesn't want to cut the administrative accounts of the Secretary of Education, he can cut Head Start by another couple million dollars.

If he doesn't want to cut the drug czar's office expenses account, he can cut $200,000 or more of the funding for the anti-heroin strategy.

If the President doesn't want to cut four-tenths of a percent of the funding for any one program, he can instead cut up to 15 percent of any line item approved by the Congress in any appropriations bill this year to get the savings.

Even though I clearly don't think Congress has done a very good job of allocating resources among our nation's priorities, why in the world would the Congress cede to the President the ability to decide where to take almost $2 billion from programs that have been approved by Congress through the appropriations process? Frankly, I recommend that the President take that money out of the $13 billion in pork that the Congress added to the budget.

Finally, Mr. President, let me take a moment to talk about the policy ''riders'' that have found their way into the appropriations process this year. As my colleagues know, the Senate has a rule—Rule 16—that is supposed to prevent the inclusion of legislative or authorizing provisions in spending bills. In fact, the Senate voted earlier this year to reinstate that rule. Unfortunately, when a process moves behind closed doors, these ''riders'' seem to proliferate.

There were over 65 legislative riders on the appropriations bills that passed the Senate earlier this year, but it seems that every time I turn around, I hear about another issue that will be rolled into this non-amendable budget package.

Perhaps that is a result of the fact that these end-of-the-year budget deals are usually negotiated by Members of the Appropriations Committee, rather than the authorizers. Or it may be driven by the need to garner support for the deal from Members who may have a special interest in an issue. Whatever the reason, the inclusion of legislative matters thwarts the very process that is needed to ensure that our laws address the concerns and interests of all Americans, not just a few who seek special protection or advantage.

Some of these riders are not necessarily objectionable to me, but the circumvention of the authorization process that took place makes me unable to benefit from the advice and recommendations of the committees of jurisdiction and their members. I should note, however, that many of the reported efforts to add riders to the bill were unsuccessful, for which I applaud the negotiators. However, most of the 32 new riders in this bill are highly objectionable because of their content as well as the process that led to their inclusion in this budget deal.

For example, one of the last-minute riders in this legislation would grant a new lease on life to the milk cartel known as the Northeast Dairy Compact, which milks consumers in New England by providing an above-market price to the region's dairy farmers. The compact is set to expire under a bill this Congress passed in 1996, but the pending legislation would reverse this ''Freedom to Farm'' reform. The legislation before us would also overturn milk pricing reforms mandated by Congress in 1996, supported by our Department of Agriculture, and ratified by the nation's dairy farmers in a referendum last summer. These reforms were developed by USDA over a three-year period and reflect a consensus-based approach worked out with America's dairy farmers and producers. Consumer groups estimate that blocking milk pricing reform in favor of the current system, as this legislation does, will cost consumers across America between $185 million and $1 billion a year—a sharp blow to low-income individuals, who spend more on dairy products as a portion of household income. I cannot in good conscience support the repeal of market-oriented reforms passed by a Republican Congress in 1996 to benefit American consumers. I fear that, yet again, a narrow core of special interests has trumped the people's interest in consumer-oriented milk pricing and marketing reforms.

Another last-minute rider will carve out liability exemptions for certain recycling businesses under the Superfund law. Although these same provisions are under consideration in a separate bill as well as part of a broader Superfund reform effort, this rider affords special treatment to a small group of affected industries with a last-minute add-on that is another of a targeted special interest deal. Superfund reform is important to our nation, yet such piece-meal measures can thwart the intentions and progress of those who have made good-faith efforts to work through a legislative process.

Regarding the inclusion in this deal of the restoration of certain Medicare benefits, in 1997, Congress made some difficult, but necessary changes in the financial structure of the Medicare system as a part of the Balanced Budget Act. These changes were needed to strengthen the system and delay its impending bankruptcy from 2001 until 2015. These reforms allowed us to preserve and protect the Medicare program while increasing choice and expanding benefits for beneficiaries.

However, at the end of last year, many of us began hearing from health care providers and seniors about the unintended negative consequences which certain provisions may be having on current beneficiaries and providers in the Medicare system. There has been increasing concern that certain reimbursement reductions and caps contained in the Balanced Budget Act could result in access problems for our nation's seniors if they were not adjusted this year. Personally, I have grown increasingly concerned about this problem, particularly about the negative impact on health care delivery which it may pose for our nation's most frail or rural elderly.

While I support the overall intentions of these provisions, I am concerned about provisions which have been slipped in to benefit only a select area or specific companies, rather than addressing the national problem of access to safe, quality and affordable health care for Medicare recipients. For example, hospitals in Iredell County, North Carolina; Orange County, New York; Lake County, Indiana; Lee County, Illinois; Hamilton-Middletown, Ohio; Brazoria County, Texas; and Chittenden County, Vermont are given special consideration for reimbursement under the Medicare program. Wesley Medical Center in Mississippi as well as Lehigh Valley Hospital are given special reimbursement consideration under this bill. Meanwhile, the District of Columbia, Minnesota, Wyoming and New Mexico are provided increases for their hospitals. Sadly, Congress has once again taken a well intentioned piece of legislation and inserted provisions directly benefitting only a select few at the expense of all taxpayers.

Finally, Mr. President, nothing would please me more than being able to endorse all the satellite television provisions included in this appropriations bill. Some of them are good news for satellite TV consumers, who would

gain the ability to receive local TV signals as part of their satellite TV service package, have discontinued distant network TV station signal service restored, and be relieved of unfair limitations on their ability to subscribe to distant network signals when their local network stations are unwatchable off-air. Cable TV subscribers would also be indirect beneficiaries, because anything that makes satellite TV a more attractive alternative to cable TV increases the cable operators' incentive to keep monthly rates in check. Considering the fact that cable TV rates have increased more than 20 percent since the passage of the 1996 Telecom Act, cable subscribers more than deserve this kind of break.

Despite all this, and despite the fact that I have worked for over a year and a half to bring procompetitive relief to satellite TV and cable TV subscribers, I find myself having to speak out against some of the other satellite TV provisions that also appear in this bill.

Why? Because these other provisions substantially undercut the bill's promised consumer benefits. Why, then, were they included? To protect special interests—in this case, the TV broadcasters, the TV program producers, and the professional sports leagues.

The primary special interest benefitted by these new provisions is the TV broadcasters. Under the law they're considered to be ''public trustees,'' and as such they have enjoyed considerable protection against competition, thanks to the Congress (which fears the power of the local network stations) and to the FCC (which fears the Congress).

Nevertheless, neither Congress nor the FCC can hold back technology, and local broadcasters have increasingly found themselves subjected to competition from new multichannel video technologies—first cable TV, and now, satellite TV. So the last thing the broadcast TV industry is receptive to is the prospect that satellite TV might be able to increase its competitive power and thereby lure more of the local broadcast audience—and revenue base—away.

That was one of the reasons why local broadcasters finally sued satellite TV companies that were offering distant network TV stations to subscribers who technically weren't entitled to receive them—even though many of these subscribers had, in fact, been receiving them for years without causing any apparent harm to local stations. The lawsuit was successful, and as a result many existing satellite TV subscribers found their distant network stations suddenly dropped, even when they couldn't get satisfactory off-air service from their local stations.

Not surprisingly, this led to widespread consumer protest. The House and the Senate Commerce Committees passed legislation that, taken together, would have solved satellite TV consumers' problems without inflicting material harm on broadcasters. But the legislation before us today contains a number of new provisions that will hurt satellite TV consumers and serve no purpose other than protecting the congruent interests of the well-heeled TV broadcasters, program producers, and professional sports leagues. These new provisions will adversely impact the very competition Congress claims it's trying to enhance, and the very satellite TV consumers Congress claims it's trying to help.

The first of these objectionable new provisions directly affects the ability of satellite TV companies to offer their subscribers local TV stations. Specifically, it governs the process whereby satellite TV companies negotiate with the TV networks for the rights to carry their local affiliates.

This issue has always been one of considerable concern because the TV networks have the stronger bargaining position, and the incentives, to extract unfair prices and conditions from satellite TV companies in return for giving them the right to carry local affiliates. Satellite TV companies' inability to offer local network stations has been cited repeatedly as the principal competitive disadvantage satellite TV companies face. The TV networks, therefore, begin with a strong bargaining advantage. Added to this is the fact that the networks also hold substantial cable TV programming interests, which increases the possibility that they could seek to extract further competition-dampening conditions that would serve the interests of their cable-channel partners. And, of course, the fact that the networks' local affiliates have been in litigation with the satellite TV industry adds to the concerns about the networks' incentives to withhold consent to carry their local affiliates unless, and until, the satellite TV carriers agree to whatever onerous and unfair terms and prices the networks might choose to dictate.

Now let's see how this legislation deals with this critical issue. Not only does this legislation omit fair-dealing requirements that had been included in the House bill; it adds a new provision, dictated by the broadcast industry, that makes a mockery of any notion of fair dealing.

This new provision gives satellite TV companies a six-month ''shot-clock'' to negotiate and obtain a signed retransmission consent agreement from a TV network for carriage of its local affiliate. During this time the satellite TV company could begin offering the station to its subscribers.

But there's a catch if, at the end of six months, the satellite TV company doesn't get the consent. First of all, the broadcaster, and only the broadcaster, is allowed to file a complaint and request a cease-and-desist order from the FCC. Moreover, the legislation doesn't simply deprive an aggrieved satellite TV company of the ability to file a complaint against an unreasonably recalcitrant broadcaster; it goes further, and specifically denies the satellite TV company any right to claim that the broadcaster didn't negotiate in good faith. These patently unfair provisions are complemented by penalties so stringent that no satellite TV company in its right mind would knowingly risk them.

Let's examine exactly what this is will mean in real terms. The big benefit that satellite TV consumers are supposed to get from this legislation is local signals, and their ability to get local signals depends on their satellite TV company's ability to close a deal with the networks, which have strong bargaining power and palpable disincentives to deal dispassionately. So what does this new provision do? It deletes the substantive provision that would have provided a statutory guarantee of fair dealing, adds a complaint process front-loaded to benefit the party that has the stronger bargaining position and the incentive to deal unfairly, deprives the party that's in the weaker bargaining position from raising unfair treatment as a defense, and imposes huge penalties on the party with the weaker bargaining position if it fails to enter into an agreement before the six-month deadline expires.

In practical terms, this presents any underdog satellite TV companies that don't already have retransmission consent agreements with a set of Hobson's Choices when it comes to offering local stations. They can, of course, simply not begin carrying local stations unless and until they have the required retransmission consents. That's the safest thing to do. But if they don't start carrying local signals right away, they certainly won't be offering their customers the ''local stations by Christmas'' promised by those who back this legislation. In addition, they'll not only be perpetuating the competitive disadvantage they already face when it comes to competing with cable TV; they'll be incurring a completely new competitive disadvantage when it comes to competing with other satellite TV companies that already have agreements. If, on the other hand, a satellite TV company begins offering local signals before obtaining the necessary agreements, it entails the risk that if the six month negotiation period runs out without mutually-acceptable terms having been reached, the satellite TV company will have to either drop the local signals or agree to whatever terms the network wants.

Pretty clearly, the effect of this new provision is pro-broadcaster, not pro-consumer or pro-competitive. But it's not the only new provision that protects special interests at the expense of the public's interest. This legislation also protects local network TV stations from any action by the FCC to change an outdated 50-year old law whose effect is to prevent many satellite TV subscribers from receiving additional distant network stations.

The legislation's new program blackout provisions are another Congressional valentine to special interests.

These provisions could result in blackouts of scheduled network programming, non-network programming, and especially sports programming, on the distant stations satellite TV consumers get. This will make the broadcasters and TV program producers happy, at the expense of making millions of satellite TV consumers unhappy when uninterrupted reception of distant station programming becomes a thing of the past. The sports programming that so many satellite TV consumers enjoy is at the greatest risk. In a special favor to the NFL and the other professional sports leagues, the legislation will require satellite TV carriers to black out sports programming on distant network stations unless the FCC finds it's ''economically prohibitive'' for the satellite TV company to do so—a standard that virtually guarantees blackouts. And when these blackouts are imposed, no existing satellite TV subscriber—not even those who have their distant network signal service restored, or the big backyard dish owners who were the very first satellite TV subscribers—would be exempt, no matter how long they have received multiple distant stations without blackouts and without inflicting any detectable harm on any of the special interests at whose behest these new provisions were added.

Rather than prolonging this discussion further, let me sum up. Before you now is the latest example of how special interests can, and do, make Congress shape legislation to suit what they want, rather than what average Americans need and deserve.. At some point, the American people will get fed up, and the ability of special interests to exercise unwarranted influence like this will be constrained. Unfortunately, that's not going to happen today, and therefore I will close—but not without some promises that, I assure you, I intend to keep.

I will continue to do everything I can to make sure that satellite TV consumers are helped, and multichannel competition improves, after this legislation is enacted. I will convene the Commerce Committee early next year to examine how competition and consumers are being affected by this legislation. I will introduce and I will move new legislation to correct any problems we see.

I will also make sure that the FCC does all it can to help Congress serve the interests of satellite TV consumers and multichannel video competition. To begin this process I will send a letter tomorrow to FCC Chairman William Kennard, requesting that the Commission establish, as quickly as possible, the minimum requirements for bargaining in ''good faith'' for retransmission consent agreements, and submit recommendations to Congress, as quickly as possible, on further legislation that will redefine what constitutes a ''viewable'' local TV signal. This will remove the problem that keeps satellite TV subscribers from getting as many distant TV stations from their satellite TV companies as they otherwise could.

All these measures will enable us to cure the problems these particular special-interest provisions will cause. In the meantime, it's helpful to recall that in the final analysis they won't affect our everyday lives as profoundly as other special interests do when it comes to other legislation. The provisions before us today won't determine how much we must pay in taxes, how we are permitted to educate our children, how we obtain health care, or how our seniors will be protected. But in spite of that, they will serve to remind us—when we watch satellite TV or open our monthly cable TV bills—that, when it comes to legislation pending before Congress, no corporate issue is too small, and no consumer issue is too big, to avoid the pervasive grasp of entrenched special interests.

Mr. President, I cannot support this budget deal.

I wonder, Mr. President, when will we begin to listen to the American people? When will we take heed of the absolute cynicism about the ways of Washington? When will we reform the way we do business so that we might reclaim the faith and confidence of the people we are sworn to serve?

Sadly, we seem never to learn. The last-minute, end-of-year budget agreement has become a yearly ritual and a tired cliche.

Mr. President, we have all year to complete our business in a responsible manner like grownups. But every day, at great expense to the taxpayers, we whirl about in our self-importance, never to be diverted from playing at our pathetic partisan political games.

After all the hearings, paper-shuffling, and speech-making, the taxpayers' hard-earned money is spent according to the whims of a massive, hastily compiled budget deal that contains lots of goodies for Members of Congress and special interests, but very little for the American people—an annual monument to our arrogance that is chock full of pork-barrel spending, special-interest riders, and clever budget gimmicks, but not one morsel of family tax relief.

Mr. President, in just a few short weeks, we will usher in a new century and a new millennium. This is a time of renewal and reform. Just as individual Americans take stock of themselves and resolve to do and be better, perhaps we elected officials might resolve to set a better example in the way we conduct the people's business. Perhaps in the year 2000, we might address ourselves not to partisan gridlock and political games, but to restoring the people's faith in their elected leaders. Perhaps next year we can spare the American people the grim faces and high drama of the last-minute budget summit, and simply do our work responsibly, in the open, and on time.

Maybe then we can restore the confidence in our public institutions that is so badly flagging, but is so essential to making the new century worthy of the highest dreams and aspirations of the people we are privileged to serve.

Mr. LUGAR. Mr. President, I will vote for this final appropriations package, because I believe that, on balance, it is a good product. However, the situation we are in today is hauntingly familiar to that of a year ago, and my disappointment in the appropriations process continues. Last minute budgeting makes sound decisions increasingly difficult. We should reform the appropriations process to safeguard the interests of taxpayers and achieve a more balanced use of our time and resources.

We all know that the appropriations process has grown to an inordinate length. We spend months holding hearings and negotiations, crafting sound public policy, only to scrap it in a hasty year-end scramble when we cobble together a bill negotiated by the White House budget chiefs and a few members of Congress. A 1996 CRS study revealed that budget matters eat up 73% of the Senate's time. I can't imagine we spent much less time on budget matters this year.

As I have been recommending since 1993, along with our distinguished Budget Committee Chairman and many other Senators, Congress should adopt a two-year budget cycle, and do the budgeting in non-election years. This would double the time available for non-budget policy issues and for carrying out often neglected oversight duties. Our goal must be to engage in lawmaking in the deliberative manner the Founders intended.

Mr. LEVIN. Mr. President, once again the Senate is considering a massive appropriations bill in the final hours of a session of Congress. This one spends more than $385 billion, contains legislation which rightly belongs in five separate appropriations bills, and other important legislation which doesn't belong in an appropriations bill at all. This is a process which reflects poorly on the Congress both because it represents a failure to get the nation's work done on time, and because the final rush precludes the kind of careful consideration and debate which wise decisionmaking demands. The combination of its enormous size and the swiftness with which it was thrown together makes certain that Senators will only after the fact learn full details about many provisions which have been added.

Democrats have won critical victories in this bill providing funds for new teachers to reduce class size in our schools, a first installment toward 50,000 new police officers by 2005, the necessary funding to implement the Wye River peace agreement and more than $514 million for the Lands Legacy Initiative to preserve and safeguard our most precious public lands, as well as funds for after-school programs to benefit 675,000 students. Other needed legislation is included to reverse some

of the unintended consequences of the 1997 Balanced Budget Act on hospitals, nursing homes and other health care facilities and legislation to benefit consumers by increasing competition between cable and satellite companies and permitting satellite companies to provide local network signals in local markets. However, like last year, even as I acknowledge some important budget victories, I do not support this process and, on balance, cannot vote for this bill.

Mr. FEINGOLD. Mr. President, as some of my colleagues know, I have been posted, here on the Senate floor, day after day this week because of my concerns about the dairy provisions that are included in the budget package, and I know other Senators support those provisions because of the States they represent. For now, I just want to comment more broadly on the budget package and how we got here.

Mr. President, we have before us a measure that we are told will direct something like $400 billion in spending in such areas as the Justice Department including the FBI, Education including funding for local school districts, increased security for our foreign embassies, the Interior Department including our national parks system, Health and Human Services including critical funding for aging programs like the congregate and home delivered meals programs, and much more.

But, Mr. President, you would not know that by reading this bill. That roughly $400 billion in spending is distributed in a few pages of text. With the exception of District of Columbia funding, it's all on one page—the last page.

I have not been here as long as some of my colleagues, but I cannot recall ever seeing anything like this. Last year's omnibus appropriations bill was bad enough. It, too, lumped several appropriations bills together into one giant omnibus appropriations measure. It, too, was loaded with special interest measures that were slipped in, never having been debated, and unlikely to pass on their own. But at least, Mr. President, the spending done in that bill was explicitly a part of the document formally placed before the Senate. If you took the time to read the several thousand page appropriations bill, you would have found those items last year.

Mr. President, the bill before us is another matter entirely. It legislates by reference. Other than the DC Appropriations bill, there are no details provided in this document that indicate how those hundreds of billions of dollars are to be spent, only references to other bills.

Mr. President, when this bill goes to the President for his approval, what will he be signing into law? Essentially, he will be signing into law little more than a glorified table of contents.

Mr. President, this is a horrible precedent. This kind of gimmick may have been used before, but never on anything so momentous as an omnibus appropriations bill. And it is perhaps fitting that this piece of legislation should be structured the way it is.

This bill is the ''poster child'' of the 106th Congress. Unable to meet the budget deadline, we are once again presented with an omnibus appropriations bill, laden with the kind of special interest provisions that undermine our budget as well as the confidence of the public. And unwilling to bring any but a handful of authorizing bills to the floor for open debate, the leadership has now crammed this perverse bill full of legislation that has no business in an appropriations measure.

Mr. President, earlier this year this body voted to restore some order to the appropriations process by re-establishing the point of order against legislating on appropriations. This bill renders that exercise utterly meaningless. Worse, it means that while the Senate is precluded from adding authorizing language after thorough debate on the floor, a few people in a backroom are free to add anything they wish, with no debate and out of public view.

Mr. President, the 106th Congress is not yet half over a but it has already earned itself a sorry reputation. This is the Congress of Convenience. The 106th Congress found it inconvenient to finish the simple job of passing appropriations bills before the end of the fiscal year, so it cuts a few backroom deals and lumps five appropriations bills together. The 106th Congress found it inconvenient to debate authorizing bills fully and openly, so it bundled several together and shoved them into this omnibus appropriations bill. And now, the 106th Congress finds it inconvenient to provide even the details of this $400 billion compost heap, so it engages in some drafting gymnastics, and gives the public little more than a glorified table of contents.

Mr. President, I realize there are some strong feelings about the provisions of this bill. I know that some of my colleagues support some of the provisions in this measure. Chances are there are provisions in this measure that I, too, would support, but how would I know? But I hope that a few weeks from now, after this thing is enacted, my colleagues will consider just what has been wrought this week and this past year. The normal procedures of the Senate and the other body have been run over by a steamroller in the name of political expediency and convenience, and that cannot be good, even for those who may have gained a temporary victory.

In the play A Man for All Seasons, there is an exchange between Sir Thomas More and his son-in-law, Roper. More asks Roper—''What would you do? Cut a great road through the law to get after the devil?'' Roper responds—''I'd cut down every law in England to do that!'' More then replies—''Oh? And when the last law was down, and the devil turned round on you—where would you hide, Roper, the laws all being flat? * * * This country's planted thick with laws from coast to coast—man's laws, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could just stand upright in the winds that would blow then?''

Mr. President, the 106th Congress has done more than its share of flattening our rules and procedures. Those of us in the minority on the issue before us today perhaps feel it most keenly, but let me suggest that many more may come to regret the precedents set by the Congress of Convenience.

Mr. KOHL. Mr. President, before I begin my remarks, I want to express my appreciation for all of the hard work that Senators STEVENS and BYRD, SPECTER and HARKIN have put into the Labor, Health and Human Services, Education Appropriations bill in the face of enormous budgetary challenges. I also appreciate all they have done to accomodate my priorities during this process.

The 20th Century is coming to a close during a time of unprecedented economic growth and budget surpluses. However, as we celebrate our nation's prosperity, we must make sure we don't leave any of our most vulnerable citizens behind. In my opinion, that's what this bill, which funds vital health and education programs in the year 2000, should be about: making a strong commitment to our aging parents and grandparents—who made this country what it is today, as well as to our children—who will determine its future.

I am pleased that this bill takes several important steps in that direction. First, this bill continues to make early childhood education and child care a top priority. I am very pleased that the bill includes a $608 million increase to the Head Start program. This program gives young children from lower-income families a real chance to succeed by providing educational, health, and other child care services.

Second, I am glad to see that this bill includes a nearly $30 million increase for States to inspect nursing homes and ensure they are safe. As a member of the Senate Aging Committee, I have had the unfortunate opportunity to hear firsthand about cases of abuse and neglect in many of our nation's nursing homes. Our seniors and disabled deserve the best possible care, and this funding will help make sure they get it. In addition, the bill includes a $1 million increase for the Long-term Care Ombudsman program. Ombudsmen serve as advocates for long-term care residents and help them to resolve complaints of neglect and abuse. They are a critical component of ensuring the safety of our seniors in nursing homes and other long-term care settings.

I am also extremely pleased that the bill includes another $100 million increase for Community Health Centers. The number of uninsured in our country continues to grow. Health centers

provide treatment to large numbers of uninsured and should be commended for the incredible work they do. This increase will help them meet the increased demand for care, and ensure that patients get the quality health care services they need.

This bill also fully funds the LIHEAP program. This program is vital to low-income families in Wisconsin who need assistance with heating costs during the cold winter months. I am pleased that this bill continues to make this program a top priority.

I am also pleased that in addition to the $2 billion increase for the National Institutes of Health, report language was included in the bill that targets many of the diseases that are devastating families across our nation. The bill includes report language I requested to increase research into epilepsy, particularly intractable epilepsy, which primarily starts in childhood and affects nearly 75,000 of the 3 million individuals with epilepsy.

In addition, at my urging, the bill also includes $90 million for the National Institute of Nursing Research within NIH. Nursing research is different from biomedical research but just as necessary. This research focuses on reducing the burden and suffering of illness, improving the quality of life by preventing and delaying the onset of disease, and by looking for better ways to promote health and prevent disease.

I am pleased that the bill also includes report language that strongly urges more research into Alzheimer's Disease. This devastating disease affects nearly 4 million people in the United States, including 100,000 in Wisconsin. The total annual cost of Alzheimer care is over $100 billion. Searching for new treatments—and ultimately a cure—must be one of our top priorities in biomedical research, to alleviate both the suffering and the costs associated with this awful disease.

I also want to thank Senators SPECTER and HARKIN for their willingness to work with me on some of my other priorities. At my request, language was included in the Senate report to start a demonstration program within HRSA to increase the number of mental health professionals in underserved areas—particularly those suffering from recent farm crises. I am hopeful that HRSA will allocate at least $1 million toward this initiative.

Funds have also been provided to CDC to expand their efforts to prevent birth defects through the promotion of folic acid among women of childbearing age. I have sponsored, along with Senators ABRAHAM and BOND, a bill that would authorize $20 million to CDC for this purpose, and I am pleased that this appropriations bill gets this initiative underway. In addition, I am pleased that the Ryan White Comprehensive Care program received an increase of $86 million to expand services for people living with HIV and AIDS.

I'd now like to talk a bit about funding for education. While I am concerned about the use of advance funding for many of our education programs, I am pleased that this bill provides necessary increases for education. Title I—which provides assistance to disadvantaged youth, received a $209 million increase, although we must do much better than that in the future in order to serve all Title I-eligible children. I am also pleased that Special Education received a large increase in funding, although we still have a great deal of work to do to live up to our commitment to fund 40% of the costs of the program. We still need to do more in both these areas, but this is a good start.

In addition, I strongly support the $253 million increase for 21st Century Community Learning Centers, for a total of $453 million for FY 2000. I have visited several of these afterschool programs in my State and I have seen firsthand how successful and critically important they are. These programs give kids a safe place to go after school, keep them off the streets, and out of trouble. It is supported on a bipartisan basis, by parents, teachers, and police chiefs. Last year, thousands of applications were submitted for only 184 grants. However, I believe it deserves an even stronger investment than this bill provides, which is why I voted for an amendment during consideration of the Senate version to provide $600 million for this worthy program. Although that amendment failed, I will continue to fight for more funding for after-school programs next year.

This bill also makes greater strides to give students the tools they need to go to college. First, the bill increases the maximum Pell Grant award to $3,300, and I am hopeful we can further increase this amount next year. It also increases the Federal Work-Study program by $64 million. TRIO programs also received a $45 million increase, and I am pleased that more students will be able to take advantage of TRIO programs that give lower-income students a better chance to go to college. I also strongly support the $80 million increase for the GEAR-UP program. This program gives many middle school students their first real opportunity to strive toward going to college. I am hopeful that we will further increase funding for this program in future years.

Finally, I am pleased that the conference report maintains and increases our commitment to hiring 100,000 teachers and reducing class sizes in the early grades. Class size reduction efforts have produced tremendous results in Wisconsin and across the nation. It is essential that we continue to provide the resources States and school districts need to put a qualified teacher in every classroom. Our students deserve nothing less.

I am pleased that these important education programs have received increases. However, I also have several significant concerns about the education section of the bill.

First, I am deeply concerned that the bill level funds the Child Care & Development Block Grant. The Senate bill included an amendment, which I supported, to increase funding for the CCDBG from $1.2 billion to $2 billion. This amendment had strong bipartisan support because there is now widespread recognition that child care is critical to the success of working families. Unfortunately, this amendment was dropped during negotiations of the conference report. This is a serious mistake, and one that will have serious repercussions for working families. Programs funded by the CCDBG ensure that parents have a safe, educational place to send their children during the workday. Businesses experience less absenteeism and greater productivity when their employees know their children are well taken care of. When families who need quality, affordable child care are able to find it, everybody wins. It's that simple. I strongly believe that we must renew our commitment to expanding access to child care, and I will continue to make child care funding a top priority and fight hard for future increases.

Second, and even more importantly, I have serious concerns about the bill's substantial use of advance funding for education. I am not convinced that this practice is completely benign, and I believe we must watch carefully how the delayed release of education funds impacts school budgets.

However, I have an even deeper concern about the use of advance funding. The hard truth is this: we would not be forced to use advance funding, nor any budget gimmicks at all, if this bill received the priority it deserved. This bill, which funds our most basic needs—health care and education—was left for dead last. It was raided repeatedly to fund other programs, leaving it at one point with a more than $15 billion shortfall. We would not be in the budgetary box we find ourselves in today if this bill had been the top priority it should be. I hope that in the future my colleagues on the other side of the aisle will have the will to pass this bill early and send a strong message that education and health care are our top priorities, not our last.

Besides education, there are several other areas of the bill that I believe must be improved in future budgets. First, while I am pleased that the bill sets aside $19.1 million in the Child Care & Development Block Grant for Resource and Referral programs, I am concerned this just isn't enough. R&R programs serve as a resource to help parents locate quality, affordable child care in their communities. When parents need child care, they call R&R agencies, who have the tools to direct parents to appropriate child care providers in their area that meet each family's unique needs. With growing numbers of parents entering the workforce, the need for R&R is greater than ever. I would like to continue to work with Senators SPECTER and HARKIN, as

well as all of my colleagues, on increasing this set-aside to $50 million to meet the increasing demand for referral services.

I am also very concerned about the cut in the Social Services Block Grant. The State of Wisconsin and our counties rely on SSBG to fund a variety of social service programs. These include supportive home care and community living services for the elderly and disabled, drug and alcohol abuse treatment, temporary shelter for homeless families, and child abuse prevention and intervention services. States and counties rely on these funds, and it is wrong to renege on our commitment to SSBG funding.

I am also very concerned about programs for senior citizens under the Older Americans Act. I am pleased to see that the bill includes a $35 million increase for home-delivered meals to seniors. However, we must also find a way to make a stronger investment in the Supportive Services and Senior Centers program. This program provides funds to Area Agencies on Aging, which in turn provide a wide range of assistance to frail elderly. In addition, we must also provide assistance to the growing number of Americans who are taking care of elderly and disabled relatives. I am a cosponsor of the Family Caregiver Support Act, which provides $125 million in assistance and respite for caregivers. Unfortunately, this bill does not fund this necessary program, but I hope we can enact it into law quickly next year.

The National Senior Service Corps is a program we should all be proud of and support increased funding. These programs utilize the skills and experience of older Americans in our communities. Foster Grandparents, Senior Companions, and RSVP give seniors a chance to work with children, families and other seniors, and we are all the richer for their contributions. I am pleased that the bill includes increases for these programs, and I believe we must provide more in the future lest we waste this priceless resource we have in our seniors.

In addition to the Labor, HHS component, this Omnibus Appropriations bill includes some desperately needed relief for our nation's health care providers. The Balanced Budget Act of 1997 included many provisions that reduced Medicare payments further than Congress intended. Providers have been forced to reduce benefits or worse—many providers in my State and across the nation have closed altogether. I have strongly supported efforts to alleviate those cuts and have worked with many of my colleagues over the past year to fight for a solution. I am pleased that the Conference Report includes provisions to assist hospitals, home health agencies, skilled nursing facilities and other providers. In the end, Medicare beneficiaries are the ones who truly benefit, and this bill will help ensure that seniors in Wisconsin and throughout the nation continue to receive the health care services they need and deserve.

Overall, I believe this is a good bill, and I commend the Chairmen and Ranking Members of the Appropriations Committee and the Labor, HHS Subcommittee, as well as the Finance Committee, for their hard work. Unfortunately, because unrelated dairy provisions that I strongly oppose were included in this conference report, I reluctantly must vote against it. However, I want to make clear that I strongly support the vast majority of the increases in this bill—increases that will go a long way toward ensuring that our children and our elderly receive the important services they need. I want to thank the Chairman and Ranking Member of the Subcommittee for doing such a great job this year under such difficult budgetary circumstances, and for their willingness to work with me on items of concern to me and my State. I look forward to working with them again next year on this vitally important bill.

Mr. ROTH. Mr. President, I intend to support the consolidated appropriations package. This large legislative package—the result of hard work by many on both sides of the aisle—provides funding for a number of programs which are important and affect people in a direct way. This bill includes funding for programs under the D.C. Appropriations bill, the Interior Appropriations bill, the Foreign Operations Appropriations Bill, the Commerce-Justice-State Appropriations bill, and the Labor-Health and Human Services-Education Appropriations bill.

In addition, incorporated in the legislation are other important measures, including the Satellite Competition and Consumer Protection Act, provisions important for dairy farmers in my State, the State Department Authorization bill, and our Medicare refinement plan. As with any product this large and with as many compromises which were necessary to move the process forward, there will be provisions with which one will disagree.

While this is certainly a substantial legislative undertaking, I would point out that nearly all of the matters contained in this package have previously been debated in full by the Senate and passed by wide margins.

Mr. President, I would like to highlight some provisions contained in this legislation for which I have advocated. This legislation will continue the Trade Adjustment Assistance program.

Earlier this month, my distinguished colleague on the Finance Committee, Senator MOYNIHAN, and I, stressed the importance of this program for our American workers during the debate on the Africa Trade bill. The Africa Trade bill passed by the Senate extended the authority for the TAA program which lapsed in June of this year. As time did not permit us to resolve our differences with the House on the trade package, we needed to insure that the benefits to workers displaced from their jobs as a result of trade activity be continued. I am very pleased that this provision is included in this package.

The package also includes the Satellite Copyright, Competition, and Consumer Protection Act. My State has over 30,000 households which depend on satellite dishes for their television programming and I have long advocated a modernization of the laws affecting satellite television programming. I am also pleased that an agreement was reached to have the Senate consider legislation which will facilitate satellite local to local service in small and rural markets, as this will be important to bring local programming to my constituents.

I have joined with my colleague from Delaware, JOE BIDEN, in sponsoring legislation to continue the important programs he has championed—the COPS program and the Violence Against Women Act. This measure provides funding for these programs. Also contained in the package is funding for the State Side program under the Land and Water Conservation Fund. I had joined with our late colleague, Senator Chafee, in sponsoring legislation to provide these funds for the first time in several years to promote open space and recreation opportunities at the discretion of our State governments.

The package maintains the commitment we made with the passage of the Balanced Budget Act in 1997 to prioritize education. Since the passage of the 1997 bill, we have followed through with substantial increases in funding for our important education programs and have done so in a manner which promotes flexibility.

Finally, Mr. President, I would like to discuss the Finance Committee's Medicare, Medicaid, & SCHIP Refinement Act of 1999, H.R. 3426.

A little more than two years ago Congress passed and the President signed into law the historic Balanced Budget Act of 1997. This important legislation has been instrumental in making possible the budget surpluses we are beginning to see materialize.

However, not all of the consequences of the Balanced Budget Act have been positive, and many of them were unintended. Two years of implementation allowed us to identify some areas, particularly related to Medicare provider reimbursement, that needed to be revisited.

The Finance Committee carefully monitored the impact of the Balanced Budget Act on various categories of health care providers. In fact, this year the Committee held a number of hearings on Medicare and Medicaid matters.

Throughout the course of these hearings, providers presented us with compelling testimony about significant fiscal and patient care-related problems that have resulted, unintentionally, from decisions the Congress made in the Balanced Budget Act of 1997.

Mr. President, let me be clear that we should be proud of the program improvements and the corresponding savings achieved through the Balanced Budget Act. We had no intention of fundamentally undoing that work.

However, there were problems that needed to be addressed to make sure we pay providers appropriately to meet the real health care needs of Medicare beneficiaries. At passage, the 1997 BBA reduced Medicare and Medicaid spending by nearly $120 billion. This package restores $27 billion over 10 years to address unintended consequences of the original law.

New provisions in this bill restore some $17 billion in funding over 10 years. Accordingly, in October, the Committee marked up and overwhelmingly passed a package of payment adjustments to fine tune the policies enacted through the Balanced Budget Act. This package was developed in a bipartisan manner with the close cooperation of Senator MOYNIHAN and his staff.

For the past several days, we have been working to reconcile this Finance Committee package with a similar bill passed by the House of Representatives last Friday.

The bill before us today represents an excellent compromise between the House and Senate bills, with input from the Administration.

The payment adjustments included in the House-Senate compromise package will benefit Medicare beneficiaries by improving payment to all sectors of the health care market place—including hospitals, physicians' offices, nursing facilities, community health centers, and home health care agencies, among many others. In addition, the package includes other technical adjustments to Medicaid and the State Children's Health Insurance Program.

The provisions included in the package are consistent with a few basic goals I have tried to work toward from the beginning of this process. First, I felt that the overriding purpose of this package should be to address the most significant problems resulting from BBA policies.

In my view, larger Medicare reform continues to be an important objective. However, even the White House ultimately agreed this was neither the moment nor the legislative vehicle by which to pursue that goal.

The Senate Finance Committee will continue in its efforts to develop a bipartisan consensus on broader Medicare reform when we resume our work in January. That will be the time and place to consider lasting and far-reaching Medicare reforms.

Second, we sought to keep payment adjustments focused on areas in which we face demonstrated problems resulting from the Balanced Budget Act. Furthermore, we tired to make short-term adjustments in payment practices without revisiting the underlying policies set forth in the BBA.

Finally, it was particularly important to me not to let this become a partisan process. These are not partisan issues and I have tried to resist any effort to make them so. I am hopeful that this compromise can be supported by all Senators.

The provisions included in the package reflect the priorities of Senators on and off the Finance Committee. In addition, like all of you I have consulted extensively with my own constituents in Delaware, as well as with national health care and beneficiary organizations. They are strongly supportive.

Mr. President, the provisions included in this conference agreement make some significant contributions to protecting the care provided to seniors in nursing homes. We provide increased funding for medically complex patients and for rehabilitation services in nursing, homes, and we help these facilities' transition to the new payment systems required under the Balanced Budget Act. The Agreement also includes something I consider to be of vital importance to Medicare beneficiaries; we put a moratorium on the arbitrary annual dollar cap on the amount of rehabilitation therapy services a beneficiary could access. In addition, we mitigate the impact of scheduled reductions for home health agencies, increase funding and regional payment equity for teaching hospitals, and enhance programs for rural health care facilities.

The Conference Agreement also includes important protections for hospitals as the new outpatient prospective payment system goes into effect next year. I am especially pleased at the steps we have taken to stabilize the Medicare+Choice program, so that beneficiaries can count on Medicare health plan choices in the future.

Mr. President, today we have an opportunity to solve the problems that have been interfering with the ability of the provider community to make sure our constituents receive the high quality health care they deserve, without retreating from the important policy reforms enacted in the Balanced Budget Act. I ask all of you to join me in supporting this important legislation.

Mr. GRAHAM. Mr. President, today, the Senate is considering a multi-billion package focused on adjusting certain Medicare provisions in the Balanced Budget Act of 1997.

That historic legislation made changes in payment structures for programs and providers within Medicare and Medicaid.

Many in the Medicare provider community are concerned that these changes have negatively affected their ability to provide adequate access and quality care to their patients.

Mr. President, I commend the Administration and my colleagues for completing the difficult task of designing a bill that addresses many of these concerns.

I have heard from hospitals, physicians, community health centers and a variety of other Medicare providers, all of whom are very concerned that the quality of care provided to Medicare beneficiaries may decline significantly if cuts to provider payments are not softened.

There are many provisions in this bill that I would like to see enacted. These include a moratorium on the $1500 therapy cap, support for the skilled nursing facilities, cancer centers and disproportionate share hospitals, and enhancements to Medicaid and the Children's Health Insurance Program.

But while there is some clear evidence that Congress may have erred in designing some of the Medicare provisions in the Balanced Budget Act, that fact does not relieve us of our fiduciary responsibilities to the American public.

Our commitment to revisiting Medicare provider adjustments must be accompanied by a commitment to pay for these actions.

By refusing to pay for this bill, we are funding changes to a balanced budget agreement in a way that steals from future generations.

This is an irony we cannot afford.

Mr. President, allow me to explain.

To date, we have spent all of our anticipated revenue for Fiscal Year 2000. Any further government spending comes straight from the Social Security surplus.

It is easy to spend money when it is not your own.

Didn't we prove that during the last thirty years of ''borrow and spend'' budgeting—a period in which our national debt rose from $366 million in 1969 to $5.6 billion today?

Let's not start down that slope again.

Mr. President, I clearly remember the day we passed the Balanced Budget Act in 1997. We all congratulated each other on a job well done.

We slapped each other on the back and took full and deserved credit for balancing the budget for the first time in a generation.

Now we are facing up to some of the realities of that great achievement.

Just as we took responsibility for our accomplishments in 1997, we must now take responsibility for fixing some of our mistakes.

If Congress believes that provider relief is necessary, then it must exercise fiscal responsibility and pay for it with true offsets—not surplus funds.

Congress has clearly stated that ensuring retirement security for the American public is its top priority.

Democrats and Republicans have made clear that saving Social Security and Medicare must be the first items of business on any legislative agenda.

But future generations are depending on our deeds—not our words.

Mr. President, we must hold true to our commitment to ensure Social Security's solvency until 2075 and to strengthen and modernize Medicare before we look to the surplus for any other purpose.

During his State of the Union Address, President Clinton made a commitment to bolster Social Security and

Medicare. Congress has joined him in that commitment.

A test of our commitment to protecting Social Security surplus is being played out on the Senate floor today.

Since the beginning of this debate I have offered proposals to restore payments to providers without stealing from Social Security and Medicare.

When the Finance Committee marked up its bill, I offered an amendment that would have fully offset the cost of this package through a series of modest, non-Medicare-related revenue increases.

It was my hope that the Committee would have shown the same enthusiasm for fiscal responsibility as it did two years ago.

However, it thwarted our commitment to save Social Security and Medicare by a vote of 14 to 6.

I also offered an amendment that would have put a down payment on true Medicare reform, while saving the Medicare system $4 billion over 10 years—nearly one third of the overall cost of the bill.

This focused on five proven and tested proposals, including a competitive bidding for part B services provision that was passed unanimously by the Finance Committee in 1997.

By fulfilling our obligation to help the Medicare system provide quality care while promoting cost efficiency, this amendment embraced the same principles that helped us achieve a balanced budget in 1997.

But our dedication to these principles now appears to have vanished.

The audacity of paying for this bill with the Social Security surplus is exacerbated by the fact that it includes provisions that actually do away with cost saving programs enacted in the Balanced Budget Act of 1997

Allow me to direct your attention to two of the less heralded provisions in this package.

First, the postponement of the enactment of the ''inherent reasonableness'' provision in the Balanced Budget Act of 1997 until final regulations are published. This provision prevents beneficiaries from realizing millions of dollars in savings by blocking the government's ability to negotiate rates with home oxygen and durable medical equipment suppliers.

By reimbursing providers on a market basis, the competitive bidding process will save the system money by setting a true price for medical goods and services, while ensuring that beneficiaries continue to receive comprehensive coverage.

By putting off the implementation of this provision, potentially for years, we are essentially taking $500 million of potential savings out of the pockets of Medicare beneficiaries.

Second, is the inclusion of the following language in the conference report concerning the risk adjuster for Medicare+Choice plans:

''The parties to the agreement note that in 1997, when Congress required the Secretary to develop a risk adjuster for Medicare+Choice plans, it was concerned that those plans that treated the most severely ill enrollees were not adequately paid. The Congress envisioned a risk adjuster that would be more clinically based than the old method of adjusting payments. The Congress did not instruct HCFA to implement the provision in a manner that would reduce aggregate Medicare+Choice payments. In addition, the Congressional Budget Office did not estimate that the provision would reduce aggregate Medicare+Choice payments. Consequently, the parties to the agreement urge the Secretary to revise the regulations implementing the risk adjuster so as to provide for more accurate payments, without reducing overall Medicare+Choice payments.''

Mr. President, the Health Financing Administration (HCFA) currently estimates that risk adjustment will decrease plan payments by approximately $10 billion over ten years. This estimate is based on the additional money that plans are paid relative to fee-for-service Medicare after adjusting for health status. Plans that serve a higher proportion of sicker beneficiaries would not see a decrease in payments. Plans that skim the healthiest patients from the Medicare population would see the biggest decrease in payments.

Since first learning that HCFA was planning to decrease plan payments under risk adjustment, lobbyists for the managed care industry have been claiming that congressional intent was for risk adjustment to be budget neutral, and they have been lobbying this issue on the Hill. They tried to get it into the Senate Finance Committee report but were unsuccessful. The language was included in the House Ways and Means committee report, however. The House-Senate agreement language comes straight from the House report.

It's telling that the statute does not explicitly state that risk adjustment should be budget neutral. In addition, it's telling that lobbyists for the managed care industry have not publicly stated that congressional intent was to make risk adjustment budget neutral.

In terms of what congressional intent actually was in BBA 97—I think the story is not entirely clear. It could be that no one thought much about the issue. But regardless of whether you are sympathetic to managed care plans or not, it is disingenuous to claim definitively that congressional intent was not to reduce plan payments in BBA.

This is an outrage Mr. President.

I believe that we should correct mistakes that were made in the BBA and pay for those mistakes. Equally, it is my feeling that we should seize the opportunity to make fundamental reforms to the Medicare program in order to modernize and improve services for Medicare beneficiaries.

In passing this legislation, we are trading fiscal responsibility for fiscal recklessness. We are ignoring innovation in favor of the status quo.

Mr. President, I am committed to working to find a solution to the difficult problem of bringing Medicare into the 21st Century and keeping it solvent.

It was my hope that we would have the opportunity to vote today on a package that represented good public policy and included an offset that upheld our commitment to fiscal responsibility.

I regret that this is not the case.

But most of all, I regret the overt lack of concern that this body has shown for the future generations whose Medicare and Social Security benefits hang in the balance.

Thank you, Mr. President.

Mr. BIDEN. Mr. President, I am pleased that the Conference Report before the Senate contains the State Department authorization bill.

With enactment of this legislation, we will finally—after three years of effort—approve critical legislation to authorize the payment of nearly $1 billion in back dues to the United Nations. Enactment of this legislation will serve, I believe, three important purposes. It should finally end the long-festering feud between the U.N. and Washington about our unpaid back dues; it should bring much-needed reforms to the world body so that it can more effectively perform its missions; and it should, I hope, end the debate about the utility of the U.N., and restore bipartisan support in Congress for the U.N. system.

The agreement before us will allow us to pay $926 million in arrears to the United Nations contingent upon the U.N. achieving specific reform conditions, or ''benchmarks,'' to borrow the Chairman's expression.

The first set of these conditions can be readily certified—thereby releasing $100 million immediately. The second and third set of conditions will be difficult to achieve. But I have great confidence in our ambassador to the United Nations, Richard Holbrooke. And I believe that with the money on the table—that is, with the assurance that the U.S. payment will be available—the reforms will be easier to obtain then they might otherwise be.

The State Department authorization bill contains several other important provisions which I would like to highlight briefly.

First, the bill authorizes $4.5 billion in funding over the next five years for construction of secure embassies overseas. The tragic embassy bombings in East Africa in August 1998 underscored the current vulnerability of our embassies to terrorist attack. Simply stated, the large majority of our embassies around the world do not meet current security standards. Thousands of U.S. government employees—both Americans and foreign nationals—are at risk, and we must do all that we can to protect them. In addition to authorizing funding, this bill codifies many important security standards, including the

requirement of that embassies be set back 100 feet from the street, and the requirement that all agencies be co-located in the embassy compound.

All this is important. But what is essential is that we provide the actual funding. So far, aside from last fall's emergency appropriations bill, funding for embassy security has fallen far short of need. The President requested $3 billion in advance appropriations in his budget request, which was rejected by the Appropriations Committees. We must give our attention to funding this priority matter next year.

Second, the bill provides for the establishment of a Bureau of Verification and Compliance in the Department of State to monitor arms control and non-proliferation agreements. In his plan for the integration of the Arms Control and Disarmament Agency into the State Department, the President proposed that the functions of verification and compliance be handled by a ''Special Adviser'' to the Undersecretary of State for Arms Control and International Security.

We think the Administration's proposal is ill-advised. Given the way the State Department operates—where key policy battles are waged among bureaus at the Assistant Secretary level—this ''adviser'' would be a weak bureaucratic actor, and the function of assuring compliance with arms control treaties and non-proliferation regimes would thereby be unacceptably diminished. Therefore, the conference report includes a provision which requires that this important duty be handled by an Assistant Secretary of State for Verification and Compliance.

Third, the bill reauthorizes Radio Free Asia (RFA) for another ten years. RFA, which was established in 1994 pursuant to legislation I introduced, broadcasts news and information to the People's Republic of China and other non-democratic states in East Asia. I am pleased that Congress has given its further stamp of approval to this important instrument of American foreign policy.

It is fitting that this bill is named for two devoted public servants who were deeply involved in the development of foreign policy legislation for the last two decades—James Nance and Meg Donovan.

Admiral James W. Nance, known to everyone as ''Bud'', served as staff director of the Committee on Foreign Relations for most of the 1990s, working with his long-time friend, the Chairman of the Committee, Senator HELMS. Admiral Nance was a steady hand in guiding the Committee staff for so many years, and was integral to the initial development of the ''Helms-Biden'' legislation in 1997.

Meg Donovan was long-time staffer for our House counterpart committee, serving under Chairman Dante Fascell. After Chairman Fascell retired, Meg worked closely with the Foreign Relations Committee on behalf of Secretary Christopher, and then Secretary Albright, as a senior deputy in the Bureau of Legislative Affairs. Meg's advice and counsel was important on dozens of occasions—not only to senior State Department officials but also to our committee.

Bud Nance and Meg Donovan were both deeply committed to a bipartisan foreign policy. They were both taken from us too soon. It is therefore in tribute to them that we have named this bill—which represents an important act of bipartisanship—in their honor.

THE NEED FOR SMALL BUSINESS SUPERFUND RELIEF

Mr. LOTT. Mr. President, as we end this session of the 106th Congress, it is appropriate to reflect on what we have accomplished and what remains to be done. In particular, Mr. President, I would like to focus on our efforts to enact Superfund reform.

As my colleagues know, I have fought for many Congresses to free our nation's recyclers from needless Superfund liability. I could not be more pleased to finally accomplish this goal by including the text of mine and Senator DASCHLE's bill, S. 1528, in this year's final appropriations package. I know many of you, on both sides of the aisle, join me in celebrating this long-awaited reform of an unfair system.

However, our work is not done, Mr. President. Like the recyclers, thousands of small businesses are needlessly dragged into the Superfund web each year. Although Superfund is intended to clean up the nation's hazardous waste sites, small businesses are being sued for simply throwing out their trash. Certainly we can all agree that potato peels and cardboard boxes are far from toxic waste.

Yet, another year has gone by without reform for small business. In that year, 165 small businesses in Quincy, Illinois were forced to pay over $3 million for legally sending trash to the local landfill. In that year, Administrator Browner again publicly stated her desire to get small businesses out of Superfund. In that year, reform efforts were again stymied by those who want to hold incremental reforms hostage to comprehensive fixes.

Mr. President, we had the opportunity this year to enact targeted Superfund reform for small businesses, but we did not do so. Senators and Congressmen on both sides of the aisle, as well as the EPA, agree that we should provide the relief so desperately needed by the small business community. For nearly a decade, inaction has left thousands of small business owners with no choice but to mortgage their businesses, their employees and their future to pay for damage they did not do. Small businesses struggle to survive under the threat of thousands of dollars in penalties and lawsuits—all for legally disposing of their garbage.

That's why, Mr. President, I will continue to work to free innocent small businesses from Superfund liability. I hope my colleagues on both sides of the aisle will join me in the continued fight for fair treatment of the small businesses that keep our nation's economy strong.

Mr. STEVENS. Mr. President, I have some comments on issues raised by the conference report to the Interior appropriations bill.

On the matter of contract support costs for Bureau of Indian Affairs and Indian Health Service programs operated by native organizations under the provisions of P.L. 93–638, I am pleased that we have been able to add $10 million to BIA funding and $25 million to IHS funding over fiscal year 1999 levels to support additional payments of contract support costs for these programs. This new funding will allow BIA and IHS to bring existing programs' contract support cost payments closer to the full amount of negotiated support and will allow a limited number of new and expanded programs in both agencies to go forward.

However, I am concerned that the tribes have been operating, in the distribution of contract support costs, under the assumption that contract support costs are an entitlement under the law. The House and Senate committees on appropriations have taken exception to that interpretation and have tried to persuade the IHS to change its allocation methodology and to set reasonable limits on the number and size of new and expanded contracts it executes consonant with resources made available by Congress for the payment of contract support costs. The Federal circuit's court of appeals in its October 27, 1999 decision in Babbitt v. Oglala Sioux Tribal Public Safety Department (1999 WL 974155 (Fed. Cir.)) has now affirmed that contract support costs are not an entitlement, but rather are subject to appropriations. Contract support cases raising similar legal issues are pending in the 10th circuit court of appeals and in various Federal district courts around the country. The Federal circuit's decision was correct both in its holding and in its reasoning and should serve as precedent for other pending cases. To assume that Congress would create a system in which tribes receive the majority of their contract support costs through funds appropriated to the Indian Health Service or Bureau of Indian Affairs and which requires tribes to seek the balance in court through the claims and judgment fund turns logic on its ear. ''Subject to appropriations'' means what it says.

The Indian Health Service has made improvements to its distribution methodology in fiscal year 1999 but continues to distribute funds at varying rates for different contracts, compacts and annual funding agreements. More disturbing, the current IHS system pays contractors with high overhead costs (relative to program costs) at the same percentage rate as it pays contractors with low overhead rates, rewarding inefficient operators and creating an incentive to maximize overhead costs.

The bill allows the funding in FY 2000 of a limited number of new and expanded contracts through the Indian Self Determination (ISD) Fund of $10 million. It is expected that, once the contract support cost total (paid at an average rate not to fall above or below the average rate of payment of contract support costs to existing contractors in FY 2000) for new and expanded programs has reached $10 million, IHS will not execute any further new or expanded contracts until Congress has provided funds specifically earmarked for that purpose. Existing IHS policy does not permit reduction of existing service providers' funding in order to fund new entrants into the system. This bill does not modify that policy. If funds remain in the ISD fund after all new entrants have been accommodated, those funds should be distributed equitably across existing programs, with particular emphasis on the most underfunded.

The Indian Health Service should include as part of its FY 2001 budget request a detailed cost estimate for new and expanded contracts so that Congress will be aware of anticipated need when it establishes a funding level for an ISD account in FY 2001. Congress and the courts have made it plain that IHS can no longer enter into new and expanded contracts without regard to the level of funding provided for that purpose by Congress. Congress will be aided in its efforts to establish a reasonable level of support for new and expanded contracts if the IHS provides accurate estimates of anticipated need as part of the budget process.

The authorizing committees in the Senate and House are encouraged, in consultation with the Indian Health Service, the Bureau of Indian Affairs and tribal organizations, to develop timely proposals to address the longer term issues surrounding contract support costs, including the apparent contradiction between the self-determination principles laid out in P.L. 93–638 and the legal requirement that contract support costs are ''subject to appropriations.''

Our committees encourage the transition of employees from Federal to tribal employment as part of self-determination contracts and self-governance compacts and strongly believe that the IHS should not provide disincentives for such transfers. We have noted that each year start-up costs from new and expanded contracts for the previous year are returned to the base for distribution to other contracts. These funds, currently estimated at $4.5 million, will be available in FY 2000. With my support, the House and Senate Committees on Appropriations will soon be sending a letter to the IHS requesting that it set aside a portion of base contract support funds associated with prior year start up costs for use as a transition fund for costs associated with employees who elect to transfer from Federal employment to tribal employment during the period after which contract support costs for individual contracts have been determined for that year. To the extent set aside funds are not needed for employee transition, they should be distributed equitably among existing contractors, with emphasis on the most underfunded contracts.

In the last fiscal year and the one we are funding now, we will have added a total of $60 million in new contract support cost funding to the IHS budget. We know that these funds are critical to the success of Indian-operated health programs and that shortfalls still remain. However, in the current environment of caps on discretionary spending, we must develop policies that support the self-determination principles embodied in P.L. 93–638 while taking into account the fiscal realities of limits on funding for these programs. I look forward to receiving recommendations from the authorizing committees, the IHS and BIA, and tribal organizations which will address these issues in time for the committees' consideration during the FY 2001 appropriations cycle.

The conference report also includes a provision to authorize the investment of Exxon Valdez oil spill—or EVOS—settlement funds outside of the Treasury. This section is the exact language of legislation, S. 711, reported by the Senate Energy and Natural Resources Committee earlier this year, and represents an accord struck among many interests. The details of this accord are discussed more fully in the committee report (Senate Rpt. 106–124) accompanying S. 711. These interests include Koniag, a native regional corporation with a great interests in seeing that their native lands are valued at the level they feel appropriate given their prominence in the oil spill zone.

The continuing availability of EVOS funds for habitat conservation raises another important issue I hope can be resolved in the coming months. It regards revenue sharing payments arising from oil spill area acquisitions. New additions to refuge lands, such as those from EVOS settlement land acquisitions, qualify adjacent communities to increased federal payments in lieu of taxes under the Revenue Sharing Act of 1935.

In 1995, the U.S. Fish and Wildlife Service agreed to purchase from Old Harbor, Akiok-Kaguyak and Koniag Native Corporations over 160,000 acres of land within the Kodiak National Wildlife Refuge. These lands were acquired using funds derived from the consent decree in settling the United States' and State of Alaska's civil claims against Exxon, Inc. for damages caused by the Exxon Valdez oil spill in 1989.

The Exxon Valdez Trustee Council, which was formed to implement the consent decree, adopted its restoration plan in 1994 with habitat protection as a key component of the plan to recover the damages caused by the oil spill. The trustee council subsequently solicited interest from land owners throughout the spill zone and ranked the habitat based on its restoration value for the species and services injured by the spill. The council, working through State and Federal land managing agencies, commissioned land appraisals and authorized negotiations with land owners.

Negotiated agreements with land owners, resulting in significant habitat acquisitions, exceeded the appraisals approved by Federal and State appraisers. The trustee council in its resolutions authorizing these acquisitions with settlement funds made several findings, I'm advised that these findings included the following:

''Biologists, scientists and other resource specialists agree that, in their best professional judgment, protection of habitat in the spill area to levels above and beyond that provided by existing laws and regulations will likely have a beneficial effect on recovery of injured resources and lost or diminished services provided by these resources.''

''There has been widespread public support for the acquisition of these lands, locally, within the spill zone and nationally.''

''It is ordinarily the Federal Government's practice to pay fair market value for the lands it acquires. However, due to the unique circumstances of this proposed acquisition, including the land's exceptional habitat for purposes of promoting recovery of natural resources injured by EVOS and the need to acquire it promptly to prevent degradation of the habitat, the trustee council believes it is appropriate in this case to pay more than fair market value for these particular parcels.''

''This offer is a reasonable price given the significant natural resource and service values protected; the scope and pervasiveness of the EVOS environmental disaster and the need for protection of ecosystems . . .''

The trustee council-commissioned appraisals—which were performed in accordance with Federal regulations—for the three large parcels acquired within Kodiak National Wildlife Refuge are estimates of fair market value. However, they varied substantially from the landowners' appraisals and what they believed to be their fair market value. The landowners rejected the initial offers made by the U.S. Fish and Wildlife Service to purchase the lands based on the trustee council's commissioned appraisals.

The estimates of fair market value based on the Federal appraisals are below the prices actually paid for the various parcels of land, and they do not consider the purchase price paid in these and other governmental acquisitions in Alaska. The trustee council, through its public process, difficult negotiations and subsequent findings determined that the price paid for the lands was a ''reasonable price'' for a variety of reasons including past Federal large scale acquisitions.

The acquisition in fee of these three large parcels within Kodiak NWR now requires the U.S. Fish and Wildlife Service to make payments in lieu of taxes to the Kodiak Island borough in accordance with the Revenue Sharing Act of 1935. The act directs the agency to make such payments based on the fair market value of acquired lands.

The service is currently using the federally approved appraisals estimating fair market value of these three large parcels as the basis for computing the revenue sharing payment to the borough. The borough has rightly challenged the service's determination of fair market value based on the unique circumstances of these acquisitions and the findings made by the trustee council in approving funds for these acquisitions.

A plain reading of the Revenue Sharing Act (which authorizes the Secretary of the Interior to make refuge revenue sharing payments) requires that the determinations of fair market value be made in a manner that ''the Secretary considers to be equitable and in the public interest.'' Clearly, the public interest associated with these unique acquisitions has been well documented in the findings of the trustee council.

The Revenue Sharing Act imposes no legal impediment for the Secretary to make a determination of fair market value that incorporates the unique circumstances of these acquisitions and the specific findings and actions taken by the trustee council. Thus, I urge the Secretary to review the Kodiak Island borough's appeal to the service's determinations for making revenue sharing payments and do what is fair and equitable as called for by the act.

These are unique circumstances that exist nowhere else in the United States and are limited in Alaska to lands acquired in the Exxon Valdez spill zone with settlement funds. Thus, there should be no consequences for how revenue sharing payments are computed for service acquired lands in other parts of Alaska or throughout the rest of the country.

At this opportunity, upon the passage of another year's funding for the Federal and Indian lands management agencies, I must call to the attention of my colleagues and to the attention of the President of the United States, an issue that troubles me deeply. Over the years, our Government has made commitments to native Americans which it has not kept. Many Americans thought that practice ended with the new, more enlightened self-determination approach to Indian policy. But as one of Alaska's representatives in the Senate, members of the President's staff made personal promises to me just last fall on behalf of the native people of the Chugach region which have not been kept.

In 1971 Congress passed the Alaska Native Claims Settlement Act (ANCSA). The act cleared the way for Alaska native people, including the Chugach natives, to receive title to a small portion of their traditional lands as settlement of their aboriginal land claims. The act also cleared the way for the additional millions of acres to our national parks, wildlife refuges, forests, and wilderness areas. Allowing native people to develop their lands freed them from economic bondage to the Federal Government. No longer would they have to depend exclusively on the benevolence of the Federal Government for hand-outs. They could create their own jobs, generate their own income, and determine their own destiny. But only if they had access to their lands.

Both the administration and the Congress recognized the lands would be virtually valueless if there was no way to get to them. The Claims Act recognized that native lands were to be used for both traditional and economic development purposes. Alaska natives were guaranteed a right of access, under law, to their lands across the vast new parks, refuges, and forests that would be created.

In 1971 and again in 1982, under the terms of the Chugach Native Inc. settlement agreement, the Federal Government made a solemn vow to ensure the Chugach people had access to their aboriginal lands. Now, a quarter of a century later, that commitment has not been fulfilled. Many of the native leaders who worked with me to achieve the landmark Native Land Claims Settlement Act have died after waiting for decades without seeing that promise honored. Last year, Congressman DON YOUNG, chairman of the House Resources Committee, added a provision to the House Interior appropriations bill that required, by a date certain, the Federal Government to live up to the access promises it made to the Chugach natives decades ago. In the conference last fall on the omnibus appropriations bill, the administration spoke passionately and repeatedly against the provision.

Why? They fully admitted the obligation to grant an access easement exists. They acknowledged further that access delayed is access denied and that further delays were harmful to the Chugach people. They opposed the provision on the grounds that it was not necessary since they were going to move with all due haste to finalize the easement before the end of 1998. Katie McGinty, then head of the President's Council on Environmental Quality sat across from me, looked me in the eye, and promised me they would fulfill this long overdue promise before the end of the year.

She even offered to issue a ''Presidential proclamation'' promising once again to do what had already been promised and promised and promised. My staff worked with OMB on the content of such a proclamation, but I told them it would not be necessary. I would take her at her word and believed the administration would live up to the personal commitment she made to me.

Here we are a year later. Chugach still has not received its easement. Ms. McGinty is gone, but her commitment on behalf of this administration remains. It is now the responsibility of others to ensure the promises she made to me and to Alaska's native people are kept.

Congressman YOUNG's House resources Committee has reported a bill, H.R. 2547, to address this issue legislatively, in the hope of forcing the administration to do what it has promised to do. Senator MURKOWSKI has been tireless in his efforts to get the Federal Government to live up to the promises made to Alaskans concerning access to our State and native lands. I support those efforts.

But I take the time today to say clearly to this administration that the promises made by our Government to the Chugach people for access to their lands—and to me personally as their representative—must be honored. Make no mistake, if the promises made to me by officials in this administration last fall are not lived up to soon, if they oppose the efforts of Congressman YOUNG and Senator MURKOWSKI on this issue, if they continue to obfuscate and ''slow roll'' this commitment, it will be clear to all that his administration does not perceive the true meaning of Robert Service's memorable phrase: ''A promise made is a debt unpaid!''

Mr. LOTT. Mr. President. On behalf of myself and my cosponsor, Minority Leader DASCHLE, I would like to insert in the RECORD a legislative history which describes the purpose of each section of S. 1528, the Superfund Recycling Equity Act of 1999. Throughout the negotiations of this language there has been quite a bit of misrepresentation of the purpose of this bill. I hope this will be useful in clearing the confusion.

Mr. President, I ask unanimous consent that the legislative history be inserted in the RECORD at this point.

LEGISLATIVE HISTORY FOR S. 1528

SECTION 127—RECYCLING TRANSACTIONS

Summary

The Superfund Recycling Equity Act of 1999 (the language of S. 1528) seeks to correct the unintended consequence of CERCLA that actually discourages legitimate recycling. The Act recognizes that recycling is an activity distinct from disposal or treatment, thus sending material for recycling is not the same as arranging for disposal or treatment, and recyclable materials are not a waste. Removing the threat of CERCLA liability for recyclers will encourage more recycling at all levels.

The Act has three major elements. First, it creates a new CERCLA §127 which clarifies liability for recycling transactions. Second, it defines those recycling transactions for which there is no liability by providing that only those persons who can demonstrate that they ''arranged for the recycling of recyclable material'' as defined by the criteria in sections 127(c) through (e) are not liable under section 107(a)(3) or (a)(4). The specific definition of ''arranged for recycling'' varies depending upon the recyclable material involved. Third, a series of exclusions from the liability clarification are specified such that

persons who arranged for recycling as defined above may still be liable under CERCLA sections 107(a)(3) or (4) if the party bringing an action against such person can prove one of a number of criteria specified in §127(f). Lastly, new CERCLA §§127(g) through 127(l) clarify several miscellaneous issues regarding the proper application of the liability clarification.

Discussion

§127(a)(1) is intended to make it clear that anyone who, subject to the requirements of §127(b), (c), (d) and (e) arranged for the recycling of recyclable materials is not held liable under §§107(a)(3) or (4) of CERCLA. §127 provides for relief from liability for both retroactive and prospective transactions.

§127(a)(2) is intended to preserve the legal defenses that were available to a party prior to enactment of this Act for those materials not covered by either the definition of a recyclable material in §127(b) or the definition of a recycling transaction within the bill. It is not Congress' intent that the absence of a material or transaction from coverage under this Act create a stigma subjecting such material or transaction to Superfund liability.

§127(b)(1) is meant to include the broad spectrum of materials that are recycled and used in place of virgin material feedstocks. Whole scrap tires have been excluded from eligibility under this provision because of concerns about the environmental and health hazards associated with stockpiles of whole scrap tires. Processed tires including material from tires that have been cut or granulated, are eligible for the benefits of this provision.

The term ''recyclable materials'' is defined to include ''minor amounts of material incident to or adhering to the scrap material . . .'' This is because in the normal course of scrap processing various recovered materials may be commingled. An appliance may, for example, be run though a shredder that also shreds automobiles. As a result, the metal recovered from the appliance may come into contact with oil that entered the shredded incident to an automobile. Numerous other examples exist.

§127(b)(1)(A) is intended to exclude from the definition of recyclable material shipping containers between 30 and 3000 liters capacity which have hazardous substances other than metal bits and pieces in them. The terms ''contained in'' or ''adhering to'' do not include any metal alloy, including hazardous substances such as chromium or nickel, that are metallurgically or chemically bonded in the steel to meet appropriate container specifications.

§127(b)(1)(B) means that any item of material which contained PCBs at a concentration of more than 50 parts per million (''ppm'') at the time of the transaction does not qualify as recyclable material. Material, which previously held a concentration of PCBs in excess of 50 ppm, but has been cleaned to levels below 50 ppm, would still qualify for exempt treatment. Item, in this context, is meant to apply only to a distinct unit of material, not an entire shipment.

This legislation builds a test to determine what are recycling transaction that should be encouraged under the legislation and what are recycling transactions that are really treatment or disposal arrangements cloaked in the mantle of recycling. The test specified in 127(c) applies to transactions involving scrap paper, plastic, glass, textiles, or rubber. Transactions can be a sale to a consuming facility; a return for recycling, whether or not accompanied by a fee; or other similar agreement.

§127(c), (d) and (e), the term ''or otherwise arranging for the recycling of recyclable material'' recognizes that while recyclables have intrinsic value they may not always be sold for a net positive amount. Thus a transaction in which one who arranges for recycling does not receive any remuneration for the material but rather pays an amount, less than the cost of disposal, still qualifies for the protection afforded by this §127.

A commercial specification grade as referred to in §127(c)91), can include specifications as those published by industry trade associations, or other historically or widely utilized specifications are acceptable. It is also recognized that specifications will continue to evolve as market conditions and technologies change.

For purposes of Sec. 127(c)(3), evidence of a market can include, but is not limited to: a third-party published price (including a negative price), a market with more than one buyer or one seller for which there is a documentable price, and a history of trade in the recyclable material.

§127(c)(3) means that for a transaction to be deemed arranging for recycling, a substantial portion, but not all, of the recyclable material must have been sold with the intention that the material would be used as a raw material, in place of a virgin material, in the manufacture of a new product. The fact that the recyclable material was not, for some reason beyond the control of the person who arranged for recycling, actually used in the manufacture of a new product should not be evidence that the requirements of this §127 were not met.

Additionally, no single benchmark or recovery rate is appropriate given variable market conditions, changes in technology, and differences between commodities. Instead, a common sense evaluation of how much of the material is recovered is appropriate. For example, in order to be economically viable as a recycling transaction a relatively high volume of the inbound material is expected to be recovered for feedstocks of relatively low per unit economic value (such as paper or plastic), while a dramatically lower volume of material is expected to be recovered to justify the recycling of a feedstock of very high economic value (such as gold or silver).

It is not necessary that the person who arranged for recycling document that a substantial portion of the recyclable material was actually used to make a new product. Instead, the person need only be prepared to demonstrate that it is common practice for recyclable materials that he handles to be made available for use in the manufacture of a new saleable product. For example, if recyclable stainless steel is sold to a stainless steel smelter, it is presumptive that recycling will occur.

The first part of §127(c)(4) acknowledges the fact that modern technology has developed to the point were some consuming facilities exclusively utilize recyclable materials as their raw material feedstock and manufacture a product that, had it been made at another facility, may have been manufactured using virgin materials. Thus, the fact that the recyclable material did not directly displace a virgin material as the raw material feedstock should not be evidence that the requirements of §127 were not met.

Secondary feedstocks may compete both directly and indirectly with virgin or primary feedstocks. In some cases a secondary feedstock can directly substitute for a virgin material in the same manufacturing process. In other cases, however, a secondary feedstock used at a particular manufacturing plant may not be a direct substitute for a virgin feedstock, but the product of that plant completes with a product made elsewhere from virgin material. For example aluminum may be utilized at a given facility using either virgin or secondary feedstocks meeting certain specifications. In this case, the virgin and secondary feedstock materials compete directly. A particular steel mill, however, may only utilize scrap iron and steel as a feedstock because of the design restrictions of the facility. If that mill makes a steel product that competes with the steel product of another mill, which utilizes a virgin feedstock, the conditions of this paragraph have been met. In this example, the two streams of feedstock materials do not directly compete, but the product made from them do. It is the intent of this paragraph that the person be able to demonstrate the general use for which the feedstock material was utilized. It is not the intent that the person show that a specific unit was incorporated into a new product.

Section 127 provides for relief from liability for both retroactive and prospective transactions. However, an additional requirement is placed on prospective transactions in this paragraph such that persons arranging for such transactions take reasonable care to determine the environmental compliance status of the facility to which the recyclable material is being sent. Reasonable care is determined using a variety of factors, of which no one factor is determinant. The clause ''not procedural or administratrative'' is included to protect one who arranges for recycling from losing the protection afforded by §127 due to a record keeping error, missed deadline or similar infraction by the consuming facility which is out of control of the person arranging for recycling. For transactions occurring prior to, or during the 90 days after, enactment of §127 the requirements of §127(c)(5) shall not be considered in determining whether §127 shall apply.

The person arranging for the transaction must exercise reasonable care at the time of the transaction (i.e., at the time when the buyer and seller reach a meeting of the minds). Should a consuming facility's compliance record indicate past non-compliance with the environmental laws, but at the time the person arranged for the transaction the person exercised reasonable care to determine that the consuming facility was in compliance with all applicable laws, the transaction would qualify for relief under §127.

In addition, the person must only determine the status of the consuming facility's compliance with laws, regulations, or orders, which directly apply to the handling, processing, reclamation, storage, or other management activity associated with the recyclable materials sent by the person. Thus, for example, a person who arranges for the recycling of scrap metal to a consuming facility would not be responsible for determining the consuming facility's compliance with regulations governing the consuming facilities production of its product, just the consuming facility's compliance with management of the scrap metal as an in-feed material.

It is common practice in the industry for scrap processors to otherwise arrange for the recycling of a secondary material through a broker. The broker chooses to which consuming facility the secondary material will be sold. In such cases, it is the responsibility of the broker, not the original person who entered into the transaction with the broker, to take reasonable care to determine the compliance status of the consuming facility. Likewise, a scrap processor may sell material to a consuming facility which in turn arranges for recycling of all or part of that material to another consuming facility. It is only the responsibility of the scrap processor to inquire into the compliance status of the party he arranged the transaction with, not subsequent parties.

In determining whether a person exercised reasonable care, the criteria to be applied should be considered in the context of the time of the transaction. Thus, when looking at ''the price paid in the recycling transaction'' in §127(c)(6)(A) one should look not only at whether the price bore a reasonable relationship to other transactions for similar materials at the time of the transaction in question but should also take into account the circumstances surrounding the individual transaction such as whether it was part of a long term deal involving significant quantities. In addition, market conditions vary considerably over any given time period for any given commodity. Thus, when determining whether the price paid was reasonable, general market conditions, and variations should be considered.

Congress recognizes that small businesses often have less resources available to them than large businesses. Thus, §127(c)(6)(B) acknowledges the fact that a small company may be able to determine less information about the consuming facility's operations than a large company. The size of an individual facility may be an important factor in the facility's ability to detect the nature of the consuming facility's operations.

§127(c)(6)(c) requires a responsible person who arranges for the recycling of a recyclable material to inquire of the appropriate environmental agencies as to the compliance status of the consuming facility. Federal, State, and local agencies may not respond quickly (or respond at all) to inquiries made regarding a specific facility's compliance record. §127(c)(5) only requires a person to make *reasonable* inquiries; inquiries need not be made before every transaction. Inquiries need only be made to those agencies having primary responsibilities over environmental matters related to the handling, processing, etc. of the secondary materials involved in the recycling transaction.

§127(d)(1)(B) provides that a person who arranges for the recycling of scrap metal must meet all of the criteria set forth in §127(c) as they relate to scrap metal and be in compliance with federal regulations or standards associated with scrap metal recycling that were in effect at the time of the transaction in question (not regulations promulgated or standards issued sequent to the time of the transaction). In addition, compliance must only be shown with Solid Waste Disposal Act regulations, which were promulgated and came into effect subsequent to enactment of §127.

Section 127(d)(1)(C) as modified by §127(d)(2) is not intended to exclude from liability relief such activities as welding, cutting metals with a torch, ''sweating'' iron from aluminum or other similar activities.

Section 127(d)(3) defines scrap metal using the regulatory definition found at 40 CFR 261.1 The Administrator is given the authority to exclude, by regulation, scrap metals that are determined not to warrant the exclusion from liability. Because §127 grants relief from liability both prospectively and retroactively, any exclusion by the Administrator would only apply to transactions occurring after notice, comment and the final promulgation of a rule to such effect.

Persons who arrange for the recycling of spent batteries must meet the criteria specified in §127(e), in addition to the criteria already discussed above and laid out in §127(c) for transactions involving scrap paper, plastic, glass, textiles, or rubber.

The act of recovering the valuable components of a battery refers to the breaking (or smelting) of the battery itself in order to reclaim the valuable components of such battery. The generation, transportation, and collection of such batteries by persons who arrange for their recycling is an activity distinct from recovery. Thus, a person who generates, transports, and/or collects a spent battery, but does not themselves break or smelt such battery, is not liable under §§107(a)(3) and (4) provided all other requirements set out in this Section are met.

Section 127(e)(2)(A) provides that for spent lead-acid batteries, the party seeking the exemption must show that it met the federal environmental regulations or standards in effect at the time of the transaction in question (not regulations or standards issued subsequent to the time of the transaction).

Persons who arrange for recycling as defined by the criteria specified in sections 127(a)–(e) and discussed above may be liable under CERCLA §§107(a)(3) or (4) if the party bringing an action against such a person can demonstrate that one of the exclusions provided for in section 127(f) apply. Thus, the burden is on the government or other complaining party to demonstrate the criteria specified in section 127(f).

§127(f)(1)(A) is intended to mean that an ''objectively reasonable basis for belief'' is not equivalent to the reasonable care standard. The objectively reasonable basis for belief standard is meant to be a more rigorous standard than the reasonable care standard.

§127(f)(1)(A)(i) means that in order for the government to show that a recycling transaction should not receive the benefit of §127, it would have to prove that a person knew that the material would not be recycled. Moreover, it is not necessary that every component of the recyclable material be recycled and actually find its way into a new product in order to meet this requirement.

For the purposes of §127(f)(1)(A)(ii), smelting, refining, sweating, melting, and other operations which are conducted by a consuming facility for purposes of materials recovery are not considered incineration, nor would they be categorized as burning as fuel or for energy recovery. However, nothing in this bill shall be construed to limit the definition of recycling so as to restrict, inhibit, or otherwise discourage the recovery of energy through pyroprocessing from scrap rubber and other recyclable materials by boilers and industrial furnaces (such as cement kilns).

§127(f)(1)(A)(iii) sets forth certain obligations upon one who arranges for a recycling transaction which occurs within the first 90 days after enactment and had an objectively reasonable basis to believe that the consuming facility was not in substantive compliance with environmental laws and regulations. This is the corollary to §127(c)(5). The clause ''not procedural or administrative'' is included to protect one who arranges for recycling from losing the protection afforded by §127 due to record keeping error, missed deadline or similar infraction by the consuming facility which is out of control of the person arranging for recycling. There is no expectation that the person who arranged for recycling would necessarily have carried out any type of records search or made any extensive inquiries of administrative agencies.

The provision in §127(f)(1)(B) is intended to apply to persons who intentionally add hazardous substances to the recyclable material in order to dispose or otherwise rid themselves of the substance.

§127(f)(1)(C) is intended to mean that reasonable care is to be judged based on industry practices and standards at the time of the transaction. Thus, in order to determine if a person failed to exercise reasonable care with respect to the management and handling of the recyclable material, one should look to the usual and customary management and handling practices in the industry at the time of the transaction.

In enacting §127(i) Congress clearly intends that the exemptions from liability granted by §127 shall not affect any concluded judicial or administrative action. Concluded action means any lawsuit in which a final judgment has been entered or any administrative action, which has been resolved by consent decree, which has been filed in a court of law and approved by such court. Furthermore, §127 shall not affect any pending judicial action brought by the United States prior to enactment of this section. Any pending judicial action, whether it was brought in a trial or appellate court, by a private party shall be subject to the grant of relief from liability. For purposes of this section, Congress intends that any third party action or joinder of defendants brought by a private party shall be considered a private party action, regardless of whether or not the original lawsuit was brought by the United States. Additionally, any administrative action brought by any governmental agency but not yet concluded as set forth above, shall be subject to the grant of relief from liability set forth in this §127.

§127(l)(1) preserves the rights of a person to whom §127(a)(1) does not apply to raise any defenses that might otherwise be raised under CERCLA. This is consistent with the explanation for §127(a)(2).

By adding §127(l)(2) Congress intended to make certain that no presumption of liability is created against a person solely because that person is not afforded the relief granted by §127(a)(1).

Mr. DASCHLE. This past Wednesday—the day we finally produced a fragile budget agreement—marked the 199th anniversary of the first time Congress ever met in Washington, DC. They met that day in what was then an unfinished Capitol. Several times during the negotiations, the thought occurred to me that, if the same people who are running this Congress were in charge back then, the Capitol might still be unfinished.

These negotiations took longer, and were more difficult, than they needed to be. The good news is: We finally have a budget that will keep America moving in the right direction. Many longtime members and observers of Congress say this has been perhaps the most confusing, convoluted budget process they can remember.

There have been a lot of technical questions these last few weeks about accounting methods, economic growth projections, and CBO versus OMB scoring. But the big question—the fundamental question that was at the heart of this budget debate—is quite simple: Are we going to move forward—or backward?

We have chosen, thank goodness, to move forward. This budget continues the progress we've made over the last seven years. It maintains our hard-won fiscal discipline. It invests in America's future. And it honors our values.

This budget will put more teachers in our children's classrooms, and more police on our streets. It will enable us to honor our commitments to our parents, and fulfill America's obligations as a world leader. And, it will enable us to protect our environment and preserve precious wilderness areas for generations not yet born.

I want to thank the Majority Leader, my Democratic colleagues, especially Senator HARRY REID, our whip, and

Senator ROBERT BYRD, ranking member of the Appropriations Committee. I also want to thank some of my colleagues on the other side of the aisle, particularly Senator STEVENS, chairman of the Appropriations Committee.

In addition, I want to acknowledge and thank President Clinton and Vice President GORE, as well as the incredibly skillful, patient White House negotiating team, especially Chief of Staff John Podesta, Deputy Chief of Staff Sylvia Matthews, OMB Director Jack Lew; Larry Stein and Chris Jennings.

I also want to thank my own staff, and the staff of Appropriations Committee, who have worked many weekends, many late nights, to turn our ideas and debate into a workable budget document.

Finally, I want to acknowledge our dear friend, the late Senator John Chafee. Losing Senator Chafee so suddenly was one of the saddest moments in this difficult year. He embodied what is best about the Senate. He was a reasonable, honorable man who cared deeply about people. Completing the budget process was a major challenge. But in the end, I believe we have produced a budget John Chafee would have approved of.

This budget invests in our children's education - the best investment any nation can make. It maintains our commitment to reduce class size by hiring 100,000 teachers. It contains money to help communities repair old schools and build new ones. It will enable more children to get a Head Start in school, and in life. And it will allow more young people to attend after-school programs where they will be safe, and where they will have responsible adult supervision.

This budget protects Medicare beneficiaries by providing fair payments to the hospitals, clinics, home health care providers and nursing homes they rely on.

This budget will make our communities safer by putting 50,000 more police officers on the street—in addition to the 100,000 who have already been hired—and by investing in youth crime prevention.

This budget will help keep Americans healthy . . . by reducing hunger and malnutrition among pregnant women, infants and young children . . . and by increasing funding for the National Institute of Health and the national Centers for Disease Control.

This budget protects our environment. We took out riders that would have harmed our environment, and put in money to fund the President's Lands Legacy program.

This budget will help working families find affordable housing.

It will help farm and ranch families weather these hard times.

This budget protects our national security . . . by increasing military pay and readiness . . . and by reducing the nuclear threat at home and around the world.

This budget will help us fulfill our responsibilities as the world's only superpower. It provides money to pay our UN arrears and fund the Wye Accord to promote peace to the Middle East. It will also enable us to ease the crushing burden of debt on some of the world's poorest countries, so those nations can begin to invest in their own futures.

At the beginning of the year, our Republican colleagues proposed an $800 billion tax cut. For months, we all heard a lot of debate about what such a huge tax cut would mean. This budget makes it clear. There is no way we could have paid for an $800 billion tax cut without exploding the deficit again, or raiding Medicare, education, and other programs working families depend on.

Instead of moving backwards on taxes, we're moving forward. We're cutting taxes the right way. We're widening the circle of opportunity . . . by extending the R&D tax credit, and other tax credits that stimulate the economy . . . and by empowering people with disabilities by allowing them to maintain their Medicare and Medicaid coverage when they return to work.

There is one other point I want to make about the budget: For every dollar Democrats succeeded in restoring these last few weeks . . . for teachers, and police officers and other critical priorities . . . we have provided a dollar in offsets. Dollar for dollar, every one of our priorities is paid for. If CBO determines that this budget exceeds the caps, the overspending is in the basic budget our Republican colleagues drafted—on their own.

THE UNFINISHED AGENDA

As I said, Mr. President, this budget does move the country in the right direction—but only incrementally. My great regret and frustration with this Congress, is that we have achieved so little beyond this budget.

Look what we are leaving undone! In a year in which gun violence horrified America . . . a year in which gun violence invaded our schools and even a day care center . . . the far right has prevented this Congress from passing even the most modest gun safety measures—measures that would make it harder for children and criminals to get guns.

The far right has prevented this Congress—so far—from passing a Patients' Bill of Rights. More than 90 percent of Americans—Democrats and Republicans—support a real Patients' Bill of Rights that holds HMOs accountable. So does the AMA, the American Nurses Association—and 200 other health care and consumer organizations. And so does a bipartisan majority in both the House and Senate. Yet the Republican leaders in this Congress continue to use parliamentary tricks to deny patients their rights. As we leave here for the year, HMO reform, like gun safety, has been stuck for months in the black hole of conference committees.

The Republican leadership clearly is hoping that we will forget about all the shootings . . . forget about the families who have been injured because some HMO accountant overruled their doctor and denied needed medical treatment. I am here to tell them: The American people will not forget. And neither will Senate Democrats.

We will fight to close the gun show loophole. And we will fight to pass a real Patients' Bill of Rights next year. We will continue the fight for meaningful campaign finance reform. We will continue the fight to preserve and strengthen Medicare—including adding a prescription drug benefit. We will resume the fight for a decent minimum wage increase. We will fight for a fair resolution of the dairy-pricing issue. And, we will restore the rural loan guarantee program for satellite TV service, so rural Americans aren't left with second-class service.

It's taken a long time, but we finally have a budget that keeps America moving in the right direction. That is a relief, and a victory for the American people. But we still have a long way to go. We are leaving here with too many urgent needs unmet. We must do better next year.

Mr. LOTT. Mr. President, today the Superfund Recycling Equity Act, S. 1528, is being sent to the President as part of H.R. 3194. This is a great day for environmental law—this is the day that the public policy restores recycling as a rewarded, rather than punished activity.

This is a great day because partisan feuding was set aside so that the Congress could find a realistic, incremental, and common sense environmental fix. The freestanding Superfund Recycling Equity Act has strong bipartisan support with 68 cosponsors—68 Senators who have worked together to advance a fix to a small piece of the Superfund debate.

In this controversial world of environmental legislation it is rare that the leaders of the two parties in either Congressional body would agree on a piece of legislation. Well, here in the Senate we do. I wish to thank Minority Leader DASCHLE who understood the merits of recycling and twice joined with me to sponsor this legislation. Without his leadership, this legislation would not have been possible.

Mr. President, I would also like to commend the Senators who originally joined Senator DASCHLE and me in introducing this legislation. Senators WARNER and LINCOLN, who sponsored this measure in a previous Congress, have long exhibited their enthusiasm for fixing recycling rules. They are true leaders—leaders who have fostered this reasonable, workable, environmental proposal. Senator BAUCUS, the Ranking Minority Member of the Environment and Public Works Committee, has also been an avid supporter of recycling by including a version of the Superfund Recycling Equity Act in his comprehensive Superfund reform bill in the 103rd Congress. His six years of leadership in trying to fix public policy for recyclers is appreciated.

Mr. President, this bill would not be where it is at today, on the cusp of becoming law, had it not been for the active support of the late Senator John Chafee—a dear friend to me and many of our colleagues. John Chafee was a respected leader of the Environment and Public Works Committee. His advice and counsel helped shape my bill and he was an original cosponsor. I am proud to have been associated with him on this bill and its legislative process. I consider it a tribute that this bipartisan bill, negotiated with the Administration, representatives of the national environmental community, and the recycling industry, was supported by John Chafee, a man for whom consensus was so important. I believe this is not a footnote to John Chafee's legacy; rather I believe that he made this kind of cooperation possible.

The former mayor of Warwick, Rhode Island, is now the newly appointed Senator from Rhode Island. I have already had an opportunity to hear our newest senator—Senator LINCOLN CHAFEE—tell me about what Warwick has done with regards to recycling. It is a proud record—a record that would be extended and enhanced by this bill. I find it a credit to John Chafee's legacy that his son would be working with me on this legislation. Less than a month in the Senate and already LINCOLN's voice is being heard in ways that will directly help Rhode Island.

Mr. President, I also must recognize the vision of trade associations like American Petroleum Institute and National Federation of Independent Businesses for supporting an incremental solution. It would have been easier for these groups to oppose the bill because it did not address all the fixes for which they have been advocating. However, AFI and NFIB recognized that this increment would not jeopardize their efforts; rather it exemplifies the efforts of various stakeholders to accomplish something positive for the environment albeit it incremental.

And finally, I must thank the various staff members who have diligently worked toward the passage of this legislation: Eric Washburn and Peter Hanson of Senator DASCHLE's staff, Tom Gibson and Barbara Rogers of the Environment and Public Works committee staff, Charles Barnett of Senator LINCOLN's staff, Ann Loomis of Senator WARNER's staff, and my former staffer, Kristy Simms, who set the stage for this years success.

While too often Senators have seen various interest groups tell Congress why we cannot achieve some worthy environmental goal, the history of the Superfund Recycling Equity Act is replete with evidence of people coming together to correct a problem. Everyone, including myself, realizes that comprehensive reform is necessary to fix the vast array of problems in many different sectors of the environmental community. Unfortunately, we do not live in a perfect world, so Congress must do what is achievable whenever it is possible. This is good public policy—increments will show all parties there is a bridge for bipartisan environmental fixes. Recycling is the first of many necessary fixes, and I would bet my colleagues that it will not be the last fix.

This is a great day for many environmental groups who saw a change that they supported, not be taken hostage by the debate that has for so many years paralyzed reforms to Superfund. The original negotiation that resulted in the basis of the bill was tough and long—but it was fair. Each of the negotiating partners left items on the table that they would have wanted in an otherwise perfect world. Their collective approach was always bipartisan—they never pitted one party against another by pledging one group of interests against another. They remained loyal to their agreement for an unheard of five years—an eternity in Washington. Though this legislation was a long time in coming, I am grateful for its passage.

Mr. President, this is a great day for my good friend and fellow Mississippian, Phillip Morris. It is also a great day for the thousands of mom-and-pop recycling firms across America, like the one owned by Phillip Morris. This legislation protects the legacy of these firms which in most cases have been handed down through generations—often started by new immigrants to America nearly a hundred years ago. This ends the long Superfund nightmare that our nation's recyclers have suffered. Each time they sold their recyclable products they were, unintentionally, exposing themselves to costly Superfund liability. Removing Superfund as an impediment to recycling is a predicate to higher recycling rates throughout the nation.

The Superfund Equity Act is not about special interests getting a fix. No, this bill is about representing constituent interests throughout America and promoting the public interest. That is why Senator DASCHLE and I have 68 cosponsors—cosponsors that range completely across the liberal and conservative political spectrum, and range across all regions of America.

Mr. President, let me be clear, the Superfund Recycling Equity Act corrects a mistake nobody intended to make. When the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA) was enacted in 1980, there was no suggestion that traditional recyclables—paper, plastic, glass, metal, textiles, and rubber were ever intended to be subject to Superfund liability. As a result of court interpretations, however, the sale of recyclables as manufacturing feedstock was considered to be arranging for the disposal of the material and, therefore, subject to Superfund's liability scheme. However, as we have all come to know as a matter of public policy, recycling is not disposal; it is the exact opposite of disposal.

Mr. President, let me say that again—recycling is not disposal, and a law is needed to remove this confusion. Sad, but true.

Enactment of this legislation clarifies this point and corrects the misinterpretations that have cost recyclers—primarily small family-owned businesses—millions and millions of dollars for problems they did not cause. With passage of the Superfund Recycling Equity Act, the costs of cleanup at sites that utilize recyclable materials as feedstock will be borne, rightfully, by those persons who actually cause or contribute to the pollution. As a result, those facilities will be less likely to cause contamination because they will no longer have recyclers to help them pay for Superfund cleanup. That's a powerful market incentive and will cause the consuming facility to become more environmentally conscientious.

Let me be clear, this legislation will not alter the basic tenants of environmental law—polluters will still pay. This legislation does not relieve recyclers of Superfund liability where they have polluted their own facilities. It also does not protect these businesses when they have sent materials destined for disposal to landfills or other facilities where those materials contributed, in whole or in part, to the pollution of those facilities. Furthermore, the public can expect recyclers to continue to be environmentally vigilant because they must operate their businesses in an environmentally sound manner, in order to be relieved of Superfund liability.

Today is a victory for coalition building that avoids the attack strategies that are so often employed by trade associations in DC. I hope they see the wisdom in building coalitions around achievable increments. This is how Congress can move forward. This is how Congress shows that it not only hears from its constituents but it acts successfully. Hostage taking, distortion, and scorch the earth approaches are not productive legislative strategies or lobbying tactics. Trade associations need to seek achievable solutions, develop responsible legislative goals, and avoid Beltway attack politics. I am extremely pleased that Congress has been able to take this tiny but very important step forward in reforming the Superfund law. I hope this accomplishment will inspire others to work for sensible, incremental solutions that help both our environment and our nation's economy.

I am proud that today Congress leveled the playing field and created equity in the statutory treatment of recycled material and virgin materials. I am proud to have removed the disincentives to recycling without loosening any existing liability laws for polluters. I am proud to have represented the mom and pop recyclers across America. I'm especially proud of the fact that this was all done in a bipartisan manner.

Mr. MOYNIHAN. Mr. President, 2 years ago, as part of the effort to balance the Federal budget, Congress enacted the Balanced Budget Act of 1997—which we have come to know as the ''BBA.'' Among other provisions, the BBA enacted major changes in the way Medicare pays for medical services. As implementation of these changes proceeds, concerns have been raised that some of them are having unintended consequences that threaten the viability of health care providers—and consequently the overall availability of health care to our constituents.

In order to alleviate some of these unintended consequences of the BBA, the appropriations conference report before the Senate today incorporates by reference H.R. 3426, the ''Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999.'' This legislation will restore some $17 billion over 10 years to hospitals, skilled nursing facilities, home health agencies, and other Medicare and Medicaid providers. The bill will also facilitate administrative actions that will provide an additional $10 billion of relief to hospital outpatient departments.

H.R. 3426 has many important provisions; here are some of the highlights:

Teaching hospitals will receive $600 million in additional Indirect Medical Education (IME) payments over fiscal years 2000 and 2001. They will also benefit from other provisions that add money back to hospital outpatient departments, and which scale back cuts in Medicare disproportionate share payments to hospitals serving low-income patients. I will have more to say about teaching hospitals in a moment.

Rural hospitals will be assisted by: an exemption from the new payment system for hospital outpatient departments; improvements in the Critical Access Hospital (CAH) program; a 5-year extension of the Medicare Dependent Hospital program; and an update in payments for Sole Community Hospitals (SCHs).

Skilled Nursing Facilities—usually referred to as SNFs—would receive $2.1 billion of assistance over 10 years by: increasing payments for certain medically complex patients; permitting SNFs to switch immediately to a more favorable payment system; and excluding certain high cost items from consolidated billing.

The caps on payments for rehabilitation therapy would be suspended for two years pending development of a better payment system; and hospice facilities, which are covered under Medicare part A, would receive temporary payment increases in fiscal years 2001 and 2002.

Other provisions of the bill would: stabilize the formula used to calculate payment for physician services; lift time limits for state use of a fund for delinking of welfare and Medicaid eligibility; slow the phase-down of a Medicaid cost reimbursement to community health centers and rural health clinics; and provide adjustments to the State Children's Health Insurance Program—known as CHIP—which was enacted by the BBA of 1997

GRADUATE MEDICAL EDUCATION

I would like to focus the remainder of my remarks on one particular aspect of this legislation—funding for graduate medical education. My State of New York is the home to 117 teaching hospitals—almost 10 percent of our Nation's academic medical centers.

The cumulative effect of several provisions in the Balanced Budget Act of 1997 has produced an unintended financial burden on teaching hospitals. First, the BBA enacted a multi-year reduction in payments for the indirect costs associated with medical education, known as IME payments. Second, many teaching hospitals serve a large share of low-income inpatients and have therefore been burdened by the BBA's cuts in disproportionate share hospital (DSH) payments. Finally, many teaching hospitals are also subject to the BBA's reductions in hospital outpatient department reimbursements.

I am pleased that the legislation we are voting on today, mitigates the fiscal pressures on teaching hospitals by adding back Indirect Medical Education (IME) funds in fiscal years 2000 and 2001. Teaching hospitals in New York will receive more than $150 million in additional IME payments over these 2 fiscal years.

In addition, the bill's relief to disproportionate share hospitals—those serving low-income patients—will assist the many teaching hospitals serving those populations. Finally, teaching hospitals across the Nation will benefit from the nearly $10 billion over 10 years in additional payments to hospital outpatient departments.

I am concerned, however, about a change made in this bill to Direct Graduate Medical Education (DGME) payments. Medicare DGME payments compensate teaching hospitals for the costs directly related to the graduate training of physicians. Such DGME costs include residents' salaries and fringe benefits, the salaries and benefits of the faculty who supervise the residents, as well as other direct and overhead costs.

The current payment methodology for DGME was developed in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Under COBRA, a hospital-specific per-resident amount was determined based on each individual hospital's 1984 Medicare allowable costs. This per-resident amount took into account the extent to which teaching hospitals already had alternative sponsorship—such as from a university, medical school, or faculty practice plan—and locked payments at that level, so as not to replace outside funding sources. In determining current DGME payments, 1984 costs are updated for inflation and subjected to a formula based on each hospital's number of current residents (which is capped under BBA), and each hospital's proportion of inpatient Medicare beds.

Consequently, there is wide variation in DGME payments from hospital to hospital. On average, New York has a higher average per-resident amount ($85,000/per resident) than the rest of the country ($67,000/per resident). However, DGME payments are hospital specific, not region specific; even within New York great variation exists. In New York DGME payments range from $156,000 per-resident to $38,000 per-resident. There are a number of factors which account for the variation in the hospital specific payments: the level of outside support from non-hospital sources; the relationship to the medical school; and state or local government appropriations. In addition, residents' salaries, which are determined by geographic cost of living factors, further explains the variation.

The version of this legislation that passed the House of Representatives included DGME language that would change the hospital specific per-resident formula to a payment based on a wage-adjusted national average. I am pleased to say that during negotiations on these provisions, I and the distinguished ranking Democrat on the Ways & Means Committee, Representative Rangel, with Chairman Roth's support were able to significantly narrow the scope of the House provision, thereby protecting many teaching hospitals in New York and elsewhere from abrupt changes in DGME payments. The scaling back of the House provision will provide time to address the complicated DGME system in a comprehensive and fair manner.

The negotiations necessary to reach agreement on both the IME and DGME adjustments in this legislation clearly demonstrate the need for fundamental change in the way that medical education is financed in this country. What is needed is not year-to-year adjustments in Medicare funding but an explicit and dedicated source of funding for these institutions—a Medical Education Trust Fund as I have proposed this year and in the past.

The legislation that I introduced would require that the public sector, through the Medicare and Medicaid programs, and the private sector, through an assessment on health insurance premiums, contribute broad-based and fair financial support. Changing the funding source for graduate medical education from primarily Medicare funds to multiple payers would protect graduate medical education for the long term. Teaching hospitals are national treasures; they are the very best in the world. Yet today they find themselves in a precarious financial situation as market forces reshape the health care delivery system in the United States. The all-payer trust fund I have proposed would ensure that America continues to lead the world in the quality of its health care system.

Mr. THURMOND. Mr. President, I rise in support of the Conference Report to H.R. 1554, the Satellite Home Viewer Improvement Act. This is pro-consumer legislation which will promote much needed competition among television providers.

This legislation allows satellite carriers to carry local television stations for the first time. Consumers now will have a choice between cable companies and satellite companies that offer similar programming. This competition should help lower costs and increase quality service for all consumers.

In addition, this legislation contains many other pro-consumer provisions. For example, it protects consumers who are about to lose their distant signals and establishes a new consumer-friendly process to determine distant signal eligibility.

This legislation also protects local broadcasters who provide a valuable service to our communities. Most importantly, local broadcasters should benefit from the legislation's must carry requirements. The members of the conference also agreed on a provision which would encourage satellite carriers and other entities to provide local into local network service in small and rural markets. However, this provision was taken out at the last minute. I strongly support fiscally sound ways of encouraging satellite carriers and other entities to provide local network television in small and rural markets.

This legislation is a good step in promoting competition among satellite and cable providers. I urge support of this legislation, and I look forward to working early next year with other Senators regarding local into local network service for small and rural markets.

Mr. LIEBERMAN. Mr. President, I rise today with renewed hope for the safety of our public roads. In 1998, 5,374 people were killed in truck-related crashes. In my State there is a strong public sense of alarm about this safety problem. And as trucks get bigger and heavier and the volume of trucks on our roads increases, the General Accounting Office (GAO) predicts that by the year 2000, over 6,000 people will be killed every year as a result of truck-related crashes. This prediction comes at a time when the Office of Motor Carriers (OMC)—the federal agency charged with overseeing truck safety—has failed in its duties to protect the American public. The Department of Transportation Inspector General, the National Transportation Safety Board, the GAO and members of this Congress have all brought to light and documented the many inadequacies of this broken agency.

I commend the leaders of the Senate Commerce Committee for pursuing this very important issue. H.R. 3419, The Motor Carrier Safety Improvement Act of 1999, addresses the numerous failings of the Office of Motor Carriers by strengthening federal motor carrier safety programs, and by creating a new Federal Motor Carrier Safety Administration. Although H.R. 3419 takes a large step in the right direction, federal truck safety oversight needs a new look, with a focus dedicated to reducing truck-related fatalities and injuries, and not simply a new agency with new letterhead.

The Inspector General in his April 1999 report showed that the OMC has not maintained an ''arm's length'' relationship between itself and the industry it regulates. In fact, the report suggests OMC has developed too close a relationship with the industry it must regulate. This has limited OMC in taking the tough regulatory and enforcement actions that the accident data suggests are needed to protect public safety. One example of this problem is that the OMC has consistently awarded research contracts to the regulated industry to perform some of the most critical, and highly sensitive research on future rulemakings governing the industry. This practice appears questionable. In order to protect the American public, an independent relationship should be established by the new Federal Motor Carrier Administration.

H.R. 3419 provides us with an opportunity for real progress in improving truck safety, but only if the new Federal Motor Carrier Safety Administration and its leaders commit to a new culture which truly holds safety as the highest priority. This Congress and the Department of Transportation must restore the American public's trust in federal motor carrier safety programs, and take action that produces safer results.

Mr. STEVENS. Mr. President, I have some comments on issues raised by the conference report to the Interior appropriations bill.

On the matter of contract support costs for Bureau of Indian Affairs and Indian Health Service programs operated by Native organizations under the provisions of P.L. 93–638, I am pleased that we have been able to add $10 million to BIA funding and $25 million to IHS funding over fiscal year 1999 levels to support additional payments of contract support costs for these programs. This new funding will allow BIA and IHS to bring existing programs' contract support cost payments closer to the full amount of negotiated support and will allow a limited number of new and expanded programs in both agencies to go forward.

However, I am concerned that the Tribes have been operating, in the distribution of contract support costs, under the assumption that contract support costs are an entitlement under the law. The House and Senate Committees on Appropriations have taken exception to that interpretation and have tried to persuade the IHS to change its allocation methodology and to set reasonable limits on the number and size of new and expanded contracts it executes consonant with resources made available by Congress for the payment of contract support costs. The Federal Circuits Court of Appeals in its October 27, 1999 decision in *Babbitt* v. *Oglala Sioux Tribal Public Safety Department* (1999 WL 974155 (Fed. Cir.)) has now affirmed that contract support costs are not an entitlement, but rather are subject to appropriations. Contract support cases raising similar legal issues are pending in the 10th Circuit Court of Appeals and in various Federal district courts around the country. The Federal circuit's decision was correct both in its holding and in its reasoning and should serve as precedent for other pending cases. To assume that Congress would create a system in which Tribes receive the majority of their contract support costs through funds appropriated to the Indian Health Service or Bureau of Indian Affairs and which requires Tribes to seek the balance in court through the claims and judgment fund turns logic on its ear. ''Subject to appropriations'' means what it says.

The Indian Health Service has made improvements to its distribution methodology in fiscal year 1999 but continues to distribute funds at varying rates for different contracts, compacts and annual funding agreements. More disturbing, the current IHS system pays contractors with high overhead costs (relative to program costs) at the same percentage rate as it pays contractors with low overhead rates, rewarding inefficient operators and creating an incentive to maximize overhead costs.

The bill allows the funding in fiscal year 2000 of a limited number of new and expanded contracts through the Indian Self Determination (ISD) fund of $10 million. It is expected that, once the contract support cost total (paid at an average rate not to fall above or below the average rate of payment of contract support costs to existing contractors in fiscal year 2000) for new and expanded programs has reached $10 million, IHS will not execute any further new or expanded contracts until Congress has provided funds specifically earmarked for that purpose. Existing IHS policy does not permit reduction of existing service providers' funding in order to fund new entrants into the system. This bill does not modify that policy. If funds remain in the ISD fund after all new entrants have been accommodated, those funds should be distributed equitably across existing programs, with particular emphasis on the most underfunded.

The Indian Health Service should include as part of its fiscal year 2001 budget request a detailed cost estimate for new and expanded contracts so that Congress will be aware of anticipated need when it establishes a funding level for an ISD account in fiscal year 2001. Congress and the courts have made it plain that IHS can no longer enter into new and expanded contracts without regard to the level of funding provided for that purpose by Congress. Congress will be aided in its efforts to establish

a reasonable level of support for new and expanded contracts if the IHS provides accurate estimates of anticipated need as part of the budget process.

The authorizing committees in the Senate and House are encouraged, in consultation with the Indian Health Service, the Bureau of Indian Affairs and Tribal organizations, to develop timely proposals to address the longer term issues surrounding contract support costs, including the apparent contradiction between the self-determination principles laid out in P.L. 93–638 and the legal requirement that contract support costs are subject to appropriations.

Our committees encourage the transition of employees from Federal to Tribal employment as part of self-determination contracts and self-governance compacts and strongly believe that the IHS should not provide disincentives for such transfers. We have noted that each year start-up costs from new and expanded contracts for the previous year are returned to the base for distribution to other contracts. These funds, currently estimated at $4.5 million, will be available in fiscal year 2000. With my support, the House and Senate Committees on Appropriations will soon be sending a letter to the IHS requesting that it set aside a portion of base contract support funds associated with prior year start up costs for use as a transition fund for costs associated with employees who elect to transfer from Federal employment to Tribal employment during the period after which contract support costs for individual contracts have been determined for that year. To the extent set aside funds are not needed for employee transition, they should be distributed equitably among existing contractors, with emphasis on the most underfunded contracts.

In the last fiscal year and the one we are funding now, we will have added a total of $60 million in new contract support cost funding to the IHS budget. We know that these funds are critical to the success of Indian-operated health programs and that shortfalls still remain. However, in the current environment of caps on discretionary spending, we must develop policies that support the self-determination principles embodied in P.L. 93–638 while taking into account the fiscal realities of limits on funding for these programs. I look forward to receiving recommendations from the authorizing committees, the IHS and BIA, and tribal organizations which will address these issues in time for the committees' consideration during the fiscal year 2001 appropriations cycle.

Mr. President, the conference report also includes a provision to authorize the investment of Exxon Valdez oil spill—or EVOS—settlement funds outside of the Treasury. This section is the exact language of legislation, S. 711, reported by the Senate Energy and Natural Resources Committee earlier this year, and represents an accord struck among many interests. The details of this accord are discussed more fully in the committee report (Senate Rpt. 106–124) accompanying S. 711. These interests include Koniag, a native regional corporation with a great interest in seeing that their native lands are valued at the level they feel appropriate given their prominence in the oil spill zone.

The continuing availability of EVOS funds for habitat conservation raises another important issue I hope can be resolved in the coming months. It regards revenue sharing payments arising from oil spill area acquisitions. New additions to refuge lands, such as those from EVOS settlement land acquisitions, qualify adjacent communities to increased Federal payments in lieu of taxes under the Revenue Sharing Act of 1935.

In 1995, the U.S. Fish and Wildlife Service agreed to purchase from Old Harbor, Akiok–Kaguyak and Koniag Native corporations over 160,000 acres of land within the Kodiak National Wildlife Refuge. These lands were acquired using funds derived from the consent decree in settling the United States' and State of Alaska's civil claims against Exxon, Inc. for damages caused by the Exxon *Valdez* oil spill in 1989.

The Exxon Valdez Trustee Council, which was formed to implement the consent decree, adopted its restoration plan in 1994 with habitat protection as a key component of the plan to recover the damages caused by the oil spill. The trustee council subsequently solicited interest from land owners throughout the spill zone and ranked the habitat based on its restoration value for the species and services injured by the spill. The council, working through State and Federal land managing agencies, commissioned land appraisals and authorized negotiations with land owners.

Negotiated agreements with land owners, resulting in significant habitat acquisitions, exceeded the appraisals approved by Federal and State appraisers. The trustee council in its resolutions authorizing these acquisitions with settlement funds made several findings, I'm advised that these findings included the following:

> Biologists, scientists and other resource specialists agree that, in their best professional judgment, protection of habitat in the spill area to levels above and beyond that provided by existing laws and regulations will likely have a beneficial effect on recovery of injured resources and lost or diminished services provided by these resources.
>
> There has been widespread public support for the acquisition of these lands, locally, within the spill zone and nationally.
>
> It is ordinarily the Federal Government's practice to pay fair market value for the lands it acquires. However, due to the unique circumstances of this proposed acquisition, including the land's exceptional habitat for purposes of promoting recovery of natural resources injured by EVOS and the need to acquire it promptly to prevent degradation of the habitat, the trustee council believes it is appropriate in this case to pay more than fair market value for these particular parcels.
>
> This offer is a reasonable price given the significant natural resource and service values protected; the scope and pervasiveness of the EVOS environmental disaster and the need for protection of ecosystems . . .

The trustee council-commissioned appraisals—which were performed in accordance with Federal regulations—for the three large parcels acquired within Kodiak National Wildlife Refuge are estimates of fair market value. However, they varied substantially from the landowners' appraisals and what they believe to be their fair market value. The land owners rejected the initial offers made by the U.S. Fish and Wildlife Service to purchase the lands based on the trustee council's commissioned appraisals.

The estimates of fair market value based on the Federal appraisals are below the prices actually paid for the various parcels of land, and they do not consider the purchase price paid in these and other governmental acquisitions in Alaska. The trustee council, through its public process, difficult negotiations and subsequent findings determined that the price paid for the lands was ''a reasonable price'' for a variety of reasons including past Federal large-scale acquisitions.

The acquisition in fee of these three large parcels within Kodiak NWR now requires the U.S. Fish and Wildlife Service to make payments in lieu of taxes to the Kodiak Island borough in accordance with the Revenue Sharing Act of 1935. The act directs the agency to make such payments based on the fair market value of acquired lands.

The service is currently using the federally approved appraisals estimating fair market value of these three large parcels as the basis for computing the revenue sharing payment to the borough. The borough has rightly challenged the Service's determination of fair market value based on the unique circumstances of these acquisitions and the findings made by the trustee council in approving funds for these acquisitions.

A plain reading of the Revenue Sharing Act (which authorizes the Secretary of the Interior to make refuge revenue sharing payments) requires that the determinations of fair market value be made in a manner that ''The Secretary considers to be equitable and in the public interest.'' Clearly, the public interest associated with these unique acquisitions has been well documented in the findings of the trustee council.

The Revenue Sharing Act imposes no legal impediment for the Secretary to make a determination of fair market value that incorporates the unique circumstances of these acquisitions and the specific findings and actions taken by the trustee council. Thus, I urge the Secretary to review the Kodiak Island Borough's appeal to the Service's determinations for making revenue sharing payments and do what is fair and equitable as called for by the act.

These are unique circumstances that exist nowhere else in the United States and are limited to Alaska to lands acquired in the *Exxon Valdez* spill zone with settlement funds. Thus, there should be no consequences for how revenue sharing payments are computed for service acquired lands in other parts of Alaska or throughout the rest of the country.

At this opportunity, upon the passage of another year's funding for the Federal and Indian land management agencies, I must call to the attention of my colleagues and to the attention of the President of the United States, an issue that troubles me deeply. Over the years, our Government has made commitments to Native Americans which it has not kept. Many Americans thought that practice ended with the new, more enlightened self-determination approach to Indian policy. But as one of Alaska's Representatives in the Senate, members of the President's staff made personal promises to me just last fall on behalf of the Native people of the Chugach region which have not been kept.

In 1971 Congress passed the Alaska Native Claims Settlement Act (ANCSA). The act cleared the way for Alaska Native people, including the Chugach Natives, to receive title to a small portion of their traditional lands as settlement of their aboriginal land claims. The act also cleared the way for the addition of millions of acres to our national parks, wildlife refuges forests, and wilderness areas. Allowing Native people to develop their lands freed them from economic bondage to the Federal Government. No longer would they have to depend exclusively on the benevolence of the Federal Government for hand-outs. They could create their own jobs, generate their own income, and determine their own destiny. But only if they had access to their lands.

Both the administration and the Congress recognized the lands would be virtually valueless if there was no way to get to them. The Claims Act recognized that Native lands were to be used for both traditional and economic development purposes. Alaska Natives were guaranteed a right of access, under law, to their lands across the vast new parks, refuges, and forests that would be created.

In 1971 and again in 1982, under the terms of the Chugach Native Inc. settlement agreement, the Federal Government made a solemn vow to ensure the Chugach people had access to their aboriginal lands. Now a quarter of a century later, that commitment has not been fulfilled. Many of the Native leaders who worked with me to achieve the landmark Native Land Claims Settlement Act have died after waiting for decades without seeing that promise honored.

Last year, Congressman DON YOUNG, Chairman of the House Resources Committee, added a provision to the House Interior Appropriations bill that required, by a date certain, the Federal Government to live up to the access promises it made to the Chugach Natives decades ago. In the conference last fall on the Omnibus appropriations bill, the administration spoke passionately and repeatedly against the provision.

Why? They fully admitted the obligation to grant an access easement exists. They acknowledged further that access delayed is access denied and that further delays were harmful to the Chugach people. They opposed the provision on the grounds that it was not necessary since they were going to move with all due haste to finalize the easement before the end of 1998. Katie McGinty, then head of the President's Council on Environmental Quality sat across from me, looked me in the eye, and promised me they would fulfill this long overdue promise before the end of the year.

She even offered to issue a ''Presidential Proclamation'' promising once again to do what had already been promised and promised and promised. My staff worked with OMB on the content of such a proclamation, but I told them it would not be necessary. I would take her at her word and believed the administration would live up to the personal commitment she made to me.

Here we are a year later, Chugach still has not received its easement. Ms. McGinty is gone, but her commitment on behalf of this administration remains. It is now the responsibility of others to ensure the promises she made to me and to Alaska's Native people are kept.

Congressman YOUNG's House Resources Committee has reported a bill, H.R. 2547, to address this issue legislatively, in the hope of forcing the administration to do what it has promised to do. Senator MURKOWSKI has been tireless in his efforts to get the Federal Government to live up to the promises made to Alaskans concerning access to our State and Native lands. I support those efforts.

But I take the time today to say clearly to this administration that the promises made by our Government to the Chugach people for access to their lands—and to me personally as their Representative—must be honored. Make no mistake, if the promises made to me by officials in this administration last fall are not lived up to soon, if they oppose the efforts of Congressman YOUNG and Senator MURKOWSKI on this issue, if they continue to obfuscate and ''slow roll'' this commitment, it will be clear to all that this administration does not perceive the true meaning of Robert Service's memorable phrase: ''A promise made is a debt unpaid''!

Mrs. FEINSTEIN. Mr. President, today I am pleased the Senate is considering the Balanced Budget Refinement Act of 1999, to restore some of the unanticipated cuts in Medicare and Medicaid made in 1997 and I commend the Senate leadership, the Finance Committee, Senators ROTH and MOYNIHAN, and the Administration for their hard work in developing this bill. The bill includes several important provisions.

The Balanced Budget Act of 1997 has been one of several factors threatening the overall stability of the health care system in California, which many believe to be on the verge of collapse. Today I will focus on eight provisions of the bill which are particularly important to California.

CALIFORNIA'S HEALTH CARE SYSTEM ERODING

During the past few months, I have met with many California health care leaders who have convinced me that the Medicare and Medicaid cuts contained in the Balanced Budget Act of 1997 have undermined the financial stability of California's health care system. In the past 6 months, I have urged President Clinton, Secretary Shalala, and Senators ROTH and MOYNIHAN to join me in addressing the impact the Balanced Budget Act of 1997 is having on our nation's health care system.

California's health care system, in the words of a November 15th Wall Street Journal article, is a ''chaotic and discombobulated environment.'' It is stretched to the limit:

Thirty-seven California hospitals have closed since 1996, and up to 15 percent more may close by 2005.

By 2002, the Balanced Budget Act of 1997 will result in cuts of $5.2 billion for California hospitals. For California's two largest Catholic health systems, Catholic Healthcare West and St. Joseph's Health System, the loss amounts to over $842 million.

Over half of my state's hospitals lose money on hospital operations annually.

Hospitals have laid off staff.

California physician groups are failing at the rate of one a week, with 115 bankruptcies or closures since 1996.

Academic medical centers, which incur added costs unique to their mission, are facing margins reduced to zero and below.

The University of California's five medical centers will lose $225 million.

California hospitals are contending with the impact of BBA while facing a projected margin of negative 7.58 percent by 2002, compared to the national rate of negative 4 percent.

For rural California hospitals, because 40 percent of patients receive Medicare and 20 percent receive Medicaid, 69 percent lost money in 1998, according to the California Health Care Association.

In short, restoring Medicare cuts is crucial to stabilizing California's health delivery system.

HOSPITALS

This bill contains several provisions that will help stabilize California's hospitals by restoring $400 million, according to preliminary estimates of the California Health Care Association. This bill clarifies that Congress' intent was not to impose a 5.7 percent cut in outpatient services, which restores $137

million to California, according to preliminary estimates by the California Health Care Association. Cancer hospitals are held harmless permanently. Since Medicare is a major payer for hospital care, improving payment rates and methods is a significant way to stop further closures and stabilize the system.

SAFETY NET HOSPITALS

I want to thank the Finance Committee and the Administration for including a provision maintaining adequate Medicaid payments to disproportionate share hospitals. California has a disproportionate burden of uncompensated care. We have one of the highest uninsured rates in the country at 24 percent, while the national rate is 17 percent. California has the fourth highest uninsured rate in the country, a rate that has risen over the last 5 years and now totals over seven million people. As a result of Medicaid reductions in the Balanced Budget Act of 1997, California's Medicaid disproportionate share hospital program could lose more than $200 million by 2002, representing a 20 percent reduction in the program, if what is know as the ''transition rule'' for California's public hospitals is not extended. At my urging, this bill continues for California only the ''transition rule'' allowing California DSH hospitals to calculate Medicaid payments at 175 percent of unreimbursed costs. Under this provision, tens of millions of dollars will be restored to California hospitals.

Public hospitals carry a disproportionate share of caring for the poor and uninsured. The uninsured often choose public hospitals and frequently wait until their illnesses are exacerbated when they come to the emergency room, making their care even more costly. Without this transition rule, for example, Kern Medical Center, in Bakersfield, would lose $8 million. Alameda County, would lose $14 million.

Forty percent of all California uninsured hospital patients were treated at public hospitals in 1998, up from 32 percent in 1993. The uninsured as a share of all discharges for public hospitals grew from 22 percent in 1993 to 29 percent in 1998. While overall public hospital discharges declined from 1993 to 1999 by 15 percent, discharges for uninsured patients increased by 11 percent. Large numbers of uninsured add huge uncompensated costs to our public hospitals.

MEDICAID COMMUNITY CLINICS

Another important provision is the Medicaid payment method for community health clinics. Extending the phase out of cost-based reimbursement for community health clinics over four years will help alleviate the financial burden associated with the more expedited phase-out proposed under the Balanced Budget Act of 1997.

BBA 1997 allowed state Medicaid programs to phase-out the previous requirement that clinics be paid on the basis of cost. The phase-out was to occur over 5 years. Under the phase-out, health centers could lose as much as $1.1 billion in Medicaid revenues. California health clinics' could have lost $969 million annually. To halt further decreases in payments to community health, an extended phase-out of cost-based reimbursement has been included in the bill which allows clinics in fiscal year 2000 to be reimbursed at 95 percent and by 2003 at 90 percent of costs.

California has over 7 million uninsured, and 306 federally qualified health centers and 218 rural health clinics that rely on federal funding so that they can provide vital health services to some of the state's sickest and poorest. Over 80 of California's clinics are located in underserved areas and provide primary and preventive services to 10 percent of the uninsured people in the state. According to the federal Bureau of Primary Health Care's Uniform Data System, 42 percent of California community health center patients are children, 52 percent are adults ages 21–64, and 6 percent are the elderly.

HOME HEALTH

I am also pleased that the bill addresses home health care in this bill. For example, the provision which delays the 15 percent reduction in payment for one year will enable home health providers to transition more smoothly and better maintain continuity of services to patients. California will gain $162 million over 5 years as a result of all the home health provisions included in the bill, according to preliminary estimates by the California Association of Health Services at Home.

While the intent of the BBA 1997 law was to restrain the growth of Medicare home health expenditures, it is now anticipated that home health expenditures in fiscal year 2000 will be lower than they were projected in 1997. CBO estimated that BBA 1997 would cut $16 billion over 5 years. Recent estimates show cuts of $48 billion over 5 years, which is three times more than originally expected. HCFA's 1998 data shows that total Medicare payments to home health agencies declined between 1997 and 1998 by 33 percent; reimbursements dropped from $1.1 billion to $745 million.

California home health providers have suffered immeasurably since passage of the BBA. In California, 230 home health agencies have closed since 1997, which is 25 percent of all state licensed agencies, largely due to the effects of BBA, according to the California Association for Health Services at Home. For example, the home health agency at the San Gabriel Valley Medical Center, which was providing nearly 10,000 patient visits per year, was forced to close this year due in part to the effects of the BBA. Additionally, between 1997–1998 there has been a 12 percent decrease in the number of patients served nationally and a 35 percent decrease in the number of home health visits nationally. As the population ages and families are more dispersed, it is especially important to help people stay in their own homes.

MEDICAL EDUCATION

I support the provisions included in the bill which alleviate reductions in graduate medical education and begin to restore equity in payment levels. Freezing cuts in the indirect medical education (IME) payment at the current level of 6.5 percent for fiscal year 2000, 6.25 percent in 2001, and 5.5 percent in 2002 and thereafter could help stabilize teaching hospitals and prevent a loss of about $3 billion for teaching hospitals nationwide over five years. For example, freezing indirect medical education payment rates represents $5 million to UCLA's teaching hospital. California's teaching hospitals as a whole will receive approximately $52 million because of this freeze, according to preliminary estimates by the California Health Care Association.

The bill also takes a good first step to correct Medicare's direct medical education (DME) formula, a geographic disparity in payments, that has paid California teaching hospitals far less than teaching hospitals in the Northeast so that California's teaching hospitals can begin to receive payments for medical residents closer to those of their counterparts in other states. Currently, California teaching hospitals receive 40% less in Medicare payments for medical education than similar New York institutions. The DME provision in this bill begins to reform a longstanding inequity in the formula that has unfairly compensated medical education in California. California's teaching hospitals will benefit from this provision by approximately $52 million over five years, according to the California Health Care Association.

Many of the nation's teaching hospitals, including UCLA in California, are premier research and clinical care facilities and will be forced to close down beds and lower the quality of care they provide if reductions in indirect medical education (IME) payments continues. According to the Association of American Medical Colleges, 30 percent of all teaching hospitals nationwide are now operating in the red, and by 2002, 50 percent of all teaching hospitals will be losing money without this bill.

Academic medical centers deserve protection because they have multiple responsibilities—teaching, research, and patient care—which cause them to incur costs unique to such facilities. There are 400 teaching hospitals across the country. Teaching hospitals only account for 5.5 percent of the nation's 5,000 hospitals but they house 40 percent of all neonatal intensive care units, 53 percent of pediatric intensive care units, and 70 percent of all burn units. Our nation's teaching hospitals are providing care to some of the nation's sickest patients.

Academic medical centers also provide care to a disproportionate share of the uninsured and underinsured. They

provide 44 percent of all care for the poor. The University of California's academic medical centers are the second largest safety net for a state that has the fourth highest uninsured rate in the country.

Medicaid disproportionate share payments to hospitals that serve the impoverished were also reduced five percent over five years as a result of the Balanced Budget Act of 1997. Teaching hospitals receive two-thirds of all Medicaid disproportionate share payments, worth $4.5 billion annually.

In California, graduate medical education (GME) funding helps support 108 hospitals that train more than 6,700 residents over three-to-five year periods. In 1997, the direct medical education funding in California totaled $95 million. Dr. Gerald Levey, the Medical Provost at the University of California Los Angeles wrote that:

> In the 5½ years I have been in my position at UCLA, my colleagues and I have implemented virtually every conceivable cost-cutting measure to keep us financially strong in order to compete in the brutal managed care market and maintain our academic mission of research and teaching. Coming on the heels of these measures, the Balanced Budget Act of 197 has served to literally ''break the camel's back.''

Teaching hospitals' ability to serve their communities, advance research, and train physicians will be compromised if we do not pass this bill.

ADEQUATELY PAYING DOCTORS

I also thank the Finance Committee and Administration for addressing the issue of the ''sustainable growth rate'' factor in payments to physicians under Medicare. The Balanced Budget Act of 1997 changed how Medicare physician payment rates are updated every year, including creating the new sustainable growth rate factor. In the first two years of using the sustainable growth rate, it appears that errors in its calculations were made because projections were used to determine the rate rather than actual data. As a result of these errors, physicians are caring for one million more patients than Medicare anticipated, at a cost of $3 billion according to the American Medical Association.

California's doctors have made a compelling case that errors in its estimates have caused unintended reductions in payments to physicians. The bill would require HCFA to use actual data beginning in 2001 to calculate payments instead of projections in order to stabilize payments to physicians who treat Medicare patients. While it does not go far enough, it is a step in the right direction towards decreasing fluctuations in physician payments from year to year.

RETAINING MEDICAID

Another provision included in this bill that is of great importance to California is removing the December 21, 1999 expiration date for the $500 million Temporary Assistance to Needy Families (TANF) Fund. The expiration date for these funds must be repealed so that states like California can continue to use TANF funds to enroll low-income children and adults in Medicaid and CHIP. As part of the 1996 welfare reform, Medicaid was ''de-linked'' from cash assistance, and states were given increased matching federal funds for administering a new Medicaid family coverage category.

Of the $500 million provided, as of July 1999, states have only spent 10 percent. Unless federal law is changed very soon, 34 states, including California, will lose these funds by the end of this year because under the law, states have to spend the funds within the first 12 calendar quarters that their TANF programs are in effect. Thus, December 31, 1999, California will lose access to the $78 million remaining of the $84 million allocated if we do not act. Fifteen other states will lose access to their remaining funds in December as well. On September 30, 1999, sixteen states lost access their funds due to these time limits.

We cannot let these funds lapse in California because we need to enroll more working, low-income people in Medicaid and children in CHIP and ensure that more Californians have access to health services.

I thank the Committee and Administration for including this provision.

MEDICARE MANAGED CARE REFORM

I am pleased with the five-year moratorium placed on NCFA's use of health status risk adjuster for payments to managed care plans included in the bill. HCFA has been using hospitalizations as a measure of health, which is not only an incomplete measure of health but also unfairly penalizes states like California that historically have had a heavy penetration of managed care, lower hospital admissions rates and shorter hospital lengths of stay. The way Medicare pays managed care plans deserves a thorough review to determine if both the payment methodology and the payment rats are appropriate. This moratorium could give us time to conduct a review as well as give HCFA time to develop a better measure of health. Under this provision, $130 million over five years will be restored so that managed care plans can pay providers more adequately, according to preliminary estimates by the California Health Care Association.

ENVIRONMENT POST-BALANCED BUDGET ACT OF 1997

Circumstances have changed since 1997 when we passed the Balanced Budget Act. We have eliminated the federal deficit. Because we have a robust economy, lower inflation, higher GDO growth and lower unemployment, we also have lowered Medicare spending growth more than anticipated. This climate provides us an opportunity to revisit the reductions made by the Balanced Budget Act of 1997 and to strengthen the stability of health care services, a system that in my state is on the verge of unraveling.

We should not end this session without passing this bill. Without it, we could have a more severe health care crisis on our hands, especially in my state. I urge my colleagues to join me in passing this bill.

Mr. LOTT. Mr. President, today concludes a grueling debate on the state of the dairy industry. Though the process was long and often times quite confusing, I think the Senate has come to an agreement on a package that will prove to be beneficial to most interested parties at this time.

Mr. President, I must say this process would not have been possible without the diligent work of one of my former staffers, Congressman CHIP PICKERING. I have always said ''once a Lott staffer, always a Lott staffer.'' Although CHIP has moved on to represent the people of the third district of Mississippi, he continues to constantly be of great help to me, and to always keep the best interest of the entire state of Mississippi at heart.

CHIP believes that Option 1A is absolutely essential for allowing most dairies in Mississippi and outside the upper Midwest to remain in business, and he worked with me to see that this legislation was put into law. He organized House members from across the country to fight in order to see that the crucial dairy language we needed became law this year.

CHIP realizes Option 1A is the only way the interests of Mississippi's dairy farmers can be protected. Having grown up working on his family's dairy farm, meeting with dairy farmers across Mississippi, and working with Mississippi Farm Bureau, CHIP knows the importance of this legislation to the survival of dairy farms and to the continued fresh supply of milk for all Mississippians. I thank Congressman PICKERING for his relentless efforts on behalf of Mississippi dairy farmers.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the conference report to accompany H.R. 3194.

The yeas and nays have not been ordered.

Mr. LOTT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays are ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Oregon (Mr. SMITH) is necessarily absent.

I further announce that, if present and voting, the Senator from Oregon (Mr. SMITH) would vote ''yea.''

Mr. REID. I announce that the Senator from Washington (Mrs. MURRAY) is absent attending a funeral.

The result was announced—yeas 74, nays 24, as follows:

[Rollcall Vote No. 374 Leg.]

YEAS—74

Abraham	Bennett	Bond
Akaka	Biden	Breaux
Ashcroft	Bingaman	Brownback

Bryan	Harkin	Mikulski
Bunning	Hatch	Moynihan
Burns	Helms	Murkowski
Campbell	Hollings	Nickles
Chafee, L.	Hutchinson	Reed
Cleland	Hutchison	Reid
Cochran	Inouye	Robb
Collins	Jeffords	Roberts
Coverdell	Johnson	Rockefeller
Craig	Kennedy	Roth
Crapo	Kerrey	Santorum
Daschle	Kerry	Sarbanes
DeWine	Kyl	Schumer
Dodd	Landrieu	Snowe
Domenici	Lautenberg	Specter
Durbin	Leahy	Stevens
Feinstein	Lieberman	Thompson
Frist	Lincoln	Thurmond
Gorton	Lott	Torricelli
Gramm	Lugar	Warner
Grassley	Mack	Wyden
Gregg	McConnell	

NAYS—24

Allard	Enzi	Levin
Baucus	Feingold	McCain
Bayh	Fitzgerald	Sessions
Boxer	Graham	Shelby
Byrd	Grams	Smith (NH)
Conrad	Hagel	Thomas
Dorgan	Inhofe	Voinovich
Edwards	Kohl	Wellstone

NOT VOTING—2

Murray	Smith (OR)

The conference report was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. GORTON. I move to lay that motion on the table.

The motion to table was agreed to.

COLLOQUY BETWEEN SENATOR WARNER AND SENATOR HELMS

Mr. WARNER. I rise to address a number of aspects of the State Department Authorization Act, which has been included in the final omnibus budget package of legislation. This bill contains a number of provisions that, directly and indirectly, affect the jurisdiction of the Armed Services Committee, and I am very concerned by the fact that this major bill was included with virtually no consultation with our committee. I believe that the process works better when the normal legislative procedures are followed.

I would like to raise a specific issue with the distinguished chairman of the Foreign Relations Committee. Section 1134 of the State Department Authorization Act prohibits Executive Branch agencies from withholding information regarding nonproliferation matters, as set forth in section 602(c) of the Nuclear Non-Proliferation Act of 1978, from the Senate Foreign Relations Committee and the House International Relations Committee, including information in special access programs.

I am aware that problems with the dissemination of nonproliferation information have arisen in the past. DOD has taken steps to correct these problems and has established a policy that special access programs will not include nonproliferation information, as defined in section 602(c) of the Nuclear Non-Proliferation Act of 1978. Based on my review of DOD's special access programs, I believe that the Department of Defense does not now have special access programs which include such nonproliferation information. I have been assured that, in the future, DOD will provide nonproliferation information to the appropriate committees of Congress.

Mr. HELMS. I thank my colleague, the chairman of the Armed Services Committee. I too have been assured by the Department that it will not use special access program status to deny the Foreign Relations Committee access to the nonproliferation information required by section 602(c).

Mr. WARNER. I am concerned that some might interpret section 1134 of the State Department Authorization Act as requiring expanded access to sensitive DOD intelligence sources and methods, as contrasted with nonproliferation information itself. I believe that section 1134 would not require DOD to change its current procedures for protecting such sensitive sources and methods. Is this also the understanding of the chairman of the Foreign Relations Committee?

Mr. HELMS. I believe that is correct. If the Department's assurances are accurate, then this provision would not modify DOD's current policies regarding the protection of sensitive sources and methods. The Foreign Relations Committee has no intention of seeking expanded access to such sources and methods, or to DOD special access programs, so long as DOD lives up to its reporting obligations under existing law. DOD's policy of not handling nonproliferation information within special access channels certainly provides a significant reassurance in that regard. Our concern is only to ensure that DOD policy regarding special access programs or intelligence sources and methods not be seen as obviating its long-standing legal obligations to inform appropriate committees of Congress.

Mr. WARNER. That is the case now, and I am pleased that DOD has assured both of us that the prerogatives of the Foreign Relations Committee will be protected. I thank my distinguished colleague, the chairman of the Foreign Relations Committee.

Mr. HELMS. I appreciate these assurances and thank my colleague, the chairman of the Armed Services Committee.

Mr. SHELBY. I am concerned with section 1134 which requires the DCI to provide certain information, including information contained in special access programs, to the chairman and ranking member of the Foreign Relations Committees. I note that this language on special access programs was added after the bill was passed by the Senate. I wish to clarify that the legislative intent of this provision does not wish to clarify that the legislative intent of this provision does not include expanded information relating to intelligence operational activities or sensitive sources and methods.

I ask for the chairman of the Foreign Relations Committee's clarification regarding the companion section in the State Department Authorization bill, section 1131. Am I correct in understanding that this provision does not levy the same requirement upon the Director of Central Intelligence that is required of the Secretaries of Defense, State, and Commerce?

Mr. HELMS. That is correct, Mr. Chairman. Unlike the other Secretaries you have mentioned, the Director of Central Intelligence is required only to disclose information covered under subparagraph (B). That information relates to significant proliferation activities of foreign nations. The Director is exempt from reporting information under subparagraph (A) and (B) which relates to the agency's operational activities. The Foreign Relations Committee understands that intelligence operations fall within the jurisdiction of the Intelligence Committee, and therefore did not include such activities in this reporting requirement.

Mr. SHELBY. I thank the Chairman for that explanation and yield the floor. I look forward to fully reviewing those provisions in the Intelligence Committee next year.

UNANIMOUS CONSENT AGREEMENT—H. CON. RES. 236

The PRESIDING OFFICER. Under the previous order, H. Con. Res. 236 is agreed to.

The motion to reconsider is laid upon the table.

The concurrent resolution (H. Con. Res. 236) was agreed to.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I am prepared to ask unanimous consent to be recognized for 5 minutes as in morning business, but I would certainly defer to the minority leader or majority leader if either has anything to address at this time.

The PRESIDING OFFICER. Without objection, the Senator from Oklahoma.

RECESS APPOINTMENTS

Mr. INHOFE. Mr. President, first of all I applaud the White House—this is probably the first time I have done that in 7 years—for responding to an issue that is very critical, probably one of the most critical issues we will be facing.

Going back in the history of recess appointments, the Constitution provided for recess appointments to be allowed, thereby avoiding the constitutional prerogative of the Senate of advice and consent in certain conditions. The major condition was that a vacancy would occur during the course of the recess. This goes back to the horse-and-buggy days when we were in session for 2 or 3 months at a time and then we were gone. So if someone such as the Secretary of State would die in office, it would allow the President to replace that person without having to go through the advice and consent.

Throughout the years, both Democrat and Republican Presidents have