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Senate

(Legislative day of Friday, October 2, 1998)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Almighty God, the only Source of lasting, authentic courage, this morning, we turn to the psalmist and to Jesus for the bracing truth about courage to see things through—not just to the end of the Congress but to the accomplishment of Your ends. David reminds us, ''Be of good courage, and He shall strengthen your heart, all you who hope in the Lord.''—Ps. 31:24. Jesus assures us, ''You will have tribulation, but take courage.''—John 16:33 NASB. We know we can take courage to press on because You have taken hold of us. You have called us to serve You because You have chosen to get Your work done through us. Bless the Senators as they confront the issues of the budget, consider creative compromises, and seek to bring this Congress to a conclusion. In this quiet moment, may they take courage and press on. Through our Lord and Savior. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

SCHEDULE

Mr. LOTT. Mr. President, this morning the Senate will immediately proceed to a rollcall vote on adoption of the omnibus appropriations conference report. Following that vote, several Senators will be recognized to speak on or in relation to the omnibus spending measure, or to make any other concluding remarks they would like to offer today. After those remarks have been made, the Senate may consider any legislative or executive matters that can be cleared by unanimous consent.

OMNIBUS CONSOLIDATED AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 1999—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the clerk will report the conference report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4328), have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

NOTICE

When the 105th Congress adjourns sine die on or before October 22, 1998, a final issue of the Congressional Record for the 105th Congress will be published on November 12, 1998, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through November 10. The final issue will be dated November 12, 1998, and will be delivered on Friday, November 13.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at ''Record@Reporters''.

Members of the House of Representatives' statements may also be submitted electronically on a disk to accompany the signed statement and delivered to the Official Reporter's office in room HT–60.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Congressional Printing Management Division, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

JOHN W. WARNER, *Chairman.*

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

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 19, 1998.)

Mr. LOTT. Mr. President, if there is no objection, I would like to engage in a colloquy with the distinguished Chairman of the Appropriations Committee, the senior Senator from Alaska.

Mr. STEVENS. I would be happy to.

Mr. LOTT. I understand that this bill contains a provision which prohibits the FBI from charging a user fee or gun tax on all firearms purchases that take place once the national instant criminal background check system takes effect on November 30 of this year—Is that correct?

Mr. STEVENS. Yes. The Brady Act did not intend, nor did it authorize the Department of Justice to charge a tax or fee to law abiding citizens to exercise their Second Amendment right. The National Instant Check System (NICS) is a national criminal justice program which was designed to quickly screen prospective firearms purchasers—weeding out prohibited gun pruchases while ensuring that the sale of a firearm to a law-abiding citizen could go forth without significant delay. The NICS is a federal program of benefit to all citizens and therefore the cost should be and will be borne by the federal government in view of the absence of any enabling provision relating to assessment of a user fee to gun owners.

Mr. LOTT. I am pleased to hear that, since I supported the establishment and the creation of a national instant check program. It was certainly my understanding that this program was meant to facilitate gun purchases by law abiding Americans and not cause a chilling effect on our rights. We have provided millions of dollars—including $42 million in this bill—for the FBI to implement NICS pursuant to the law. As I also remember, NICS is specifically prohibited from becoming a repository of approved firearms transfer records and firearms owners? Is that correct?

Mr. STEVENS. Again the Senator is correct. The establishment of NICS contained important elements in the law designed to protect the privacy of individual law-abiding gun owners. One of the greatest concerns and legitimate fears of law abiding gun owners is that the federal government will create a federal gun owner registration system where law abiding gun owners exercise of their constitutional rights will be carefully monitored. This is why there are a number of provisions in law which prohibit such action by the government. One such law is the Firearms Owners Protection Act, passed in 1986, which specifically prohibits any record of firearms owners and firearms purchases from being maintained or recorded, for any period of time, in a facility owned, managed, or controlled by the United States government.

Mr. LOTT. I thank the Senator for making that point clear. Is it not also the case that the Brady law itself includes a prohibition on the centralization and creation of a federal gun registration system?

Mr. STEVENS. Yes, the Brady Act clearly states that upon approval of a firearm transaction, the instant check system shall ''destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the transfer.'' 18 U.S.C. §922(t)(2). Additionally, Section 103 of the Brady Act prohibits the establishment of a firearms registration system to prevent any records generated by the instant check system from being transferred to a facility owned, managed or controlled by the United States government.

Mr. LOTT. Well, let me understand something. Does that mean that the FBI or the Department of Justice would be able to collect and maintain all personally identifying information on transactions relating to approved firearms transfers for one and one half years, or for any period of time?

Mr. STEVENS. The national instant criminal background check system clearly prohibits such action by the FBI. The centralization and retention of firearms transaction information and records on firearm owners would create a de facto system of firearms registration which has clearly not intended by the Brady Act or any other provision of federal law. In fact it was specifically prohibited.

Mr. LOTT. Specifically, though, is the NICS statute clear on this prohibition of maintaining an audit log or other repository of approved firearms transaction and personal information on firearms owners? Is there any doubt as to Congress' intent in this regard?

Mr. STEVENS. I do not believe the law could be any clearer. The NICS statute is transparent and unambiguous on the point that the instant check system ''shall destroy'' such records. Subsection (t)(2) of 18 United States Code, Section 922, is clearly drafted so that destruction of an approved firearms transaction and personal identifying records shall occur contemporaneously upon the system's approval of the firearms transfer, the assignment of a unique identifying number, and upon the immediate voice or electronic conveyance of such approval and unique identifying number to the federal firearms dealer making the NICS inquiry.

Mr. LOTT. Is there any information that the FBI is permitted to maintain from an approved firearms transaction that goes through NICS?

Mr. STEVENS. The only information or records on approved firearms transfers that the FBI is permitted to maintain in a central registry is the ''NICS Transaction Number'' (NTN) and the date the transaction was requested. See, 18 U.S.C. §922(t)(2)(C).

Mr. LOTT. I would like to be sure that the rights of law abiding gun owners are not violated by FBI's operation of NICS. Do you have any suggestions in this regard, to ensure that the laws are being followed?

Mr. STEVENS. I suggest that a General Accounting Office (GAO) audit be conducted periodically to ensure Americans that the retention of information and records run through the NICS is not being maintained, for any purpose, unlawfully.

Mr. LOTT. I certainly would second that recommendation. This matter is too important to the American people to allow any opportunity for abuse.

Mr. DASCHLE. Mr. President, the statement of managers contains language concerning the proposed HCFA rule that would defer to state law on the issue of physician supervision of nurse anesthetists. As I understand it, this is non-statutory language, and nothing in the bill would prohibit HCFA from moving forward with the publication of the final rule on this issue. I would like to ask my colleague from North Dakota, who is a member of the Committee on Appropriations, is that his understanding of the language as well?

Mr. DORGAN. Mr. President, the language to which my colleague refers is only included in the statement of managers and does not have a binding effect on HCFA. As a matter of law, nothing in the bill or the report language would prohibit HCFA from moving forward with the final rule.

Mr. DASCHLE. Mr. President, then it would be correct that HCFA could base its final decision on data or information that is already available, rather than conducting any new studies. My concern here is to ensure that HCFA is neither discouraged from nor delayed in moving forward in publishing a final rule. It is my understanding that nothing in the report language of this year's Labor/HHS Appropriations bill would prevent HCFA from moving ahead and that any further review of data could follow HCFA's publication of a final rule.

Mr. DORGAN. Mr. President, the Senator is correct. The statement of managers does not mandate, as a matter of law, any further studies by HCFA on this issue. Nor would HCFA be impeded from moving forward with issuing a final rule regarding the physician supervision issue. In fact, the language clearly states it is not intended to discourage or delay HCFA from moving forward.

I know this issue is particularly important to some of us because nurse anesthetists are the sole anesthesia providers in 70% of rural hospitals. Finalizing this proposed rule is critical to rural America.

Mr. CONRAD. Mr. President, I appreciate the responses from my colleague from North Dakota, and I wish to briefly comment on this matter. As the

sponsor in previous congresses of legislation that would require HCFA to defer to state law on this issue, I am pleased that HCFA has finally issued a proposed rule that would in fact defer to state law. This issue has been hanging over us for many years, and it seems that the only way to finally resolve it is for HCFA to publish its final rule based upon the proposed rule and let the states decide. As a member of the Senate Finance Committee, I would add that we included a provision in our Medicare package in 1995 that would defer to state law on the issue of physician supervision of nurse anesthetists. That provision was not included in the final package as a result of an agreement between the two associations to focus on a reimbursement issue instead. However, I want to emphasize earlier comments that HCFA should neither be discouraged nor delayed in moving forward in publishing a final rule.

Mr. DORGAN. Mr. President, I share my colleague from North Dakota's position on the nurse anesthetist issue and thank him for his comments. I believe that HCFA should move forward and issue a final rule removing the physician supervision requirement and defer to state law.

Mr. DASCHLE. Mr. President, I thank my colleagues for their comments regarding the statement of managers' language on nurse anesthetists, an issue important to all of us, and know we all will follow the issue closely in the months to come.

Mr. STEVENS. Mr. President, I would like to engage the distinguished Senator form New Mexico, the chairman of the Energy and Water Development Subcommittee, on the subject of funding which is provided in P.L. 105–245 for the existing joint U.S.—Russian program, for the development of gas reactor technology to dispose of excess weapons-derived plutonium.

As the chairman of the subcommittee knows, the purpose of this program is to develop a new reactor technology which is not only more efficient in burning weapons plutonium but is melt-down proof and more thermally efficient than existing reactors. Because of the promise of this technology, the Russians are very enthusiastic about it and the French nuclear company Framatome and the Japanese company Fuji Electric have been active participants. Further, because most of the technical work on this program is being performed by Russian nuclear scientists and engineers, program costs are reduced considerably the those same Russian scientist and engineers are engaged in stimulating non-nuclear weapons work.

It is my understanding that this unique and innovative U.S.—Russian program to destroy weapons plutonium is the result of the very considerable expense and efforts of a particular U.S. company over several years. Is this also the Subcommittee Chairman's understanding?

Mr. DOMENICI. Yes, it is.

Mr. STEVENS. Is it also the Senator's understanding that from all indications, this program has been well run and has an existing and effective management structure with both U.S. and Russian representation?

Mr. DOMENICI. Yes it certainly is. I would note that Secretary of Energy Pena noted and has appreciated the cooperation that has occurred in this area under the current partnership program. In a joint statement signed on March 11 of this year, Secretary Pena and Deputy Minister of Minatom Mr. Ryabev specified those areas in which further scientific research will be necessary; plutonium fuel, neutron physics, and materials. That joint statement was an important indicator of the success and purpose of the gas reactor partnership and future efforts should be consistent with that statement.

Mr. STEVENS. Then I would like to ask the Senator from New Mexico his understanding of language in the report that states that of the $5 million made available for this program in Fiscal Year 1999, $2 million is for ''work to be performed in the United States by the Department of Energy and other U.S. contractors.'' Specifically, is it the Senator's understanding or intent that the Department of Energy should receive most of this money or impose a new management structure over this program that is working so well and is so well accepted by the Russians?

Mr. DOMENICI. I thank the Senator from Alaska for raising this key issue. I can assure the Senator it is my wish that the Department of Energy utilize the already established partnership that created this important program and has management it so well.

Mr. STEVENS. I thank the distinguished Senator from New Mexico for this clarification.

Mr. GRASSLEY. Mr. President, Otto von Bismarck, former Chancellor of Germany, once said, ''Laws are like sausages. It is better not to see them being made.'' Yet even Bismarck would have gagged over how this bill evolved.

Several times in recent years, I have disparaged the process of eleventh-hour budgeting because it inevitably leads to one thing: a rising tide that lifts all spending. All the Republican programs get higher funding, all the Democrat programs get more funding. The budget busts apart at the seams. The taxpayers are the losers.

And it's not just the budget process. Bismarck would have croaked had he seen how the normal legislative process—bad as it is—was bypassed, becoming a free-for-all. It's as if the Clinton Administration and the Congress had a power outage, and the looters came from everywhere and picked the taxpayers' pockets clean. The legislative process was stripped of its integrity.

This isn't an ''omnibus'' bill; it's an ''ominous'' bill.

Many of us in this body have brought the good news home to our constituents. We have delivered the first balanced budget in a generation. We created surpluses as far as the eye can see. The debt is finally being paid down. Our children have a brighter future because of it. And Social Security will be saved for the Baby Boomer generation. This is the vision we had when we passed the bipartisan Balanced Budget Act of 1997.

I intend to vote against this bill. The reason is because it threatens that vision. A vision we committed to just one year ago. Specifically, there are three reasons I oppose it. First, it threatens what we accomplished last year. It compromises the Balanced Budget Act. This bill proves that the Clinton White House and Congress can never resist the temptation to spend money, even though we've promised to save the money for Social Security and to pay down the debt. That signifies a total lack of fiscal discipline.

Second, it squanders the surplus. It would soak up $21 billion of it in the coming year alone. This is just one month after the announcement of the nation's first surplus in 29 years. Both sides were patting each other on the back. Meanwhile, we couldn't wait to spend it. We could have and should have found offsets for this money. I predict that in coming years, this will be Congress' way around the budget agreement—Call any program an emergency and the budget agreement is bypassed.

Third, the bill, is a budget-buster. Maybe not technically, maybe not now. But in pushing $4.1 billion of spending decisions into next year, it's the first die cast in ensuring another rising tide of spending next year. In addition, it's not really clear what the budgetary impact is of all the legislative mushrooms we're passing in this budget. The funding for these programs is like fertilizer. And next year these mushrooms become BIG mushrooms. And that creates further budgetary pressures for more spending.

In short, Mr. President, this process shows we have reverted to the same attitude, the same mindset, the same practice, that brought us monumental debt levels in the first place.

Moreover, I deplore the intellectual dishonesty of the President of the United States. For nine months, I have been applauding his stated commitment to save the surplus to ensure the viability of Social Security. Then he pushes for a budget that spends $21 billion of that surplus in just one year. The following day, the President appears in the Rose Garden and announces we've agreed to a budget deal, and saved Social Security in the process.

Mr. President, this cynical statement by the President, and the precedent it sets, hasn't saved Social Security. It has threatened Social Security. It has opened up the flood gates. It ensures future raids on future surpluses. And the President now has no moral authority to use those surpluses exclusively for Social Security. He squandered that moral authority.

It is also intellectually dishonest of the President to oppose tax cuts, using the argument that tax cuts would jeopardize Social Security, yet assume that spending the surplus would not.

These reasons, Mr. President, constitute why I am seriously disappointed in this process, and in this budget. I regret my vote against it because there are many provisions in this bill that I fully support. Some of them I am even responsible for.

For instance, there is approximately $300 million for Iowa farmers in additional relief. The relief package includes AMTA payments, disaster assistance and new operating loans. In addition, there is tax relief for farmers, including Permanent Income Averaging, accelerated health insurance premium deductibility, and a 5-year net operating loss carry-back.

There are other provisions I fought for and support. Chief among them are:

Home health care funding; Education funding for new teachers; Head Start funding; IMF reforms and funding; Extension of Chapter 12 bankruptcy provisions for family farmers; LIHEAP funding at levels beyond the administration's request; Anti-drug funding; and, Roads and highways funding, at the highest levels in history.

These are all provisions that I worked hard for, supported and that I believe are essential. However, they could have been paid for without this revival of the practice of incrementally mortgaging the future.

The easy thing for me to do would be to vote for this bill. But when the process of governing breaks down and puts our commitments and our future at risk; when Congress's recent fiscal discipline falls apart; and, when our elected leadership abdicates its responsibilities of governing, it's time, in my view, to say ''no.''

DISTRICT OF COLUMBIA APPROPRIATIONS

Mr. FAIRCLOTH. Mr. President, I rise to make a few remarks concerning the conference report on the Columbia appropriations, fiscal year 1999. This conference report is the product of a productive debate between the Senate and House subcommittees. This is a good bill, a bipartisan bill, and I urge my colleagues to support it.

I want to thank my subcommittee members, Senator BOXER, the ranking member, and Senator HUTCHISON for their hard work and assistance in putting the Senate bill together. I would also like to thank the chairman of the Senate Appropriations Committee, Senator STEVENS, and the distinguished ranking member, Senator BYRD, for their guidance and support.

Mr. President, the conference report largely ratifies the consensus budget for local funds adopted by the Mayor, the Council, and the Financial Authority. The Congress created that budget process, and it has imposed some much needed fiscal discipline on the District's budget. Instead of drowning in red ink, the budget of the Nation's Capital is now solidly in the black, with a surplus of over $300,000,000 for fiscal year 1998.

The conference report appropriates over $372,000,000 for implementation of the National Capital Revitalization and Self-Government Improvement Act of 1997. With the exception of the capital budget for the District court system, the conference report supports the President's budget request for implementation of the act.

The conferees did not provide the $50,000,000 requested by the President to capitalize the National Capital Revitalization Corporation [NCRC]. The Congress has not been consulted as to either the composition of the Board of the NCRC, its duties, the scope of its activities, the relationship between the NCRC and other Federal or local agencies, the relationship between the NCRC and Congress, or the extent to which actions taken by the NCRC may conflict with previous economic incentives adopted by the Congress on behalf of the District. Despite these concerns, the President's nonemergency supplemental request included $25,000,000 to capitalize the NCRC.

The District of Columbia was recently named the worst city in the country to raise children. The children of our Nation's Capital deserve better. Our conference report provides $7,000,000 to pay for new facilities at the Boys Town operations in the District; over $15,000,000 for public charter schools; and $200,000 for mentoring services for at-risk children.

The conference report also provides funding for several nonprofit organizations located in the District of Columbia. These projects have broad bipartisan support and will bolster the District's downtown revitalization efforts.

The conference report provides over $75,000,000 in Federal funds to improve public safety and repair a crumbling infrastructure in the Nation's Capital. Included in this amount is over $18,000,000 for repairs to the District's public safety facilities, including badly needed capital improvements to Metropolitan Police Department [MPD] facilities. In addition, the conference report provides the United States Park Police with $8,500,000 for a new helicopter, which will assist the MPD in meeting the District's public safety needs. In addition, the conference report appropriates $25,000 to expand the subway station next to the planned Washington Convention Center.

Perhaps most important, the conference report includes $25,000,000 to continue the work of management reform. If there is one reason why the Nation's Capital has any hope of recovery, it is because District agencies which have been mismanaged for years are finally being reformed and restructured. The Financial Authority and the District's Chief Management Officer, Camille Barnett, are now midway through the process of cleaning up the largest agencies of the District government. While the District is making headway in reversing years of mismanagement, much work needs to be done to improve service delivery to District residents. The funds provided in this bill will go toward projects that will enhance government efficiency and service delivery, such as expanded emergency medical services and technology modernization.

The conference report prohibits the use of Federal and local funds for the implementation of a needle exchange program; for abortion; and for a ballot initiative to legalize controlled substances. It also provides badly needed adoption reforms for the District of Columbia.

This conference report would not have been possible without the hard work and cooperation of my friend, Congressman CHARLES TAYLOR, the chairman of the House Subcommittee on the District of Columbia. We are confident that this conference report will be supported by the Senate, the House of Representatives, and the President.

SECTION 139 OF INTERIOR TITLE

Mr. BINGAMAN. Mr. President, I would like to express my appreciation to the managers of the Interior title of the Omnibus Appropriations Act for including section 139, which ratifies payments made by small refiners under preexisting onshore and offshore royalty-in-kind programs. I was pleased to work with Senators ENZI, DOMENICI, THOMAS, JOHNSON, and LANDRIEU on this issue. My office served as the point of contact between the Minerals Management Service and the small refiners in negotiating the final text of this section, which was then included by the managers in the bill, so I would like to make two observations in relation to it. The purpose of this section is to relieve small refiners of potential additional financial obligations that they are not in a position to bear, and to avoid the likelihood that a number of small refiners who participated in a federal program to increase their access to crude oil for refining would be forced into bankruptcy over a question as to whether the amount invoiced by government for that crude oil was correct or not. I do not believe that anything in this section should be construed as expressing congressional intent on any question other than the one of whether small refiners should be relieved of this potential problem. In my opinion, this section does not constitute a congressional view for or against the use of posted prices for the valuation of crude oil produced from federal leases.

CWC IMPLEMENTATION ACT OF 1998

● Mr. HELMS. Mr. President, following Senate approval of the resolution of ratification for the Chemical Weapons Convention (CWC) and subsequent ratification of the treaty by the President, it became necessary for the United States to enact legislation to implement its various domestic obligations. The Foreign Relations and Judiciary Committees of the Senate immediately fulfilled their obligation to prepare implementing legislation once the treaty

had been ratified. On May 23, 1997, the full Senate passed S. 610—''the Chemical Weapons Convention Implementation Act of 1997.'' Soon thereafter, on November 12, 1997, the House of Representatives passed the implementing legislation, together with sanctions on Russian firms that are assisting Iran's ballistic missile program.

I regret that it has taken so long to enact the implementing legislation into law, if for no other reason than that I expect numerous U.S. companies to challenge the constitutionality of the treaty and overturn it in the courts. Unfortunately, final resolution of the legal issues surrounding the CWC, as well as full U.S. compliance with the treaty, has been delayed this entire session of Congress because of President Clinton's opposition to the unrelated missile sanctions provisions of the bill. Indeed, the President sought to delay and derail CWC implementing legislation throughout the entire spring. The President alone is responsible for putting the United States into noncompliance by delaying and then ultimately vetoing the bill (on June 23, 1998).

It is important that those who are frustrated with the slow pace of U.S. implementation of the CWC understand that the Congress has discharged its obligation to provide implementing legislation for the President's signature not once—but twice. It is the President, not Congress, who has blocked speedy and complete adherence to the treaty.

For the record, I note that two trade associations were directly involved in the crafting of the CWC's implementing legislation. The President and CEO of the Chemical Manufacturers Association wrote to me on May 7, 1998, stating that S. 610 was ''a reasonable approach to meet U.S. obligations under the CWC and protect industry's interests.'' The Vice President for Regulatory Affairs of the American Forest and Paper Association wrote to Senator HATCH on May 21, 1997, offering its support for S. 610 since the bill ''contains a number of provisions that the forest products industry believes are crucial to ensuring that implementation of the CWC is reasonable and meets the stated purpose of the treaty.''

I submit the following assessment which details the most significant provisions of the implementing legislation, together with an explanation of the Senate's rationale.

Section 3. Definitions. Section 3 specifically lists those chemical formulae (and a few biotoxins) falling under the terms: ''Schedule 1 chemical agent''; ''Schedule 2 chemical agent''; and ''Schedule 3 chemical agent''. Any chemical not listed in Section 3 as either a Schedule 1, 2, or 3 chemical agent is not subject to the any of the requirements under the legislation relating to such chemical agents (e.g. data declaration and routine inspections).

The Annex on Chemicals of the CWC excludes some chemicals which are capable of being used as chemical weapons precursors, but which also have wide commercial applications. As a result, verification measures are not applied under the Convention to those chemicals. For this reason, if the CWC were to be expanded in scope, the most likely candidates for addition to the Annex are dual-use chemicals which are produced in large commercial quantities for purposes not prohibited under the Convention. The addition of these chemicals to the Annex on Chemicals likely would increase the number of businesses affected by the Convention's verification regime, entailing additional reporting and data declarations from companies, and subjecting additional facilities to routine inspections.

Thus the implementing legislation is deliberately structured to ensure that a change in law will be required before any provision of the Verification Annex can be applied to any new chemical or biological substance added to the Annex on Chemicals. This will provide both the Congress and the American public sufficient opportunity to examine proposals by the executive branch to expand the CWC. Indeed, depending upon the extent to which the addition of a chemical (or other type of substance) is judged to substantively increase the scope of application of the CWC, such a change also might require the advice and consent of the Senate.

The American Forest and Paper Association specifically supported the requirement that ''additions or deletions from the list would only be permitted by legislative amendment, and not through the administrative regulatory process.''

Section 102. No Abridgement of Constitutional Rights. This section makes clear that the Federal Government may not force anyone to waive any Constitutional right as a condition for entering into a contract with the federal government or as a condition for receiving any other form of benefits from the government. This provision works in conjunction with Section 308, which amends The Office of Federal Procurement Policy Act. Many of the companies subject to the reporting and inspection requirements of the CWC work under contract to the federal government. Sections 102 and 308 protect these companies by prohibiting the government from imposing, as a condition of a contract, the requirement that they must agree to warrantless searches under the CWC or forego any other Constitutional right (such as the right to challenge the constitutionality of the CWC). The same protections apply to individuals receiving benefits from the United States.

Section 103. Civil Liability of the United States. Section 103 is necessary to address Fifth Amendment problems which arise with respect to the CWC. The Convention requires that the United States provide foreign inspectors with intrusive access into numerous U.S. businesses; this, together with the mandatory data declaration requirements, holds at risk trade secrets and critical proprietary information. For instance, the authority of inspectors to collect data and take samples for analysis may constitute a form of illegal seizure and the taking of private property without compensation. But the CWC contains no provisions to ensure just compensation to those whose property has been taken.

Proprietary information is often the basis for a chemical company's competitive edge. As a practical matter, a wide variety of things are considered proprietary or sensitive. For instance, the following are often considered to be ''trade secrets'': (1) the formula of a new drug or specialty chemical; (2) a synthetic route that requires the fewest steps or the cheapest raw materials; (3) the form, source, composition, and purity of raw materials or solvents; (4) a new catalyst that improves the selectivity, efficiency, or yield of a reaction; (5) the precise order and timing with which chemicals are fed into a reactor; (6) subtle changes in pressure or temperature at key steps in a process; (7) isolation methods that give the highest yields consistent with good recycling of solvents and reagents; (8) expansion and marketing plans; (9) raw materials and suppliers; (10) manufacturing cost data; (11) prices and sales figures; (12) names of technical personnel working on a particular project; and (13) customer lists.

The theft of any one of these items could result in a loss of revenue and investment that could damage a large company, and drive a small one out of business. Because some trade secrets are not all that complex, even simple visual inspection could reveal proprietary information of great value to a competitor. During routine inspections, for example, companies will run the risk that a skilled chemical engineer equipped with knowledge of the target facility and a list of specific questions to be answered will learn a great deal about that business' activities.

The Fifth Amendment provides that no private property shall ''be taken for public use without just compensation.'' As one noted constitutional scholar, Ronald Rotunda, warned the Foreign Relations Committee on March 31, 1997: ''If the federal government would simply take this property, the Constitution requires that it pay just compensation. If the federal government sets up a legal structure that allows international inspectors to make off with intellectual property, there is a 'taking' for purposes of the just compensation clause.''

The CWC, however, does not provide for just compensation in the event of misuse of treaty inspection rights. In the absence of a treaty-mandated remedy, the only means of guaranteeing Fifth Amendment protections is to hold the federal government liable for the legal structure it has created by ratifying the CWC. It is the federal government, after all, which approved a treaty giving foreign nationals access to U.S. facilities, thereby creating the potential for the taking of private property.

Section 103 provides U.S. companies and citizens with the right to bring a civil action for money damages against the United States for the actions of foreign inspectors and other OPCW employees (as well as U.S. government personnel) undertaken pursuant to, or under the color of the CWC or the implementing legislation. It precludes the federal government from raising sovereign immunity as a defense, and establishes a process whereby, once a prima facie case has been established that proprietary information has been divulged or taken, the burden to disprove the claim falls upon the United States. In so doing, Section 103 establishes a reasonable standard of evidence to be used in resolving this type of civil action, given the ambiguity that often surrounds suspicions of the theft of trade secrets.

Section 103 defers action on a civil claim for one year, providing a period of time for the United States to pursue diplomatic and other remedies to seek redress for the claim. However, once the claim moves forward, Section 103 establishes a clear policy and process by which the U.S. government shall pursue recoupment of all funds paid in satisfaction of any tort or taking for which the U.S. has been held liable. In particular, the United States will impose severe sanctions on all foreign entities (both governmental and private) involved in the theft of the trade secret in question. Sanctions against foreign governments can be waived by the President on a case-by-case basis, though sanctions against foreign persons are lifted only once the U.S. has received ''full and complete compensation.''

These provisions are designed to operate together with the requirements of Condition

16 of the resolution of ratification for the CWC. Pursuant to that condition, in the event that ''persuasive information'' becomes available indicating that a U.S. citizen has suffered financial losses or damages due to the unauthorized disclosure of confidential business information, the President is required to secure a waiver of immunity from jurisdiction for any foreign person responsible for financial losses or damages to a U.S. citizen, or to withhold half of the U.S. contribution to the OPCW until the situation has been resolved ''in a manner satisfactory to the United States person who has suffered the damages. . .''

Section 302. Facility Agreements. Section 302 prohibits the United States from concluding facility agreements which would prohibit U.S. businesses from withholding consent to an inspection request for any reason or no reason (thereby triggering a requirement for a search warrant under Section 305). It also ensures that representatives from U.S. companies may participate in preparations for the negotiation of a facility agreement, and may observe such negotiations to the maximum extent practicable.

Section 303. Authority to Conduct Inspections. In addition to providing the legal basis by which U.S. companies may be inspected by foreign personnel, Section 303 ensures that at least one special agent of the Federal Bureau of Investigation shall accompany each inspection conducted under the Convention. This ensures a minimum of protection against the possible theft of trade secrets for U.S. companies.

Section 303 also prohibits OSHA or EPA employees from escorting or otherwise accompanying inspection teams, and requires that the number of U.S. government personnel be kept to the minimum number necessary. The Administration asserted, in response to a question for the record before the Senate Select Committee on Intelligence, that the U.S. Government would be permitted ''to use information or materials obtained during inspections in regulatory, civil, or criminal proceedings conducted for the purpose of law enforcement, including those that are not directly related to enforcement of the CWC.'' This alarmed many companies.

The American Forest and Paper Association stated its support for Section 302(b)(2)(B), noting that ''[t]he treaty should not be used as an omnibus vehicle for regulatory inspections unrelated to its intended purpose. We believe that it would be inappropriate to include such government officials [from OSHA and EPA] on an international inspection team formed for the purposes set out in the CWC and would merely serve to detract from the intent of the inspection.''

By barring EPA and OSHA officials from participating in CWC inspections, Section 303 prevents the Administration from using the Convention to gain a degree of access to facilities which it otherwise is denied. As Professor Rotunda noted in his March 31, 1997, letter: ''Searches that violate the Fourth Amendment are not cured of the violation by the simple expedient of a treaty ratification or an executive agreement.''

Finally, Section 303 establishes a reasonable legal standard by which the President is expected to evaluate the risk posed by an individual inspector to the national security or economic well-being of the United States. The President has the right under the CWC to object to an individual serving as an inspector in the United States. Section 303 obligates him to give ''great weight to his reasonable belief that . . . the participation of such an individual as a member of an inspection team would pose a risk to the national security or economic well-being of the United States.''

As has been noted, the CWC provides inspectors from foreign countries unprecedented access to U.S. facilities—both commercial and government-related. The risk that trade secrets or national security secrets could be stolen during an inspection is very high. In particular, because chemicals covered by the CWC are used in a variety of aerospace activities—from the manufacture of advanced composites and ceramics to additives for paints and fuels—dozens of defense contractors are targeted for routine inspections under the CWC. Thus a threat to proprietary information often also will constitute a threat to national security information.

Certainly a number of countries intend to use CWC inspections for commercial espionage. Several incidents of concern have already occurred in this respect. For this reason, the Senate adopted a common-sense approach to the standard of evidence required by the President in exercising the right of inspector refusal. A decision to apply a higher evidentiary standard than ''reasonable belief'' would be inconsistent with Section 303.

Section 304. Procedures for Inspections. Section 304 contains a number of critical protections for U.S. companies. First, Section 304 (b)(3)(B) requires that notification of a challenge inspection pursuant to Article IX of the Convention ''shall also include all appropriate evidence of reasons provided by the requesting state party to the Convention for seeking the inspection. The requirement for specific identification of the reasons for a challenge inspection will enable companies to formulate their own views on the extent to which ''probable cause'' exists for such an inspection. As the Committee's analysis of Sections 305 makes clear, the CWC does not require a foreign country to demonstrate ''probable cause'' when it initiates a challenge inspection of a commercial U.S. facility. For this reason, the Congress has adopted implementing legislation which specifically raises the question of the constitutionality of the CWC's challenge inspection regime and provides for expedited review by the courts (under Section 503). Many in the Senate expect the Supreme Court to rule against the constitutionality of the sweeping inspection rights under Article IX of the CWC.

Section 304(f) allows the U.S. company or person to be inspected to determine who shall take samples during an inspection. It also reiterates the requirement, imposed pursuant to the resolution of ratification of the CWC, that ''[n]o sample collected in the United States may be transferred for analysis to any laboratory outside the territory of the United States.'' This provision mirrors the Presidential certification requirement contained in Condition 18 of the resolution of ratification for the CWC.

The CWC explicitly affords an inspection team the right to take samples on-site and, pursuant to Part II paragraph (E)(55) of the Verification Annex, ''if it deems necessary, to transfer samples for analysis off-site at laboratories designated by the Organization.'' As Part II paragraph (E)(57) makes clear: ''when off-site analysis is to be performed, samples shall be analysed in at least two designated laboratories.''

In agreeing to both Condition 18 of the CWC's resolution of ratification and Section 304(f) of the implementing legislation, the Executive Branch acknowledged that the United States intends to field two OPCW-designated laboratories. Specifically, the Department of Defense intends to field a mobile laboratory which will be available to analyze samples taken in the United States. While sample residue left in the laboratory's equipment would preclude it from leaving U.S. territory, the lab is intended to serve as a counterpart to a second mobile laboratory operated by the OPCW (which could be deployed to countries unable to secure OPCW approval for a facility).

There is no treaty-requirement that analysis be done in laboratories operated by countries other than the one where a sample was taken. The United States may legally preclude the transfer of samples overseas while still meeting the CWC requirement that samples-analysis be conducted in two designated laboratories.

Some have argued that Section 304(f) sets a ''dreadful example'' prompting countries to deny foreign inspectors the ability to send chemical samples abroad for analysis at independent laboratories. Such arguments fail to recognize several key points. First, any country that succeeds in obtaining OPCW accreditation for two laboratories has the treaty-right to insist that samples be analyzed ''in country,'' regardless of U.S. policy.

Second, opponents of sampling limitations overstate the scientific capacity and technical capability of proliferant countries to secure OPCW approval for two laboratories. To date, the OPCW has not given approval to any lab in any country; certainly no country has secured approval for two. Indeed, only a handful of western European countries, and perhaps Russia and China, have the ability to field two approved laboratories. The former countries pose no proliferation concern, and both Russia and China are capable of completely concealing their chemical warfare program from international inspectors (making sampling irrelevant). Thus the argument that U.S. strictures on sampling transfers will undo the CWC's verification regime are unsupportable.

Third, those who criticize Section 304(f) overstate the value of sampling analysis to U.S. nonproliferation efforts. On March 1, 1989, then-Director of Central Intelligence, Judge William Webster, pointed out the ease with which chemical weapons production can be concealed: ''. . . within fewer than 24 hours, some say 8½ hours, it would be relatively easy for the Libyans to make the site [at Rabta] appear to be a pharmaceutical facility. All traces of chemical weapons production could be removed in that amount of time.'' Similarly, delays of just a few hours have undercut UNSCOM's efforts to prove Iraqi chemical and biological concealment activities.

In contrast, the CWC gives proliferant countries five days of advance warning to conceal their activities before a challenge inspection team must be allowed on-site. Very simple techniques, such as the production of pesticides on a line used to manufacture nerve agent (e.g. production of the pesticide methyl-parathion instead of the nerve agent sarin), will reduce or eliminate the utility of sampling analysis.

Fourth, the over-focus on analysis to be done by ''independent'' laboratories ignores UNSCOM's experience with Iraq's VX program. In the case of samples taken from warheads believed to be weaponized with VX, ''independent'' laboratories in France, Switzerland, and the United States have given contradictory and inconsistent analyses. This has only complicated U.S. efforts to prove to the international community that Saddam Hussein's nerve agent program is far more advanced than admitted by Iraq. This has occurred despite UNSCOM's relatively unfettered ability—at least in comparison with the CWC—to take samples when and where it pleases. Because the CWC's timeframes provide cheating nations with ample opportunity to mask chemical warfare signatures, analysis of samples at foreign laboratories is guaranteed to make U.S. efforts to prove noncompliance harder, not easier. This

will be the case regardless of whether sampling analysis is done ''in-country.''

Fifth, in addition to overselling the value of sampling analysis to the CWC's verification regime, opponents of Section 304(f) persist in ignoring the threat that such procedures pose to legitimate commercial activities. A loss of proprietary information through sample analysis would bankrupt many chemical, pharmaceutical, and biotechnology industries. Moreover, chemical formulas, which are the type of proprietary information put at greatest risk by sampling, often are not patented. This is done to preserve competitive advantage and to prevent disclosure pursuant to Freedom of Information Act (FOIA) requests. But the lack of a patent also will make it harder for U.S. companies to prove that a trade secret has been stolen.

The Congressional Office of Technology Assessment estimated in August, 1993, that the U.S. chemical industry loses approximately $3–6 billion per year in counterfeited chemicals and chemical products. A U.S. pharmaceutical firm spends on average about $350 million to research and develop a new compound. Clearly, while it is difficult to assess the potential dollar losses associated with the CWC, information gleaned from sampling analysis could be worth millions of dollars to foreign competitors. Equally troubling is the fact that the CWC does not require the return of samples to the country from which they were taken, but instead gives the Technical Secretariat of the OPCW responsibility over final disposition. This further increases the possibility that proprietary information contained in the sample will be compromised.

As Kathleen Bailey, then-Senior Fellow at Lawrence Livermore Laboratories, warned in testimony before the Foreign Relations Committee: ''Experts in my laboratory recently conducted experiments to determine whether or not there would be a remainder inside of the equipment that is used for sample analysis on-site. They found out that, indeed, there is residue remaining. And if the equipment were taken off-site, off of the Lawrence Livermore Laboratory site, or off of the site of a biotechnology firm, for example, and further analysis were done on those residues, you would be able to get classified and/or proprietary information.''

Numerous other distinguished witnesses expressed concern regarding the threat to trade secrets posed by the CWC's intrusiveness, including Donald Rumsfeld, former Secretary of Defense and President and former Chairman and CEO of G.D. Searle and Company; James Schlesinger, former Secretary of Defense and former Director of Central Intelligence; Lieutenant General William Odom, former Director of the National Security Agency; Lieutenant General James Williams, former Director of the Defense Intelligence Agency; Edward J. O'Malley, former Assistant Director of Federal Bureau of Investigation, Chief of Counterintelligence; and Bruce Merrifield, former Assistant Secretary of Commerce for Technology. It was on the basis of the testimony of these individuals, and the concerns expressed by numerous companies and industries (ranging from members of the Chemical Manufacturers Association and the Aerospace Industries Association to other types of companies such as the one that manufactures special ink for the dollar bill) that the Congress chose to prohibit the transfer of samples overseas for analysis.

Section 305. Warrants. Section 305 builds upon Condition 28 of the resolution of ratification for the CWC, which required the President to certify to Congress that, for any challenge inspection where consent has been withheld, the United States ''will first obtain a criminal search warrant based upon probable cause, supported by oath or affirmation, and describing with particularity the place to be searched and the persons or things to be seized. . . .'' Further, the President certified pursuant to Condition 28 that an administrative search warrant issued by a United States magistrate judge would be required for involuntary routine inspections.

Accordingly, Section 305 requires Administrative search warrants for routine inspections where consent has been withheld. It limits routine inspections to no more than one per year per plant site. Additionally, for Schedule 3 facilities and sites working with discrete organic chemicals, Section 305 requires the federal government to affirm in an affadavit, prior to obtaining an administrative search warrant, that a given routine inspection: (1) ''will not cause the number of routine inspections in the United States to exceed 20 in a calendar year;'' and (2) the facility to be inspected was selected randomly by the Technical Secretariat, taking into account equitable geographic distribution of inspections and other relevant information relating to the site in question. Finally, Section 305 requires that the federal government stipulate in its affadavit that the routine inspection will not exceed the time limits specified in the Convention unless the owner, operator, or agent in charge of the plant agrees.

Section 305 requires criminal search warrants for any challenge inspection where consent has been withheld. In seeking the warrant, the federal government is required to provide to the judge of the United States all appropriate evidence or reasons showing probable cause to believe that a violation of the implementing legislation (and thus the treaty) is occurring.

In the event that a frivolous challenge inspection is initiated against the United States, perhaps in retribution for a U.S.-initiated inspection, the federal government may prove unable to provide sufficient probable cause to obtain a criminal search warrant. Under the CWC, a country wishing to initiate a challenge inspection is not required to provide any supporting evidence. The request for an inspection simply is made; unless 31 of 41 members of the Executive Council of the OPCW vote against it proceeding within 12 hours of such a request, the challenge inspection will move forward. Thus the ''screen'' against frivolous or abusive inspections is of a political, rather than evidentiary, nature. Moreover, review under the CWC of whether the challenge inspection request was within the scope of the CWC, or whether the right to request a challenge inspection had been abused, is allowed only retroactively (following conclusion of the inspection). Therefore nothing in the Convention prevents a challenge inspection from being initiated against a U.S. company without ''probable cause'' having been demonstrated.

As will be discussed in connection with Section 503, the courts will ultimately serve as the final arbiter over questions of the CWC's constitutionality.

Section 307. National Security Exception. Section 307 allows the President to deny any inspection request that ''may pose a threat to the national security interests of the United States.'' This simple provision is designed to protect the United States from frivolous inspections.

A recent Stimson Center report makes the claim that ''[t]he national security exception negates the treaty obligation to accept a challenge inspection at any U.S. location.'' This statement incorrectly asserts that the United States has such an obligation. Condition 28 of the resolution of ratification clearly established that the United States will not agree to a broad treaty obligation to accept a challenge inspection at any U.S. location. Rather, the United States will agree to inspections under Article IX of the CWC only in those cases where either consent to an inspection has been given, or probable cause has been demonstrated and a criminal search warrant obtained. Under any other circumstances, no access will be given.

Thus the argument made against Section 307 is flawed on its face. Moreover, the CWC explicitly gives the United States the right, for instance, under paragraph 41 of Part X of the Verification Annex, to ''take such measures as are necessary to protect national security.'' Indeed, as paragraph 38 makes clear, access to sensitive facilities must be negotiated between the inspection team and the inspected State Party; moreover, the inspection team is obligated to use of the least intrusive procedures possible. Under paragraph 42, should the United States provide ''less than full access to places, activities, or information'' the United States incurs the obligation to ''make every reasonable effort to provide alternative means to clarify the possible non-compliance concern that generated the challenge inspection.''

Section 307 clarifies the fact that the President has the right, both under the Constitution and pursuant to the treaty, to deny a potentially-damaging inspection. However, the exercise of such a denial must be made ''consistent with the objective of eliminating chemical weapons.'' Thus the President is obligated to provide alternative means of clarifying non-compliance concerns, and must consider the implications of a denial for the operation of the CWC, and for U.S. nonproliferation efforts. The national security interests of the United States, however, must remain paramount.

Section 402. Prohibition Relating to Low Concentrations of Schedule 2 and Schedule 3 Chemicals. The CWC does not define the term ''low concentration'' as it relates to Schedule 2 and Schedule 3 chemicals. Section 402 establishes the intent of the United States to interpret this term to mean a 10 percent concentration of a Schedule 2 chemical and an 80 percent concentration of a Schedule 3 chemical (measured either by volume or total weight, whichever yields the lesser percent). In setting the percentages at these levels, Section 402 ensures that Schedule 2 chemicals, which are of direct concern for chemical weapons production, are captured in low concentrations. It also recognizes the broad range of commercial uses for Schedule 3 chemicals, and reduces the regulatory impact of the CWC on many industries.

No chemical is placed on Schedule 2 of the CWC unless it meets specific criteria: (1) it must be lethal enough that it could be used as a chemical weapon by itself; (2) it can serve as a precursor in the final stage of the manufacture of a chemical weapon, or otherwise is important to the production of a chemical weapon; and (3) is not produced ''in large commercial quantities.'' Obviously, such chemicals should be tightly controlled even at relatively dilute levels.

Schedule 3, on the other hand, contains seventeen chemicals which are produced in large commercial quantities for use in production of various organic chemicals and agricultural products. Additionally, these chemicals are used to make gasoline additives, pharmaceuticals, detergents, flame retardant materials, and dyestuffs, among other things. There are 17 compounds on Schedule 3.

Schedule 3A (4), Chloropicrin, has important uses for the disinfection of cereals and grains, considerably increasing the potential storage life. It is also used as a soil insecticide to sterilize the soil before the planting of crops that are very sensitive to weed competition.

Schedule 3B (5), Phosphorous oxychloride, is used as an insecticide, as a chlorinating agent, flame retardant, gasoline additive, hydraulic fluid, organic synthesis, plasticizer, and as dopant for semiconductors.

Phosphorous trichloride, Schedule 3B (6), is used in dyestuffs, surfactants, plasticizers, gasoline additives, insecticides, and in organic synthesis.

Phosphorous pentachloride, Schedule 3B (7), is used as a pesticide, in plastics, and in organic synthesis.

Trimethyl phosphite, Schedule 3B (8), is used in insecticides, organic synthesis, veterinary drugs.

Triethyl phosphite, Schedule 3B (9), is used in insecticide synthesis, as a lubricant additive, in organic synthesis, and as a plasticizer.

Schedule 3B (10), Dimethyl phosphite, is used in insecticide production, as a lubricant additive, in organic synthesis, and as a veterinary drug.

Diethyl phosphite (Schedule 3B (11)) is used in the production of insecticides, as a gasoline additive, as a paint solvent, in the synthesis of pharmaceuticals, and in organic synthesis.

Sulfur monochloride (Schedule 3B (12)) is used extensively as an intermediate and chlorinating agent in the production of dyes and insecticides. It is also used for cold vulcanisation of rubber, in the treatment of vegetable oils and for hardening soft woods, in pharmaceuticals, organic synthesis, as a polymerization catalyst, and in the extraction of gold from ores.

Thionyl Chloride, Schedule 3B (14), is used in batteries, engineering plastics, pesticides, as a catalyst, surfactant, chlorinating agent, and in organic synthesis of herbicides, drugs, vitamins, and dyestuffs. Common agricultural products involving this chemical are: Fenvalerate, Endosulfan, Methidathion, Flucythrinate, Fluvalinate, Lethane, Diphenamit, Napromaide, Propamide, Tridiphane, Topan, and Pipertain.

Schedule 3B (17), Triethanolamine, is another chemical with a widespread use. Because of its surface active properties it is added to waxes and polishes and is used as a solvent for herbicides, shellac and various dyes. It is also used for producing emulsions of various oils, paraffins and waxes, as well as for breaking up emulsion. It is an important ingredient of the cutting oil used for metal shaping. Further uses include in detergents, cosmetics, corrosion inhibitors, as a plasticizer, rubber accelerator, and in organic synthesis.

As can be seen from this partial listing, the majority of these chemicals are used in agriculture, the automobile industry, and pharmaceuticals production. The vast majority are used as herbicides or insecticides/pesticides. A decision to lower the percentage associated with ''low concentrations'' of Schedule 3 chemicals would dramatically increase the number of agricultural companies and facilities subject to the CWC's onerous reporting and inspection requirements. The costs resulting from such a dramatic expansion of the CWC's scope would invariably be passed by such companies to the one consumer who can least afford an increase in operating costs at this time—the U.S. farmer.

Section 403. Prohibition Relating to Unscheduled Discrete Organic Chemicals and Coincidental Byproducts in Waste Streams. Section 403 exempts from reporting and inspection any ''unscheduled discrete organic chemical'' that is a ''coincidental byproduct . . . that is not isolated or captured for use or sale . . . and is routed to, or escapes, from the waste stream of a stack, incinerator, or wastewater treatment system or any other waste stream.''

The CWC does not list unscheduled discrete organic chemicals. Instead, it generally defines these substances as: ''any chemical belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstracts Service registry number if assigned.'' This definition captures thousands of chemical compounds—so many that it is impossible to list them. The CWC's sweeping definition of a ''discrete organic chemical'' captures thousands of U.S. companies under its reporting and inspection obligations.

However, that number would expand exponentially without Section 403's exclusion of discrete organic chemicals which form as a byproduct in a variety of manufacturing processes. The declaration and inspections costs under the CWC would fall on a far broader number of U.S. companies. Moreover, the costs of compliance for these additional companies will be far greater. Companies must declare the aggregate tonnage of discrete organic chemicals produced. If ''production'' is defined as the formation of coincidental byproducts in a waste stream, however, many companies would find it costly, and perhaps impossible, to comply with the treaty.

The paper industry, in particular, has expressed concern over the ''discrete organic chemical category,'' warning that various chemicals such as methanol, phenol, methyl ethyl ketone, and methyl mercaptan are formed in the process of paper manufacturing. The American Forest and Paper Association warned on May 25, 1994, that ''pulp digester gases containing methanol are vented, and some methanol will also be lost as fugitive air emissions from the wastewater treatment system. Methanol is only one component of these streams; it is not isolated or captured for use or sale.''

Without Section 403, numerous industries are at risk of being required to measure and report on countless chemical interactions in waste streams, and to undergo international inspection to verify the accuracy of their data. On May 21, 1997, the American Forest and Paper Association reiterated its concern over the broad scope of the CWC and stated its support for Section 403: ''We strongly support the prohibition of requirements under the treaty for chemical byproducts that are coincidently manufactured. Due to the broad nature of the category of 'discrete organic chemicals,' as defined by the treaty, it is critical to recognize that inclusion of coincidental byproducts of manufacturing processes that are not captured or isolated for use or sale would exceed the stated purpose of the CWC.''

Section 503. Expedited Judicial Review. Section 503 allows for U.S. citizens to challenge the constitutionality of any provision of the implementing legislation (and, therefore, the CWC). Such a challenge must be given priority in its disposition, and a prompt hearing by a full Court of Appeals sitting en banc must be given to a final order entered by a district court.

In reviewing the constitutionality of legislation, the courts often assume that Congress has exercised its independent judgment and that the legislation in question is constitutional. However, as the legislative history of the CWC makes clear, Congress expressed numerous misgivings about the constitutionality of the CWC (and thus about the implementing legislation required). These concerns were articulated in hearings before the Committees on Foreign Relations and Judiciary, and in correspondence between the Senate, Executive Branch, and U.S. businesses. As has been noted elsewhere, the Senate expressed some specific concerns over the constitutionality of the CWC as conditions in the resolution of ratification. The resolution also included Condition 12, which makes clear that nothing in the CWC authorizes or requires legislation, or any other action prohibited by the Constitution of the United States, as interpreted by the United States.

Many in the Congress are convinced that the Chemical Weapons Convention is incompatible with the Fourth and Fifth Amendment rights of Americans. It therefore is expected that the courts will hold that some, or all, of the CWC and its implementing legislation is unconstitutional and issue the appropriate injunctions.●

AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT

Mr. ABRAHAM. Mr. President, as part of the omnibus appropriations bill the Senate today will pass the ''American Competitiveness and Workforce Improvement Act.'' This legislation represents a bipartisan compromise resulting from tough negotiations between the House and the Senate, and between Congress and the White House. The bill will be included in this form rather than being adopted freestanding because of a last minute objection from Senator HARKIN that has prevented it from being brought to the floor on its own. Given the 78 to 20 vote for the American Competitiveness Act prior to the agreement with the White House, and the 288 to 133 vote in the bill's favor just a few weeks ago in the House of Representatives, it is clear the legislation would have passed with overwhelming support in the Senate had it been permitted to come to a separate vote.

I believe that the passage of the American Competitiveness and Workforce Improvement Act today is a great victory for American workers and for the businesses that employ them.

This legislation will protect the competitiveness of American business in the global marketplace and improve economic and career opportunities for American citizens.

Let me start by describing the history of this legislation. This past February, the Senate Judiciary Committee held a hearing at my request to examine high technology labor market needs. We heard from leaders at America's top high technology firms that they simply could not find enough qualified professionals to fill the jobs they needed filled. They also emphasized that many of the individuals they hired on H–1B temporary visas not only filled important jobs, but also typically created jobs for many Americans through their skills and innovations.

At that time, the 65,000 cap on H–1B visas was projected to be reached as early as June. Instead, it was reached the first week of May.

In March, I introduced S. 1723, the American Competitiveness Act, to increase the cap on H–1B visas for foreign born professionals. In April, that bill passed the Senate Judiciary Committee on a 12 to 6 bipartisan vote. Then in May, the bill passed on a 78 to 20 vote of the full Senate.

Some time after that, the House Judiciary Committee passed out an H–1B

visa bill as well. However, many who supported the increase in principle found that the House version included so many conditions on the use of H–1B visas that they would have more than negated the benefits of raising the cap. Negotiations ensued between the House and Senate over these provisions, brokered by the leadership of both chambers. The hope was to find a compromise.

In the end, a compromise was reached that retained the core features of the Senate bill but also found common ground with the House by focusing increased attention and requirements on employers, more than 15% of whose workforce are in this country on H–1B visas. The compromise also imposed a fee to be paid by the employer on each visa, the proceeds of which would be used for job training and scholarships.

On account of this last provision, the compromise bill was required to originate in the House. Accordingly, it was incorporated into a proposed amendment, whose text was worked out by me and by House Immigration Subcommittee Chairman SMITH—a proposed amendment which Chairman SMITH was going to offer as a substitute to H.R. 3736, the bill that had passed out of House Judiciary.

As the House was preparing to take that bill up before the August recess, however, the White House issued a public veto threat and listed 15 changes it was seeking to the bill. At that point, I was deputized to attempt to negotiate the remaining issues with the Administration, in consultation with Chairman SMITH and the House and Senate leadership.

After several weeks of negotiations, we reached agreement at 7:00 p.m. on September 23. We and the Administration were able to reach an accommodation on most of the points it had raised. The Administration withdrew the remaining two points, points 6 and 7, that in our view could not be accommodated within the existing structure of the bill and the H–1B program. We instead agreed on a different approach with regard to the concerns underlying these two points, one that focused instead on clarifying current program requirements and toughening sanctions for willful violations of these requirements.

Because the bill was scheduled to be taken up on the House floor the following day, the results of the agreement had to be quickly incorporated into a new substitute amendment to H.R. 3736. The substitute had to be filed by Chairman SMITH that evening before the House went out at 8:30 p.m. so that it could be printed in the CONGRESSIONAL RECORD and be made available for Members to review the following morning. We met this deadline, the amendment was filed, and on September 24 the amendment was adopted and the bill passed by the House with the support of a majority of both the Republican and Democratic caucuses. That bill, with some technical corrections necessitated by a few omissions that resulted from the tight deadline under which the original version was produced, is now incorporated into Title IV of Division C of the Omnibus Appropriations Bill, titled The American Competitiveness and Workforce Improvement Act.

Let me now turn to the reasons why I believe this bill remains needed and indeed timely. Mr. President, throughout this session of Congress I have come to the floor repeatedly to urge that we address the growing shortage of skilled workers for certain positions in our high technology sector. I have done this because I believe that the continued competitiveness of our high-tech sector is crucial for our economic well being as a nation, and for increased economic opportunity for American workers.

The importance of high-tech for our economy is beyond doubt. The importance of high-tech for our economy is beyond doubt. According to the Department of Commerce's Bureau of Economic Analysis, high technology companies contributed over one-quarter of America's real economic growth between 1992 and 1997. Moreover, the declining prices of computers, software, and semiconductors have made a substantial contribution to our nation's low level of inflation, thereby improving the standard of living enjoyed by millions of Americans. Without IT industries to keep prices down, according to the Bureau of Economic Analysis, the inflation rate would have been much higher in 1997—3.1 percent versus the actual level of only 2.0.

But high technology firms are experiencing serious worker shortages. A study conducted by Virginia Tech estimates that right now we have more than 340,000 unfilled positions for highly skilled information technology workers. And, while Department of Labor figures project our economy will produce more than 1.3 million information technology jobs over the next 10 years, estimates are that our universities will not produce nearly that number of graduates in related fields. And this is not only what academic studies are telling us. Firms across the nation and across my home State of Michigan have been clamoring for people to fill these skilled positions.

Of course, this issue is not only about shortages, it is about opportunities for innovation and expansion, since people with valuable skills, whatever their national origin, will always benefit our nation by creating more jobs for everyone.

Mr. President, we want and need American companies to keep and expand major operations in this country. We do not want to see American jobs go overseas. But, if they are to keep their major operations in the United States, firms must find workers here who have the skills needed to fill important positions in their companies.

To make that happen in the long term, we must do more as a nation to encourage our young people to choose high technology fields for study and for their careers. In the long run this is the only way we can stay competitive and protect American jobs.

Through scholarships and job training, the American Competitiveness and Workforce Improvement Act will help us achieve this goal. It will provide money and training to low income students who choose to study subjects, including math, computer science and engineering, that are important to our high-tech economy. In this way the American Competitiveness and Workforce Improvement Act will help bridge the gap between current job skills and the requirements of high paying, important positions in our economy.

However, over the short term, until we are producing more qualified high technology graduates, we must also take other steps to bridge the gap between high technology needs and high technology skills.

We currently allow companies to hire a limited number of highly skilled foreign born professionals to fill essential roles. To do this they must go through a fairly onerous process to get one of the 65,000 ''H–1B'' temporary worker visas allotted by the INS. Unfortunately, last year our companies hit the 65,000 annual limit at the end of August. This year that limit was hit in May.

This bill, in addition to providing significant incentives for Americans to enter the high technology sector, will temporarily raise the number of H–1B visas available for the next three years. These additional visas will enable companies to find the workers they need to keep facilities and jobs in the United States, and keep our high-tech industry competitive in the global marketplace.

The legislation also includes a number of provisions ensuring that companies will not replace American workers with foreign born professionals, including increased penalties and oversight, as well as measures eliminating any economic incentive to hire a foreign born worker if there is an American available with the skills needed to fill the position.

I would like to thank the members of my staff who worked long hours negotiating this compromise. I would also especially like to express my personal gratitude to my colleagues for their support for this important legislation. I would like to thank in particular Majority Leader LOTT, Senator HATCH, Senator MCCAIN, Senator GRAMM, Senator GORTON, Senator LIEBERMAN, and Senator GRAHAM, as well as the many cosponsors of the bill, for their crucial support at key moments in this process. I am also grateful to Senator KOHL and Senator FEINSTEIN for their support for this legislation in Committee. Finally, I would like to thank the Subcommittee's Ranking Member, Senator KENNEDY, for the cooperation he showed in moving forward this piece of legislation despite disagreement with some aspects of the bill's content.

In the House, I would like to extend special thanks to Speaker GINGRICH, Majority Leader ARMEY, and Chairman SMITH for helping to reach a compromise that has achieved a true consensus on this issue. Representatives DAVID DREIER, JIM ROGAN and DAVID MCINTOSH also provided leadership and help at significant junctures in this process and I am also grateful for their important efforts.

Because much of this legislation was developed after the conclusion of the regular Committee process, I have also prepared an explanatory document that performs the function commonly performed by the Committee Report of describing the legislation and the purpose and interrelationship of its various provisions in detail. I ask unanimous consent that this document be printed in the RECORD, along with a few pages of other materials to which the document makes reference.

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

THE AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998

SECTION 401. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT

This section specifies the short title, the ''American Competitiveness and Workforce Improvement Act of 1998,'' the table of contents for the legislation, and the rule that unless otherwise specified, the legislation amends the Immigration and Nationality Act.

Subtitle A

Subtitle A contains the changes the legislation is making to current law regarding H–1B visas.

SECTION 411. TEMPORARY INCREASE IN ACCESS TO TEMPORARY SKILLED PERSONNEL UNDER H–1B PROGRAM

This section specifies the new ceilings for these visas: 115,000 in FY 1999 and 2000, 107,500 in FY 2001, and 65,000 thereafter.

SECTION 412. PROTECTION AGAINST DISPLACEMENT OF UNITED STATES WORKERS IN CASE OF H–1B DEPENDENT EMPLOYERS

This section adds new statements that must be included on certain H–1B applications and other provisions relating to these new statements and related aspects of the H–1B program.

Subsection 412(a) amends section 212(n)(1) of the Immigration and Nationality Act to add three new statements and provisions relating to these statements that must be included on applications for H–1B visas filed by certain employers on behalf of certain H–1B nonimmigrants. Subsection 412(b) contains various definitions relating to the new statement requirements. Given the close nexus between these two subsections, they are discussed here together, so as to allow the discussion of the substantive provisions to be illuminated by the discussion of the definitions.

1. The ''non-displacement'' attestation. Subsection (a)(1) first adds a new ''non-displacement'' attestation by amending section 212(n)(1) of the Immigration and Nationality Act to add a new subparagraph (E)(i). This provision requires a covered employer to state that its hiring of the H–1B worker is not displacing a U.S. worker. The term ''displace'' is defined in new subparagraph (4)(B) of section 212(n), added by section 412(b) of this legislation. That paragraph states that an employer ''displaces'' a U.S. worker to hire the H–1B if it lays off a U.S. worker with substantially the same qualifications and experience who was doing essentially the same job the H–1B worker is being brought in to do. This is a slight change from a similar definition used in a related context in an earlier version of this legislation passed by the Senate, which imposed heightened penalties for a willful violation of the prevailing wage attestation where the employer had ''replace[d]'' the U.S. worker with an H–1B nonimmigrant. In that context S. 1723 defined ''replace'' as employment of the H–1B nonimmigrant ''at the specific place of employment and in the specific employment opportunity from which a United States worker with substantially equivalent qualifications and experience in the specific employment opportunity has been laid off.''

The current definition defines ''displace'' as employment of the nonimmigrant in a job ''that is essentially the equivalent of the job'' from which the U.S. worker has been laid off. The reason for the change from the original Senate language is that it was thought desirable to include within the scope of this prohibition situations where an employer sought to evade this prohibition by laying off a U.S. worker, making a trivial change in the job responsibilities, and then hiring the H–1B worker for a ''different'' job. This language is designed to be broad enough to cover those situations as well. For similar reasons, especially given the nature of the jobs in question, the geographical reach of the prohibition was extended so as potentially to cover other worksites within normal commuting distance of the worksite where the H–1B is employed. This was to cover the eventuality that an employer might try to evade this prohibition by laying off a U.S. worker, hiring an H–1B worker to do that person's job, but assigning the H–1B worker to a different worksite very close by in order to conceal what was going on.

At the same time, however, the final version of this language is significantly narrower than the original language proposed by the House, which sought to prohibit not only one-to-one replacements of laid off U.S. workers with H–1Bs, but the hiring of any H–1B with similar qualifications to those of any recently laid off U.S. worker. As a result, the original definition of ''displace'' in the House did not contain the key phrase ''from a job that is essentially the equivalent of the job for which the [H–1B worker] is being sought.'' That phrase was added to make clear that this provision is not intended to be a generalized prohibition on layoffs by covered employers seeking to bring in covered H–1Bs, but rather a prohibition on a covered employer's replacing a particular laid-off U.S. worker with a particular covered H–1B.

It should be noted that the language used here is deliberately different from that used in H.R. 2759, another piece of legislation that we may pass today. That legislation authorizes aliens to come in on temporary visas as nurses under certain circumstances. In order to bring an alien in on such a visa, a facility must attest that it has not laid off another registered nurse within the ninety days preceding or following the filing of the visa petition. That language was chosen there instead of the language used here because in that instance the sponsors of that legislation were interested in doing more than preventing the replacement of a particular U.S. nurse with a nurse holding such a visa. Rather in that instance the desire was to prevent the use of the visas by a facility that had laid off any registered nurses within the relevant time period. Hence the sponsors deliberately rejected the language used here forbidding only one-for-one displacement in favor of broader language.

The language in the final version of this bill does allow the Department of Labor to pursue instances where an employer has in fact laid off a U.S. worker and hired an H–1B worker to do the U.S. worker's job, but is attempting to conceal that fact with a slight change in job responsibilities or by placing the H–1B worker at a different worksite. It is not, however, intended to go beyond that. Hence, it does not empower the Department of Labor to find a violation of this clause unless an H–1B worker is being brought in to replace a particular laid-off U.S. worker and do that particular U.S. worker's job. It should also be noted that under new paragraph (E)(i), in order to qualify, the displacement has to have occurred within 90 days before or after filing the H–1B petition. This was viewed as the outer limit for how long an employer might leave open a job previously held by a U.S. worker whom the employer intended to replace with an H–1B worker, or how long the employer might retain the U.S. worker while also hiring the H–1B worker. In most instances, to constitute a genuine instance of replacement, the layoff and hiring would be expected to occur closer in time.

Finally, the definition of ''lays off'' set out in new subparagraph (3)(D) of 212(n) (added by section 412(b) of this legislation) hews closely to the language contained in the original Senate version of this legislation, with two minor changes. First, while continuing to exclude the expiration of a temporary employment contract from the definition, the final version clarifies that the expiration of such a contract will be treated as a layoff if an employer enters into such a contract with the specific intent of evading the anti-displacement attestations contained in new paragraphs (E) and (F) of subsection 212(n)(1). Second, the final version notes that its definition of layoff is not intended to supersede the rights employees may have under collective bargaining agreements or other employment contracts. By the same token, of course, the fact that an employee may have protection under a collective bargaining agreement or other employment contract against some of the grounds for termination listed as exceptions to the definition of ''lays off'' in this legislation has no consequence for purposes of determining whether an employer has violated the displacement attestation. Rather, the employee's remedies for breach of the agreement or contract remain as they were under the agreement, contract, and pre-existing law, and are neither expanded nor contracted by 212(n)(3)(D). In other words, whether a layoff does or does not violate such an agreement has no bearing on whether it is within or outside the definition set out in 212(n)(3)(D) (and hence has no bearing on whether it is actionable by the Secretary of Labor under her authorities to enforce the ''no displacement'' attestation). Conversely, the fact that a layoff is outside the definition set out in 212(n)(3)(D) has no bearing on whether it violates a collective bargaining agreement or other employment contract and hence on whether it is actionable by the employee using the remedies available under other laws for such violations.

In determining whether or not a U.S. worker has been offered a ''similar employment opportunity'' as an alternative to loss of employment, and hence has not been laid off, it is the intent of Congress that the determination of similarity take into account factors such as level of authority and responsibility to the previous job, level within the overall organization, and other similar factors, but that it not include the location of the job opportunity.

If an employer asserts that it should not be held liable for a violation of the displacement attestation because a U.S. worker lost

his or her employment as the basis for an employee's loss of employment one of the listed exceptions, it is Congress's expectation that if the Secretary disputes that, she would have the burden of disproving the employer's assertion.

2. The ''secondary non-displacement'' attestation. Section 412(a) next adds a ''secondary non-displacement'' attestation by amending section 212(n)(1) of the Immigration and Nationality Act to include a new subparagraph (F). This attestation requires a covered employer to pledge to make certain inquiries before placing a covered H–1B worker with any other employer where the H–1B worker would essentially be functioning as an employee of the other employer. The requirement that there be ''indicia of employment'' between the employer with whom the covered employer is placing the covered H–1B worker and the H–1B worker is intended to operate similarly to the provisions in the Internal Revenue Code in determining whether or not an individual is an employee.

In particular, the covered employer must promise to inquire whether the other employer will be using the H–1B worker to displace a U.S. worker whom the other employer had laid off or intends to lay off within 90 days of the placement of the H–1B worker. The covered employer must also state that it has no knowledge that the other employer has done so or intends to do so.

Making the required inquiries will not insulate a covered employer from liability should the secondary employer with which the covered employer is placing the covered H–1B worker turn out to have displaced a U.S. worker from the job that it has contracted with the covered employer to have the H–1B worker fill. That is why subsection 412(a)(2) of this legislation adds a new requirement to section 212(n)(1) that the application contain a clear statement regarding the scope of a covered employer's liability with respect to a layoff by a secondary employer with whom the covered employer places a covered H–1B worker. If the covered employer does make the required inquiries and obtains no information that would lead it to believe that the secondary employer has used the H–1B worker to displace a U.S. worker, however, that should weigh heavily in favor of the covered employer's not having knowledge or reason to know of the secondary employer's actions for purposes of the penalty provisions associated with this attestation specified in new subparagraph (E) of section 212(n)(2) (added by section 413(c)).

This provision uses the same definitions of ''displace,'' ''lays off,'' and other definitions as those used by the primary non-displacement attestation.

3. The ''recruitment'' attestation. The last new required statement added by section 412(a) is the ''recruitment'' attestation, to be set out in new subparagraph (G) of section 212(n)(1). It requires a covered employer to state that it has taken good faith steps to recruit U.S. workers for the job for which it is seeking the H–1B worker, and has offered the job to any equally or better qualified U.S. worker.

This provision allows employers to use normal recruiting practices standard to similar employers in their industry in the United States; it is not meant to require employers to comply with any specific recruiting regimen or practice or to confer any authority on DOL to establish such regimens by regulation or guideline. Further, it is the intent of Congress that this provision not require an employer to set aside its normal standards for selection and recruitment of employees, including, but not limited to, legitimate objective criteria and legitimate subjective criteria such as past job performance, attitude, personal presentation or others, as long as the employer does not intentionally discriminate against any applicant based on that applicant's immigration status, citizenship status, or country of nationality in the course of applying these criteria.

This intention is further spelled out in section 412(a)(3) of this legislation. That section adds language at the end of section 212(n)(1) that states explicitly that the recruitment attestation is not to be construed to preclude an employer from using ''legitimate selection criteria relevant to the job that are normal or customary to the type of job involved.'' The purpose of this language is to make clear that an employer may use ordinary selection criteria in evaluating the relative qualifications of an H–1B worker and a U.S. worker. It is intended to emphasize that the obligation to hire a U.S. worker who is ''equally or better qualified'' is not intended to substitute someone else's judgment for the employer's regarding the employer's hiring needs. Rather, the employer remains free to use ordinary hiring criteria, whether subjective or objective, in deciding who in the employer's view is the right person for the job. Moreover, its judgment as to what qualifications are relevant to a particular job is entitled to very significant deference.

At the same time, this rule of construction is intended to insure that U.S. workers are given a fair chance at any job, rather than being turned down as a result of prejudice a particular employer may have against U.S. workers. It is not intended to allow an employer to impose spurious hiring criteria with the intent of discriminating against U.S. applicants in favor of H–1Bs and thereby subvert employer obligations to hire an equally or better qualified U.S. worker.

The provision is, however, intended to insure that a properly deferential and latitudinous understanding of the notion of relevant qualifications is used in interpreting these provisions. In that regard, it is emphatically not Congress's intention to invite the kind of elaborate scrutiny of selection criteria and the accompanying ''validation'' machinery that has developed under ''disparate impact'' analysis of such criteria under Executive Order 11246 and Title VII of the Civil Rights Act of 1964. Given the absence of any kind of record that employers use hiring criteria as a covert mechanism for preferring non-U.S. workers, such an analysis would make no sense in this context. That is why the bill deliberately avoids terms like ''job-related,'' ''related to the job'', or the ''use'' of selection criteria to discriminate.

Rather, what is intended is a commonsensical approach, under which an employer does not have to prove that ordinary selection criteria such as class rank, a degree from a superior school, people skills, recommendations from former employers, or qualities such as dependability are a legitimate basis on which to prefer one applicant over another. Likewise, the employer need not prove that a particular qualification or skill that it is looking for and that in a common-sense world would obviously be relevant, helpful, or useful to doing a job is necessary or indispensable in order to be able to consider that qualification or skill in its selection decisions. Additionally, business reasons such as the relative salary demands of competing candidates may also legitimately be considered, although only, of course, to the extent consistent with the employer's obligation under section 212(n)(1)(A) to pay the higher of prevailing or actual wage. For similar reasons, the intent is not to require employers to retain extensive documentation in order to be able retroactively to justify recruitment and hiring decisions, provided that the employer can give an articulable reason for the decisions that it actually made.

4. Employers and H–1B workers covered by the new statements. Section 412(a) of this legislation adds a new subparagraph (E)(ii) to section 212(n)(1) which specifies which employers have to include the new statements on their applications. There are two categories of covered employers: (1) ''H–1B dependent'' employers and (2) employers who, after enactment of the Act, have been found to have committed a willful failure to meet a condition set out in section 212(n)(1) or a willful misrepresentation of material fact on a labor condition attestation.

The first category, ''H–1B dependent'' employers, is defined in new paragraph (3)(A) of section 212(n), added by section 412(b) of this legislation. Under that definition, an employer is H–1B dependent if it has 51 or more full-time equivalent employees, 15% or more of whom are H–1B workers. Employers with 25 or fewer full-time equivalent employees are H–1B dependent if they have more than 7 H–1B employees, and employers with between 26 and 50 full-time equivalent employees are H–1B dependent if they have more than 12 H–1B employees.

The second category of covered employers is those who have been found to have committed a willful failure or a willful misrepresentation under 212(n)(2)(C) or 212(n)(5). These employers must include the new statements on their applications for five years after the finding of violation. Of course, in order to trigger coverage, the finding of willful violation must have been made in a manner consistent with the other procedural requirements in the Act, including the prohibition on the investigation of complaints or other information provided more than 12 months after the alleged violation, see 212(n)(2)(A) and 212(n)(2)(G)(v). Thus, this provision confers no superseding authority for DOL to take action with respect to violations outside that time period.

Under new subparagraph (E)(ii) of 212(n)(1), employers required to include the new statements on their applications are excused from doing so on applications that are filed only on behalf of ''exempt'' H–1B nonimmigrants. An ''exempt'' H–1B nonimmigrant is defined in new paragraph (3)(B) of section 212(n) (added by section 102(b) of this legislation) as one whose wages, including cash bonuses and other similar compensation, are equal to at least $60,000 or who has a master's or higher degree (or its equivalent). In determining whether an employer is H–1B dependent, under new paragraph (3)(C) (also added by section 412(b) of this legislation), these exempt H–1Bs are excluded from both the numerator and denominator in the calculation of the percentage (or, in the case of employers with 50 or fewer full-time equivalent employees, from the count of both total full-time equivalent employees and the count of H–1Bs) for the first six months after enactment, or until promulgation of final regulations, whichever is longer.

Finally, subparagraph (E)(ii) specifies that the requirement to include the new statements on applications applies only to applications filed before October 1, 2001.

Subsection 412(c) authorizes employers to post information relating to H–1Bs electronically. This provision is intended to allow employers a choice of methods for informing their employees of the sponsorship of an H–1B nonimmigrant. An employer may either post a physical notice in the traditional manner, or may post or transmit the identical information electronically in the same manner as it posts or transmits other company notices to employees. Therefore, use of electronic posting by employers should not be restricted by regulation.

Subsection 412(d) makes the new attestation requirements effective on the date of issuance of final regulations to carry them

out, and the associated definitions and the new posting provision effective upon enactment.

Subsection 412(e) allows the Secretary of Labor and the Attorney General to reduce the period for public comment on proposed regulations to no less than 30 days.

SECTION 413. CHANGES IN ENFORCEMENT AND PENALTIES

This section specifies the penalty structure for failures to meet the new labor conditions added by section 412. It also raises penalties for willful failures to meet existing labor conditions, and imposes a special penalty for a willful violation of such a condition in the course of which an employer displaces a U.S. worker. It also clarifies that certain kinds of employer conduct constitute a violation of the prevailing wage attestation, and that other kinds of employer conduct are also prohibited in the context of the H–1B program. Finally, it grants certain new authorities to the Secretary of Labor and establishes a special enforcement mechanism administered by the Attorney General to address alleged violations of the selection portion of the recruitment attestation.

Subsection 413(a) sets out a new version of 212(n)(2)(C) of the Immigration and Nationality Act, the provision currently specifying the penalties for certain failures to meet labor conditions. In that subparagraph as amended, clause (i) specifies the penalties for a failure to meet a condition of paragraph (1)(B) (strike or lockout) or a substantial failure to meet a condition of paragraph (1)(C) (posting) or (1)(D) (contents of application), or a misrepresentation of material fact. These remain as they are under current law: administrative remedies including a $1000 fine per violation and a one-year debarment. The clause also specifies that these penalties also apply to a failure to meet a condition of new paragraphs (1)(E) or (1)(F) (the non-displacement attestations) and to a substantial failure to meet a condition of new paragraph (1)(G)(i)(I) (good faith recruitment). The Secretary should consider an employer's compliance with the H–1B program as a whole in determining whether a ''substantial failure'' has occurred.

New clause (ii) of section 212(n)(2)(C) sets out the new increased penalties for willful failures to meet any condition in paragraph (1), willful misrepresentations of material fact, or violations of new clause (iv) prohibiting retaliation against whistleblowers. These consist of administrative remedies including a $5000 civil fine per violation and a 2 year debarment.

New clause (iii) sets out a further enhanced penalty for willful failures to meet a condition of paragraph (1) or willful misrepresentations of material fact in the course of which failure or misrepresentation the employer displaced a U.S. worker within 90 days before or after the date of the filing of the visa petition for the H–1B worker by whom the U.S. worker was displaced. This penalty consists of administrative remedies including a $35,000 per violation civil fine and a three year debarment.

The rationale for this new penalty is that there have been expressions of concern that employers are bringing in H–1B workers to replace more expensive U.S. workers whom they are laying off. Current law, however, requires employers to pay the higher of the prevailing or the actual wage to an H–1B worker. Thus, the only way an employer could profitably be systematically doing what has been being suggested is by willfully violating this obligation. Otherwise, the employer would have no economic reason for preferring an H–1B worker to a U.S. worker as a potential replacement. Thus, the new penalty set out in new clause (iii) is designed to assure that there are adequate sanctions for (and hence adequate deterrence against) any such conduct by imposing a severe penalty on a willful violation of the existing wage-payment requirements in the course of which an employer ''displaces'' a U.S. worker with an H–1B worker.

At the same time, Congress chose not to make the layoff itself a violation. The reason for this is that there are many reasons completely unconnected to the hiring of H–1B workers why an employer may decide to lay off U.S. workers: for example, because it decides to discontinue a product line that is losing money, because it is inefficient to maintain an office in a particular location, or because it has decided to refocus on other aspects of its business. Congress did not want to turn these legitimate business decisions into investigable, let alone punishable events. Accordingly, it is important to understand that unlike the new attestation requirements imposed by the amendments to section 212(n)(1), clause (iii) of section 212(n)(2)(C) provides no new independent basis for DOL to investigate an employer's layoff decisions. The only point at which DOL can do so pursuant to clause (iii) is after it has already found that the employer has committed a willful violation of one of the pre-existing labor condition attestations.

Thus, just as was the case before enactment of clause (iii), to be actionable by DOL in the first instance, except where an employer has executed one of the new attestations added to section 212(n)(1), an allegation must provide reasonable cause to believe not that an employer has displaced a U.S. worker with an H–1B worker but that an employer has violated one of the pre-existing attestations (and, of course, the other procedural requirements for initiation of an investigation must be satisfied as well). Clause (iii) comes into play only after DOL has found that an employer has committed such a violation, and after it has been found to be willful. At that point, and not before, provided that there is reasonable cause to believe that an employer had also displaced a U.S. worker in the course of committing that violation, it would be proper for DOL to investigate, but only in order to ascertain what penalty should be imposed. The definitions concerning ''displacement'' and the like, set out in new 212(n)(3) and 212(n)(4) of the Immigration and Nationality Act, and discussed in the previous portion of this section-by-section analysis dealing with the amendments to that Act made by section 412 of this legislation, apply in this context as well.

The ''administrative remedies'' all these clauses refer to (as well as those referred to in new subparagraph 212(n)(5)(E) added by subsection 413(b) of this Act) are unchanged from the ''administrative remedies'' the current version of 212(n)(2)(C) makes available. It should be noted that these do not include an order to an employer to hire, reinstate, or give back pay to a U.S. worker as a result of any violation an employer may commit. In current law, the Secretary's authority to issue an order for back pay even with respect to H–1B workers who are not paid the prevailing wage does not come from the ''administrative remedies'' authority granted in 212(n)(2)(C) but from a separate provision, 212(n)(2)(D), specifically authorizing the issuance of ''order[s] . . . for payment of such amounts of back pay as may be required to comply with the requirements of paragraph (1), whether or not a penalty under subparagraph (C) has been imposed.'' That subparagraph would have been worded quite differently if the authority it granted was already included in the ''administrative remedies'' authority granted under subparagraph (C).

This construction of the phrase is reinforced by the fact that suggestions from a number of quarters, including the Administration, that the Secretary should be granted the authority to issue orders of this type with respect to U.S. workers, were advanced and ultimately rejected in the final version of this legislation. In the course of negotiations leading to the bill currently before the Senate, the Administration ultimately was forced to accept the reality that authority of this type could not be conferred without radically transforming the way this program operates and indicated that acceptance by withdrawing its demand for this authority in favor of other concessions. The relevant documents from the Administration demonstrating this are submitted for the record following this statement. As can be seen, the initial document contains a point 7 seeking this authority, and that point 7 is crossed out in the later document. The reason suggestions for inclusion of this type of authority were ultimately rejected was the sense that they would end up transforming the traditional enforcement model used for the current program into something more resembling a new font of civil employment litigation.

New clause (iv) essentially codifies current Department of Labor regulations concerning whistleblowers. It is included not in order to change current standards concerning when a person has been the victim of retaliation, but because the source of statutory authority for the current regulations is somewhat unclear.

New clause (v) is intended to complement clause (iv) by directing the Secretary of Labor and the Attorney General to devise a process to make it easy for someone who has filed a complaint under clause (iv) to seek a new job. It is contemplated that this process would be expeditious and easy to use, so that the employee does not need to wait for a new employer to obtain approval for a new petition in order to change jobs in these circumstances.

New clause (vi)(I) prohibits employers from requiring H–1B workers to pay a penalty for leaving an employer's employ before a date agreed to between the employer and the worker. It directs that the Secretary is to decide the question whether a required payment is a prohibited penalty as opposed to a permissible liquidated damages clause under relevant State law (i.e. the State law whose application choice of law principles would dictate). Thus, this section does not itself create a new federal definition of ''penalty'', and it creates no authority for the Secretary to devise any kind of federal law on this issue, whether through regulations or enforcement actions. If the Secretary determines that a required payment is a prohibited penalty under governing State law, however, under this provision, it is also a violation of new clause (vi)(I), and the Secretary may take action under new subclause (vi)(III).

New clause (vi)(II) prohibits employers from requiring H–1B workers to reimburse or otherwise compensate employers for the new fee imposed under new section 214(c)(9), or to accept such reimbursement or compensation.

New clause (vi)(III) specifies that the penalty for violating subclauses (I) or (II) is a civil monetary penalty of $1,000 per violation and the return to the H–1B worker (or to the Treasury, if the H–1B worker cannot be located) of the required payment made by the worker to the employer.

New clause (vii) addresses an issue known colloquially as ''benching.'' This issue involves a practice under which an employer brings over an H–1B worker on the promise that the worker will be paid a certain wage, but then pays the worker only a fraction of that wage because the employer does not have work for the H–1B worker to do. There

is a shortage of evidence on the extent to which employers are engaging in this practice. The anecdotal information suggests that to the extent employers are engaging in it, they are likely principally to be contractors who hire out their employees to other employers for particular projects.

Subclause (I) clarifies that this practice of ''benching'' is a violation of the employer's obligation to pay the prevailing or actual wage. It is the intent and understanding of Congress that this includes an obligation to provide the full benefits package that the employer would provide to a U.S. worker as required under clause (viii) discussed below.

Subclause (II) further clarifies that in the case of an H–1B worker designated as a part-time employee on a visa petition, an employer commits this violation by failing to pay the H–1B worker for the number of hours, if any, the employer has designated on the petition at the rate of pay designated on the petition. Nothing in subclause (II) is intended to preclude H–1B employment on a part-time or as-needed basis, so long as that is the understanding on which the H–1B employee was hired, or to impose or authorize the Secretary of Labor or the Attorney General to impose any new requirement that the employer designate in advance the hours a part-time H–1B employee is expected to work. Additionally, nothing in subclauses (I) or (II) is intended to give the Department of Labor the authority to reclassify an employee designated as part-time as full-time based on the employee's actual workload after the employee begins employment. Finally, of course, nothing in clause (vii) is intended to prohibit an employer from terminating an H–1B worker's employment on account of lack of work or for any other reason.

Subclause (III) describes the manner in which the provisions of subclauses (I) and (II) apply to an employee who has not yet entered into employment with an employer. In such cases, the employer's obligation is to pay the H–1B worker the required wage beginning 30 days after the H–1B worker is first admitted, or in the case of a nonimmigrant already in the United States and working for a different employer, 60 days after the date the H–1B worker becomes eligible to work for the new employer. If a change of status or other formalities beyond approval of the petition are required in order for the latter nonimmigrant to be eligible to work for the employer, the 60 days begin to run on the date that the last formality necessary to make the H–1B worker eligible to work for the employer has been completed.

Subclause (IV) makes clear that an employer does not commit a violation of the prevailing/actual wage attestation by granting an H–1B worker a period of unpaid leave or reduced pay for reduced hours worked at the request of the H–1B worker. Thus, H–1B employees taking unpaid leave for other reasons, i.e. leave under the Family and Medical Leave Act or other corporate policies, annual plant shutdowns for holidays or retooling, summer recess or semester breaks, or personal days or vacations, should not be considered ''benched.'' It is possible, of course, that the employer might violate some other law, either State or federal, by failing to pay an H–1B worker for leave time, if that law requires employers to pay workers for such leave periods. It is also possible that the employer might violate new clause (viii) of section 212(n)(2)(C), discussed below, if it would ordinarily offer similarly situated U.S. workers paid leave and is singling out the H–1B worker for denial of this benefit. Hence the inclusion of subclause (VI), which makes clear that the fact that a practice is within an exception covered by this subclause does not insulate it from challenge under clause (viii). If the leave is requested by the H–1B worker, however, it does not present a clause (vii) issue.

Subclause (V) is intended to make clear that a school or other educational institution that customarily pays employees an annual salary in disbursements over fewer than 12 months may pay an H–1B worker in the same manner without violating clause (vii), provided that the H–1B worker agrees to this payment schedule in advance. Because Congress is not aware of all the possible kinds of legitimate salary arrangements that employers may establish, the situation covered by subclause (V) may be merely illustrative of other kinds of legitimate salary arrangements under which an employee's rate of pay may vary. Accordingly, so long as an H–1B worker is not being singled out by such a salary arrangement, it is not Congress's intent that such a salary arrangement be treated as suspect under or violative of clause (vii) merely because there is no special provision like subclause (V) addressing it. To the contrary, if it is an arrangement that the employer routinely uses with U.S. employees as well as H–1B workers, it should be treated as presumptively not a violation of that clause.

Clause (viii) adds an additional clarification concerning an employer's obligations under the attestation set forth in 212(n)(1)(A). It states that it is a violation of those obligations for an employer to fail to offer benefits and eligibility for benefits to H–1B workers on the same basis, and in accordance with the same criteria, as the employer offers benefits and eligibility for benefits to U.S. workers. This obligation is only an obligation to make benefits available to an H–1B worker if an employer would make those benefits available to the H–1B worker if he or she were a U.S. worker. Thus, if an employer offers benefits to U.S. workers who hold certain positions, it must offer those same benefits to H–1B workers who hold those positions. Conversely, if an employer does not offer a particular benefit to U.S. workers who hold certain positions, it is not obligated to offer that benefit to an H–1B worker. Similarly, if an employer offers performance-based bonuses to certain categories of U.S. workers, it must give H–1B workers in the same categories the same opportunity to earn such a bonus, although it does not have to give the H–1B worker the actual bonus if the H–1B worker does not earn it. While this clause is not intended to require that H–1B workers be given access to more or better benefits than a U.S. worker who would be hired for the same position, it does not forbid an employer from doing so. For example, an employer might conclude that it will pay foreign relocation expenses for an H–1B worker whereas it will not pay such relocation expenses for a U.S. worker.

Clause (viii)'s phrasing of the employer's duty as an obligation to provide ''benefits and eligibility for benefits'', rather than just one or the other, was chosen to protect against two eventualities. On the one hand, it would not be proper for an employer to make an H–1B worker ''eligible'' for benefits on the same basis as its U.S. workers but then proceed to actually provide them to its U.S. workers but never provide them to the H–1B worker. While this construction of an obligation to make a person ''eligible'' for a benefit may seem a little strained, sufficient concerns were expressed about this possibility that it seemed worth eliminating any ambiguity on the point by including the first prong of the obligation. On the other hand, in order actually to receive many kinds of benefits, employees are frequently required to take some kind of action on their end, whether to select a plan, to provide partial payment for the benefits, to work for the employer for a certain period of time, or to perform at a high level. The actual provision of other kinds of benefits may also turn on other contingencies, such as, in the case of some kinds of bonuses and stock options, the company's year-end performance. Accordingly, the core obligation that makes sense with respect to many benefits is an obligation to make H–1B workers ''eligible'' for them. Finally, the obligation is to make the H–1B worker eligible ''on the same basis, and in accordance with the same criteria'' as U.S. workers. Thus, in determining whether an employer is meeting this obligation, care must be taken to find the right U.S. worker to whom to compare the H–1B worker in terms of access to benefits.

A few examples are useful in understanding this important principle. If a particular benefit is available only to an employer's professional staff, then it only need be made available to an H–1B filling a professional staff position. If an employer's practice is not to offer benefits to part-time or temporary U.S. workers, then it is not required to offer benefits to part-time H–1B workers or temporary H–1B workers employed for similar periods. If an employer's practice is to have its U.S. workers brought in on temporary assignment from a foreign affiliate of the employer remain on the foreign affiliate's benefits plan, then it must allow its H–1B workers brought in on similar assignments to do the same. Likewise, in that instance, it need not provide the H–1B workers with the benefits package it offers to its U.S. workers based in the U.S. Indeed, even if it does not have any U.S. workers stationed abroad whom it has brought in in this fashion, it should be allowed to keep the H–1B worker on its foreign payroll and have that employee continue to receive the benefits package that other workers stationed at its foreign office receive in order to allow the H–1B worker to maintain continuity of benefits. In that instance, the basis on which the worker is being disqualified from receiving U.S. benefits (that he or she is receiving a different benefits package from a foreign affiliate) is one that, if there were any U.S. workers who were similarly situated, would be applied in the same way to those workers. Hence the H–1B worker is being treated as eligible for benefits on the same basis and according to the same criteria as U.S. workers. It is just that the criterion that disqualifies him or her happens not to disqualify any U.S. workers. Or to put the point a little differently: the H–1B worker is being given different benefits from the U.S. workers not because of the worker's status as an H–1B worker but because of his or her status as a permanent employee of a foreign affiliate with a different benefits package.

This provision is not meant to supersede an employer's obligations under other provisions of the law, or its obligations to comply with international agreements governing social security benefits, taxes, retirement plans or other similar benefits. Finally, this provision does not require an employer to offer benefits or any particular category of benefits to its H–1B workers (or anyone else) if its practice is not to offer benefits or the particular category of benefits to its similarly situated U.S. workers.

Section 413(b) adds a new paragraph (5) at the end of 212(n) that sets out the exclusive remedial mechanism for alleged violations of the selection portion of the recruitment attestation set out in new paragraph 212(n)(1)(G)(i)(II) or any alleged misrepresentations relating to that attestation. It also contains a savings clause that states that it should not be construed to affect the Secretary or the Attorney General's authorities with respect to other violations. This was to address the possible case where evidence

tending to establish a violation of the selection attestation also tends to establish a violation of some other attestation. This savings clause, however, is not meant to serve as a backdoor way around the exclusivity of the remedy set out in 212(n)(5) for a violation of the selection attestation itself. It should also be noted that by setting up separate mechanisms, one lodged at Labor concerning recruitment and one lodged at Justice concerning selection, this provision contemplates that the two different kinds of violations be handled differently. Thus, it does not contemplate, for example, recharacterizing a ''failure to select'' complaint as a ''failure to recruit in good faith'' and then using the enforcement regime for the latter category of violations to pursue what in fact is a ''failure to select'' complaint. Moreover, it is unlikely that evidence tending to establish a violation of the selection attestation would tend to establish a violation of the recruitment attestation, since such evidence, whatever else it would tend to prove, would tend to prove that the employer had made sufficient efforts to recruit that others applied for the job. Finally, it should be noted that nothing in this section should be construed to give the Attorney General or the Department of Labor any authority to write regulations or guidelines concerning permissible and impermissible selection criteria or mechanisms for determining when such selection criteria are permissible or impermissible.

Under the enforcement scheme set up by paragraph (5), any person aggrieved by an alleged violation of 212(n)(1)(G)(i)(II) or a related misrepresentation who has applied in a reasonable manner for the job at issue may file a complaint with the Attorney General within 12 months of the date of the violation or misrepresentation. The Attorney General is charged with establishing a mechanism for pre-screening such a complaint to determine whether it provides reasonable cause to believe that such a violation or misrepresentation has occurred. If the Attorney General does find reasonable cause, she is charged with initiating binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint an arbitrator from the Service's roster.

The arbitrator is to be selected in accordance with the procedures and rules of the Service. He or she should have experience with personnel decisions in the industry to which the employer belongs, unless for some reason this is not possible. The fees and expenses for the arbitrator are to be paid by the Attorney General.

The arbitrator is charged with deciding whether the alleged violation or misrepresentation occurred and whether, if it occurred, it was willful. The complainant has the burden of establishing such violation or misrepresentation by clear and convincing evidence. If the complainant alleges that the violation or misrepresentation was willful, the complainant also has the burden of establishing that allegation under the same standard. This standard was selected in order to avoid the risk that the arbitrator could otherwise end up simply substituting the arbitrator's judgment for the employer's concerning the relative qualifications of potential employees. The arbitrator's decision should likewise pay careful heed to the rule of construction set forth at the end of section 212(n)(1).

The arbitrator's decision is subject to review by the Attorney General only to the same extent as arbitration awards are subject to vacation or modification under 9 U.S.C. 10 or 11, and to judicial review only in an appropriate court of appeals on the grounds described in 5 U.S.C. 706(a)(2).

The remedies for violations resemble those established for the other violations of the labor condition attestations (administrative remedies including $1,000 fines per violation or $5,000 fines per willful violation and a potential debarment of one year, or two years for a willful violation).

The Attorney General is prohibited from delegating the responsibilities assigned her to anyone else unless she submits a plan for such a delegation 60 days before its implementation to the Committees on the Judiciary of each House of Congress. This is in order to assure that Congress has an adequate opportunity to be involved in the decision regarding where at the Department of Justice the Attorney General plans on lodging this function.

Section 413(c) adds a new section 212(n)(2)(E) describing the liability of an employer who has executed the ''secondary non-displacement attestation'' for placing a non-exempt H–1B worker with respect to whom it has filed an application containing such an attestation with another employer under the circumstances described in paragraph (1)(F). If the other employer has displaced a U.S. worker (under the definitions used in this legislation) during the 90 days before or after the placement, the attesting employer is liable as if it had violated the attestation. The sanction is a $1,000 civil penalty per violation and a possible debarment. The attesting employer can only receive a debarment, however, if it is found to have known or to have had reason to know of the displacement at the time of the placement with the other employer, or if the attesting employer was previously sanctioned under 212(n)(2)(E) for placing an H–1B nonimmigrant with the same employer. If an employer has conducted the inquiry that it is required to attest that it has conducted before any such placement, and (as that attestation requires) acquired no knowledge of displacement of a U.S. worker in the course of that inquiry, it should ordinarily be presumed not to have known or have reason to know of a displacement unless there is an affirmative showing that it did have such knowledge or reason to know. It should also be noted that an employer can be held liable for such a placement only if it filed an application that contained the ''secondary non-displacement attestation,'' and only with respect to H–1B workers covered by such an application.

Subsection 413(d) adds a new section 212(n)(2)(F) granting the Secretary authority to conduct random investigations of employers found after enactment of this act to have committed a willful violation or willful misrepresentation for five years following the finding.

Subsection 413(e) grants the Secretary limited additional authority with respect to other employers to investigate certain kinds of allegations of failures to comply with labor condition attestations. The Secretary's authority under current law is limited to investigating complaints concerning such violations that come from aggrieved parties. Under the authority granted by new subparagraph (G) of 212(n)(2), added by paragraph (1) of subsection 413(e) of this Act, under certain circumstances the Secretary will also be authorized to investigate for 30 days allegations of willful failures to meet a condition of paragraph (1)(A), (1)(B), (1)(E), (1)(F), or (1)G)(i)(I), allegations of a pattern or practice by an employer of failures to meet such a condition, or allegations of a substantial failure to meet such a condition that affects multiple employees even if those allegations do not come from an aggrieved party.

The rationale for this grant of authority is to make sure that if DOL receives specific, credible information from someone outside the DOL that an employer is doing something seriously wrong but that information comes from someone who is not an aggrieved party, DOL can nevertheless pursue the lead.

In order for the Secretary to exercise the authority granted her under new subparagraph (G), the allegations will have to be based on specific credible information from a source who is likely to have knowledge of an employer's practices of employment conditions or an employer's compliance with the employer's labor condition application. Thus, this provision does not authorize ''self-directed'' or ''self-initiated'' investigations by the Secretary. Rather, as specified in clauses (ii) and (iii), an investigation can only be launched on the basis of a communication by a person outside the Department of Labor to the Secretary, or on the basis of information the Secretary acquires lawfully in the course of another investigation within the scope of one of her statutory investigative authorities. The source's identity must also be known to the Secretary. Thus, the Secretary may not rely on anonymous tips in exercising this authority, although she may withhold the source's identity from the employer or others. As clause (iv) states, information received from the employer that the employer is required to file in order to obtain an H–1B visa does not constitute the ''receipt of information'' under this subparagraph. This is meant to be illustrative rather than exclusive. The same principle would prevent other kinds of information filed by the employer in the course of seeking some other benefit from DOL, such as labor certification, for example, to constitute the ''receipt of information'' either.

In giving effect to the provisions specifying the kinds of alleged violations that may be investigated under this authority, the purpose of this authority should likewise be taken into account. Thus, for example, a ''substantial failure to meet such a condition that affects multiple employees'' should not be understood to mean an unintentional posting violation even if it affects many employees. Nor should it be understood to mean a more significant violation but one that affects only a handful of people. Rather, it should be understood to be a violation of a magnitude that warrants the unusual step of committing DOL's resources even though there is no aggrieved complaining party.

Subparagraph (G) also establishes several procedural safeguards to prevent this authority from being abused. First, under clause (i), there must be a finding of reasonable cause to believe that an employer is committing one of the covered violations. Second, the Secretary (or the Acting Secretary, in the case of the Secretary's absence of disability) must personally certify that this requirement and the other requirements of clause (i) have been met before an investigation may be launched. This authority cannot be delegated to anyone else in the Department. Third, as in current law regarding investigations of complaints, the investigation may only last 30 days. Fourth, rather than being a generalized grant of authority to investigate the employer, the Secretary's authority is limited to investigating only the alleged violation or violations. Fifth, under clause (ii), the information provided by the source must be put in writing, either by the source itself or by a DOL employee on behalf of the source. Sixth, under clause (v), the information may not concern a violation that took place longer ago than 12 months, so investigations may not be launched on the basis of stale information. Additionally, under clause (vi), the Secretary is directed to provide notice to an employer of the information that may lead to the launching of an investigation and an opportunity to respond to that information before an investigation is actually initiated.

This last requirement is waivable by the Secretary where the Secretary determines that complying with it will interfere with

her efforts to secure compliance by the employer with the H–1B program requirements. That the decision whether to waive it is left to the Secretary's discretion does not mean that it should be made lightly, or that it should be the rule rather than the exception. Rather, it is Congress's expectation that the Secretary will provide the otherwise required notice unless she has a reasonable belief, based on credible evidence, that the employer can be expected to avoid compliance because of the notice. Past, proven willful violations could be such evidence. Congress's belief, however, is that most employers will correct a problem if brought to their attention and it cannot be assumed that simply because allegations have been made that the employer will not do so. The scant number of willful violations that DOL has found in the history of this program suggests that this is likely to be the rule rather than the exception. Thus, in many cases, notice will advance the twin ends of compliance (or a credible explanation demonstrating that the facts do not support the allegations and an investigation is not needed) and the ability to preserve the Secretary's enforcement resources so they can be used on other pressing matters.

Finally, clause (vii) makes clear that after completion of the 30-day investigation, if the Secretary finds that a reasonable basis exists to make a finding that a violation of the type described in clause (i) has occurred, the procedure follows the procedure in existing law, under which the employer is entitled to notice of the finding and an opportunity for a hearing within 60 days. After the hearing, the employer is entitled to a finding by the Secretary not more than 60 days later.

One last point should be noted in regard to this authority. Both this new grant of authority and existing authority to investigate complaints require that DOL have ''reasonable cause to believe'' that the employer is committing a violation (limited, in the case of the authority granted in new subparagraph (G), to certain kinds of violations). This requirement is meant to track that of the Fourth Amendment. Thus, if an employer believes that DOL does not have the ''reasonable cause'' required, it is free to refuse to give DOL access to the materials DOL is seeking and put DOL to the test on that point. In other words, Congress's view is that an employer does not waive any Fourth Amendment rights by applying for an H–1B visa or by filing any documents required to obtain one, and that DOL has no authority to use the occasion of the employer's filing such materials to compel such a waiver.

Paragraph (2) of subsection 413(e) sunsets the new DOL investigative authority granted by paragraph (1) on September 30, 2001.

Subsection 413(f) clarifies that none of the enforcement authorities granted in subsection 212(n)(2) as amended should be construed to supersede or preempt other enforcement-related authorities the Secretary of Labor or the Attorney General may have under the Immigration and Nationality Act or any other law.

SECTION 414. COLLECTION AND USE OF H–1B NONIMMIGRANT FEES FOR SCHOLARSHIPS FOR LOW-INCOME MATH, ENGINEERING AND COMPUTER SCIENCE STUDENTS AND JOB TRAINING OF UNITED STATES WORKER

Subsection 414(a) adds a new paragraph at the end of section 214(c) of the Immigration and Nationality Act imposing a $500 fee on employers filing petitions for H–1B nonimmigrants. This fee is to be collected by the Immigration and Naturalization Service. The statute requires that the fee be charged starting on December 1, 1998. INS has informed the Congress that this will give it sufficient time to establish a mechanism for collecting the fee that will not delay the processing of visa petitions. It is the Congress's hope and expectation that INS will establish that system as expeditiously as possible, and will have it in place on December 1. If, however, INS does not have a system up and running for collecting the fee at that time, it is not required or expected to stop accepting, processing, or approving visa petitions. To the contrary, it is expected that it will continue to accept, process, and approve visas without delay while also moving as quickly as possible to put the system for collecting the fee in place.

Under this provision, the fee will be paid by the employer in three circumstances: (1) upon initial application for the nonimmigrant to obtain H–1B status (through change from another status or by securing a visa from abroad); (2) the first time an employer files a petition for the purpose of extending the nonimmigrant's H–1B status; and (3) when a new employer is petitioning for an alien who is already in H–1B status whom the new employer wants to hire away from the H–1B's current employer.

The fee will apply to any petition filed by the same employer that has the effect of extending the nonimmigrant's status for the first time, whether that is its sole purpose or whether it is a dual-purpose petition that both, for example, advises the Immigration and Naturalization Service of a material change in the terms and/or conditions of the alien's employment and extends the alien's stay.

On the other hand, an employer will not have to pay the fee for any extension after a first extension petition filed by that employer. This section is meant to ensure that a single employer not be required to pay the $500 fee more than twice for a single H–1B nonimmigrant. In addition, petitions filed for such purposes as advising the Immigration and Naturalization Service of a material change in the terms and/or conditions of the alien's employment (an amended petition) or to advise the INS of a change in the circumstances of the employer (such as notification of a successor-in-interest following a corporate merger, acquisition or sale), or for assigning an H–1B worker to a new area of employment or to a different legal entity within the employer's corporate structure, will not ordinarily require payment of the fee. To repeat, the only circumstance in which an employer will have to pay the fee for a petition of this type is when the petition also has the effect of extending the alien's status and is the first petition that employer has filed to extend that alien's status.

In addition, even when a prior employer paid the fee, a new employer would be required to pay the fee when it hires an H–1B nonimmigrant who changes jobs or when an H–1B is hired to engage in concurrent employment.

Universities and nonprofit research institutes are exempted from the fee.

Subsection 414(b) amends section 286 of the Immigration and Nationality Act by adding a new subsection (s) requiring the establishment of an account for holding the fees assessed under section 214(c). The new subsection also specifies the distribution of the funds, to be divided among the Workforce Improvement Act (56.3%), a new program established by the Act setting up low-income university scholarships for mathematics, engineering, and computer science administered by the National Science Foundation (28.2%), grants for science and math development for those in kindergarten through 12th grade through existing programs administered by the National Science Foundation (8%), DOL processing and enforcement relating to the H–1B program (6% total), and INS processing of H–1B visas (1.5%).

With respect to the funding for DOL, although the funds are not equally divided by law between the processing and enforcement functions during the first fiscal year, the expectation is that they will be split 50–50 unless DOL determines that it needs to spend more funds on processing in order to get into compliance with the 7 day statutory deadline under which it is supposed to be either certifying an application or rejecting it for incompleteness or obvious inaccuracies. After the first fiscal year, the money is equally split by statute, except that none of the money can be spent on enforcement unless the Secretary certifies that the Department was in substantial compliance with the 7-day deadline during the previous calendar year. At present, DOL is routinely violating this obligation, taking up to a month and sometimes up to three months to certify an application, despite the fact that the task is essentially ministerial. It is time for that to end. Moreover, getting into compliance with this obligation should not be accomplished by diverting resources from labor certifications for the permanent employment program. These are presently routinely taking two years, which is far too long.

The INS funds are designed to enable INS to establish a mechanism for collecting the new fee, to facilitate its revision of its forms and computer systems so as to better enable it to collect the fee and improve its data collection capacity, and to speed up INS's processing time for petitions, which is presently taking up to 3 months. This function should be able to be performed in no more than a month.

Subsection 414(c) uses a portion of the funds deposited in the account established under subsection 104(b) for the Secretary of Labor to provide grants for demonstration projects and programs for technical skills training for both employed and unemployed workers. These projects and programs will be administered through local boards established under section 121 of the Workforce Investment Act of 1998 or regional consortia of local boards.

Through this provision, the Secretary will be able to award grants to innovative programs to train employees to meet the workforce shortage needs in the high-tech industry. By doing so, this legislation works to address our country's long-term employment needs by training American workers to fill these crucial jobs. In addition, the legislation addresses the issue of underemployment by allowing grants to go to training programs for both employed and unemployed workers. A regional consortium of local boards can also apply for grants that will encourage regions to work together to meet their area's unique employment needs and encourage business and community colleges to work together to train that region's workers. These grants will allow the Secretary to support innovative training programs that can serve as models for other training programs around the country to learn from their best practices.

Subsection 414(d) authorizes a low-income scholarship program to be administered by the National Science Foundation. This program would allow the Director of the National Science Foundation to award scholarships to low-income students pursuing an associate, undergraduate or graduate level degree in mathematics, engineering, or computer science. The scholarships will be funded through the account established under subsection 414(b). Like the previous subsection, this provision invests in the American workforce by providing scholarships for students interested in pursuing studies in high-tech fields. By making scholarships available to low-income students, this legislation provides incentive and opportunity for

students to enter careers in the growing high-tech industry.

SECTION 415. COMPUTATION OF PREVAILING WAGE

Under current law an employer must attest on a Labor Condition Attestation that an individual on an H–1B will be paid the greater of the actual or prevailing wage paid to similarly employed U.S. workers.

Subsection 415(a) amends section 212 of the Immigration and Nationality Act by adding at the end a new subsection (p) that spells out how that wage is to be calculated in the context of both the H–1B program and the permanent employment program in two circumstances. Paragraph 212(p)(1) provides that the prevailing wage level at institutions of higher education and nonprofit research institutes shall take into account only employees at such institutions. The provision separates the prevailing wage calculations between academic and research institutions and other non-profit entities and those for for-profit businesses. Higher education institutions and nonprofit research institutes conduct scientific research projects, for the benefit of the public and frequently with federal funds, and recruit highly-trained researchers with strong academic qualifications to carry out their important missions. The bill establishes in statute that wages for employees at colleges, universities, nonprofit research institutes must be calculated separately from industry. Although this legislation does not explicitly require separate prevailing wage calculations in relation to for-profit and other non-profit entities that are not higher education institutions and nonprofit research institutes this is not meant to preclude the Department of Labor from making these same common-sense distinctions for other nonprofit entities.

New paragraph 212(p)(2) spells out the prevailing wage criteria for professional sports. Where there is a collective bargaining agreement (CBA), the minimum wage established therein constitutes the prevailing pay rate. Where no CBA exists, the prevailing wage is the minimum salary mandated by the professional sports league which teams must pay players—foreign nationals as well as U.S. workers. The system currently employed to determine the prevailing wage for minor league professional sports uses a ''mean wage.'' Because salaries for professional athletes vary greatly (up to 20 times difference between lowest and highest paid players), using the mean wage to calculate prevailing wage actually encourages the leagues to pay approximately fifty percent of the U.S. athletes a lower salary than similarly situated foreign national athletes. This current system is a disincentive to increase U.S. workers' salaries.

Subsection 415(b) of this legislation makes these rules for prevailing wage calculations retroactive so that they may be applied to any still-open prevailing wage determinations. This will allow DOL to apply only a single set of rules, that set out in subsection 212(p), for making these calculations in these industries, starting on the date of enactment.

SECTION 416. IMPROVING OF COUNT OF H–1B AND H–2B NONIMMIGRANTS

Subsection 416(a) requires the Immigration and Naturalization Service to improve its counting of the number of actual individuals granted or admitted in H–1B status in each fiscal year, rather than counting approved petitions, which may or may not be used by an individual to obtain H–1B status after approval.

Subsection 416(b) requires the revision of the petition forms so as to assure that this can be done.

Subsection 416(c) requires the Attorney General to submit to the House and Senate Judiciary Committees (1) a quarterly count on the number of individuals issued visas or provided nonimmigrant status; and (2) beginning in FY 2000, on an annual basis, information on the countries of origin and occupations of, educational levels attained by, and compensation paid to, aliens issued H–1B visas. The first requirement is intended to provide an early warning system if the cap is coming close to being hit. The second requirement is intended to develop reliable information on how these visas are being used.

In collecting additional data regarding H–1B nonimmigrants, the agency should not have to impose additional or new paperwork burdens on employers. In fact, it is Congress's understanding that the data required to be furnished are currently being collected, but that they are not being entered into a database that would allow them to be used. As a result, the only information Congress has had made available to it on the use of the visas has come from DOL's compilation of information on applications, which, on account of multiple filings, does not accurately reflect who is really coming in. Finally, nothing in this provision should be construed to allow INS to delay or withhold approval or adjudication of petitions in order to comply with its obligations under this provision.

SECTION 417. REPORT ON OLDER WORKERS IN THE INFORMATION TECHNOLOGY FIELD

Subsection 417(a) directs the Director of the National Science Foundation to enter into a contract with the National Academy of Sciences to study the status of older workers in information technology field. This study is to focus on the best available data, rather than on anecdotal information.

Subsection 417(b) requires the results of that study to be supplied to the Committees on the Judiciary of each House of Congress no later than October 1, 2000.

SECTION 418. REPORT ON HIGH TECHNOLOGY LABOR MARKET NEEDS; REPORTS ON ECONOMIC IMPACT OF INCREASE IN H–1B NONIMMIGRANTS

Subsection 418(a) requires a study and report on high tech, U.S., and global issues for the next ten years overseen by the National Science Foundation and done by a panel to be transmitted to the Judiciary Committees of both Houses by October 1, 2000.

Subsection 418(b) directs that the Chairman of the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Chair of the Council of Economic Advisers, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labor, and any other member of the cabinet report to Congress on any reliable study that uses legitimate economic analysis that suggests that the increase in H–1B visas under this bill has had an impact on any national economic indicator, such as the level of inflation or unemployment, that warrants action by Congress.

Subtitle B

The content of this subtitle was added to S. 1723 on the Senate floor by an amendment offered by Senator Warner incorporating the text of H.R. 429, a bill to grant special immigrant status to certain NATO civilian employees.

SECTION 421. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO EMPLOYEES

This section amends Section 101(a)(27) of the Immigration and Nationality Act to add to the class of those eligible for special immigrant status certain NATO employees and their children on the same basis as employees of other qualifying international organizations.

Subtitle C

This subtitle makes an additional amendment to the Immigration and Nationality Act originally included in S. 1723 regarding permissible payments by universities to holders of visitors' visas.

SECTION 431. ACADEMIC HONORIA

This section amends section 212 of the Immigration and Nationality Act by adding at the end a new subsection (q) permitting universities and other nonprofit entities to pay honoraria and incidental expenses for a usual academic activity or activities to an alien admitted under section 101(a)(15)(B), so long as the alien has not received such payment or expenses from more than 5 institutions or organizations in the previous 6 month period.

PROPOSED ADMINISTRATION REVISIONS TO H.R. 3736 (THE JULY 29, 1998 VERSION):

1. Require either a $500 fee for each position for which an application is filed or a $1,000 fee for each nonimmigrant. Fee to fund training provided under JTPA Title IV. In addition, a small portion of these revenues should fund the administration of the H–1B visa program, including the cost of arbitration.

2. Define H–1B-dependent employers as:

a. For employers with fewer than 51 workers, that at least 20% of their workforce is H–1B; and

b. For employers with more than 50 workers, that at least 10% of their workforce is H–1B.

3. The recruitment and no lay-off attestations apply to: (1) H–1B dependent employers; and (2) any employer who, within the previous 5 years, has been found to have willfully violated its obligations under this law.

4. H–1B dependent employers attest they will not place an H–1B worker with another employer, under certain employment circumstances, where the other employer has displaced or intends to displace a U.S. worker (as defined in paragraph (4)) during the period beginning 90 days before and ending 90 days after the date the placement would begin.

5. DOL would have the authority to investigate compliance either: (1) pursuant to a complaint by an aggrieved party; or (2) based on other credible evidence indicating possible violations.

6. Establish an arbitration process for disputes involving the laying-off of any U.S. worker who has replaced by an H–1B worker, even of a non-H–1B dependent employer. This arbitration process would be largely similar to that laid out in H.R. 3736 except that it would be administered by the Secretary of Labor. The arbitrator must base his or her decision on a ''preponderance of the evidence.''

7. Reference in the bill to ''administrative remedies'' includes the authority to require back pay, the hiring of an individual, or reinstatement.

8. There must be appropriate sanctions for violations of ''whistleblower'' protections.

9. Close loopholes in the attestations:

a. Strike the provision that ''[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or customary to the type of job involved.''

b. Clarify that job contractors can be sanctioned for placing an H–1B worker with an employer who subsequently lays off a U.S. worker within the 90 days following placement.

c. Do not exempt H–1B workers with at least a master's degree or the equivalent from calculations of the total number of H–1B employees.

d. Define lay-off based on termination for ''cause or voluntary termination,'' but exclude cases where there has been an offer of continuing employment.

10. Consolidate the LCA approval and petition processes within DOL, rather than within INS.

11. Broaden the definition of U.S. workers to include aliens authorized to be employed by this act or by the Attorney General.

12. Include a provision that prohibits unconscionable contracts.

13. Include a ''no benching'' requirement that an H–1B nonimmigrant in ''non-productive status'' for reasons such as training, lack of license, lack of assigned work, or other such reason (not including when the employee is unavailable for work) be paid for a 40 hour week or a prorated portion of a 40 hour week during such time.

14. Increase the annual cap on H–1B visas to 95,000 in FY 1998, 105,000 in FY 1999, and 115,000 in FY 2000. After FY 2000, the visa cap shall return to 65,000.

15. Eliminate the 7500 cap on the number of non-physician health care workers admitted under the H–1B program to make the bill consistent with our obligations under the GATS agreement.

ADMINISTRATION PACKAGE—SEPTEMBER 14, 1998

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* * * * *

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b. Clarity that job contractors can be sanctioned for placing an H–1B worker with an employer who subsequently lays off a U.S. worker within the 90 days following placement.

c. Do not exempt H–1B workers with at least a master's degree or the equivalent from calculations of the total number of H–1B employees.

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U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 16, 1998.

Hon. DORIS MEISSNER,
Commissioner, Immigration and Naturalization Service, Washington, DC.

DEAR COMMISSIONER MEISSNER: As I am sure you know, legislation raising the H–1B cap has been included in the Omnibus Appropriations bill. The final version is the result of hard work by all involved, including all of those who negotiated this compromise on behalf of the Administration.

There is one point on which I thought it would be useful to have a clear record of our shared understanding. The legislation creates a new $500 filing fee for most visa petitions, which the Attorney General is tasked with collecting, and which takes effect on December 1 of this year. I believe it is everyone's understanding that INS will be charged with devising the system for collecting this fee.

The point I wanted to confirm is that I also believe that it is everyone's understanding that if, as a result of unforeseen circumstances, it does not prove possible to have a system up and running by that time, our shared understanding is that the language in the bill concerning the fee will not result in a cessation of accepting, processing, or approving petitions on that account. Rather, I believe it is everyone's view that petitions should be continued to be accepted, processed, and approved in the interim, while INS continues to move as expeditiously as possible to finalize putting the fee-collection system in place.

Thank you for your attention to this matter.

Sincerely,

SPENCER ABRAHAM.

U.S. DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, October 29, 1998.

Hon. SPENCER ABRAHAM,
Chairman, Subcommittee on Immigration, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your October 16 letter concerning the implementation of the H–1B program. The Immigration and Naturalization Service (INS) has been working with your staff to identify and to address the management and administrative challenges associated with the proposed H–1B legislation that is now included in the Omnibus Appropriations Bill. These challenges include two sources of additional workload, those emanating from new requirements contained within the legislation, and those related to the increased volume of cases that must be processed.

The INS has already initiated efforts to meet the challenges posed for us, and fully expects to be able to implement the new fee provision proposed in the H–1B legislation by December 1. However, let me assure you that the INS will continue adjudicating H–1B applications, even if unforeseen circumstances cause a delay in establishing final procedures for fee collection and deposit.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

DORIS MEISSNER,
Commissioner.

DISTRICT OF COLUMBIA

Mr. BROWNBACK. Mr. President, I want to congratulate the bill managers for their hard work to reach an agreement on the bill before us today. I especially want to thank them for including the District of Columbia Adoption Improvement Act of 1998 in the omnibus appropriations bill.

As chairman of the Senate Oversight Subcommittee on Government Management, Restructuring, and the District of Columbia, improving adoption for foster care in the District is one of my highest priorities. For the past year, I, along with Senators DEWINE, GRASSLEY, CRAIG, and LANDRIEU, have been looking for ways to make it easier for children in the Nation's Capital to find an adoptive family.

Earlier this year, we hosted an Adoption Fair on Capitol Hill in which resulted in the adoption of five children to two families. We also held a hearing in the subcommittee to explore a solution that would shorten the time it takes for children in the District to be adopted.

Gordon Gosselink, age 13, testified before the subcommittee at this hearing about how he entered the District's foster care system at the age of two. For the next 10 years, he lived in several foster care homes and even endured physical abuse until he was finally adopted at the age of 13 by Robert and Mary Beth Gosselink. He said:

> Last year, I met Rob and Mary Beth Gosselink at a Christmas party. When my social worker told me that two people were hoping to adopt me, I was really excited. I knew that this was the one. I moved [in] with Rob and Mary Beth last year at Easter time, and now I am part of the Gosselink Family. Things are really great now. I like my neighborhood and I am doing well in school. Best of all, I am with a family who loves me forever. My parents now are adopting another boy named Ricardo who is 11 years old. I am looking forward to having a new brother. I know there are a lot of kids who are still waiting for a home. I hope they find homes, too, like me.

Some children are not as lucky as Gordon. Currently, there are 994 children in the District with the goal of adoption but only 50 percent have been referred to the District's adoption branch. Even worse, many children in the District grow up moving from foster care home to foster care home without finding an adoptive family by the age of 18. The most recent statistics indicate that 67 percent of the children who left the foster care system,

left because they turned 18 years old. In other words, one of the only ways out of the system, is to grow-up to adulthood within the system. Once these children turn 18, they are released to the streets without a family or a home.

Allowing just one child to grow up without the love, attention, and commitment of a family is a tragedy. Allowing hundreds to languish in foster care is a disgrace.

The District Child and Family Services Agency has been under the leadership of Ernestine Jones, the Federal court appointed receiver for nearly one year now. I am hopeful that reforming the system will remain a priority and these discouraging realities will no longer haunt the children who need the system most.

We must also recognize foster care and adoptive parents for their contribution and their example of taking in these children when they need them most. As many of the Senators, who have adopted children, know, we need to make it easier, not more difficult, for parents to adopt.

I believe this can be done and systemic improvements can be made with positive results—as seen in my home state of Kansas. The Kansas reform model of the Child and Welfare Services Agency has shown some immediate signs of success. Within one year of implementing these reforms, Kansas increased the number of children placed in adoptive homes from 25 percent to 50 percent. Prior to these reforms, the average stay for a child in the Kansas foster care system was two years. Now, the average stay in 13 months.

Using the Kansas model, we drafted the D.C. adoption reform language and came to a bipartisan agreement which included the Federal court appointed receiver and the Federal court appointed monitor. I am pleased that this compromise language is included in the omnibus appropriations bill. First, the bill would require the D.C. Child and Family Services Agency (CFSA) to maintain an accurate database tracking all children found by the Family Division of the District of Columbia Superior Court to be abused or neglected and who is in the custody of the District of Columbia—including any child with the goal of adoption or who is legally free for adoption. Unfortunately, this basic step has been neglected in the past in CFSA. To meet the immediate demand of placing children in adoptive homes, the bill would also require CFSA to contract out some of its adoption functions which may include recruitment, homestudy, and placement services. Like the Kansas model, these contracts would be required to be performance-based contracts. Contractors would be compensated once specific goals, such as an adoption placement or finalization, are achieved. Finally, CFSA and contractors would be required to work together to identify and lift any barriers to timely adoptions.

I want to stress that in the end, we are talking about individual children who are in search of a permanent and secure home. Any improvement in the system translates into bringing each child closer to the fundamental need of having a loving, adoptive family.

THE AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT INCLUDED IN DIVISION C, TITLE IV

Mr. LIEBERMAN. Mr. President, I speak today in support of the American Competitiveness and Workforce Improvement Act, which is included in the Conference Report on H.R. 4328, the Omnibus Appropriations Act, under Division C, Title IV. The House passed this Act as H.R. 3736 on September 24. The Senate had passed the companion bill, S. 1723, on May 18. I cosponsored the Senate bill because I believe strongly that the U.S. Government's job is to make sure that U.S. industry has adequate access to the resources necessary to grow their business. Right now we have the lowest unemployment rate in 28 years. The high-tech sector, which has been the engine of growth in our economy—creating the most jobs—cannot find enough skilled workers. If U.S. industry needs more skilled workers than the U.S. labor force can provide, as the Department of Commerce has documented, then we must allow them to hire foreign skilled workers, and, as is more often the case, allow them to hire foreign graduate students educated here in the United States. These foreign workers create wealth and more jobs in this country. If we block these visas the research will go abroad.

The Semiconductor Research Corporation, founded by the U.S. semiconductor industry, supports approximately 800 graduate students each year with merit-based scholarships. Some of the students receiving grants are foreigners studying here in the United States. They told me that this year, for the first time, they have been unable to hire all of the graduate students whose research they funded, even though the students wished to remain in the United States, because they cannot get H–1B visas.

When I cosponsored S. 1723 in May, I believed it was a good bill because it not only temporarily increased the number of visas available for skilled workers, but it also set up education and training programs for Americans so that more U.S. workers will soon be eligible for these high-paying jobs in the high-tech sector. I am delighted to say that I believe the bill that emerged from the long and detailed negotiation between Senator ABRAHAM and the White House is now even better legislation. The American Competitiveness and Workforce Improvement Act increases the number of visas available for the next three years, includes funding to decrease processing time for visa applications, and funds education and training programs to increase the pool of skilled workers in the United States. For the benefit of workers, it includes substantial protections for U.S. workers, increases enforcement authority for the Department of Labor to protect workers rights, and creates additional protections for H1–B employees. These new protections will help eliminate real and/or perceived hiring practices that came under criticism and made this such a controversial visa program. Removing the opportunity for abuse of the program makes its a stronger program and broadens its base of support. This act is in the best interests of both U.S. and foreign workers and U.S. business.

The funding that is included in this act is vitally important. Too often, Congress passes legislation with the result that executive branch agencies or States are expected to provide more services and programs with less money. This act funds each of the programs it creates and the increased duties it requires of government agencies with a fee on each visa. It funds K–12 science programs. It funds scholarships in the math, science and engineering fields. And it funds training in high-tech skills.

I would like to speak in particular about the training program contained in the American Competitiveness and Workforce Improvement Act, Section 414 (c). As the chief sponsor of this provision, I want in these remarks to particularly address the intent and meaning of the provision. Section 414 (c) directs the Secretary of Labor to establish demonstration projects to provide technical skills training for workers. What makes this program unique is not just that it is targeted at technical skills, but that it will be open to both employed and unemployed workers.

Most Department of Labor training programs are solely for unemployed, displaced or disadvantaged workers. But in today's market, technology changes so quickly that no longer can people be trained in their twenties and expect to use those same skills throughout their career. American workers used to have one job for life. Now the average American will have five to ten jobs in a lifetime. Employees need to update their skills continually to remain competitive. Realistically, we must allow Department of Labor training programs to include workers who have jobs now, and want to upgrade and update their skills so they can qualify for the changing needs of industry, instead of waiting until they lose their job or become dislocated workers from a declining industry.

The United States is in the enviable situation at this time of having under 5% unemployment. The high-tech industry tells us it has as many as 190,000 unfilled jobs. This does not necessarily mean that we do not have the people to fill those jobs; it means we don't have the people who have the skills to fill

those jobs. Nearly seven out of ten employers say that the high school graduates they see are not yet ready to succeed in the workplace.

The jobs in the high-tech sector pay more than other jobs. The average wage in the high-tech sector pays 73% more than the average wage in the private sector. The average high-tech manufacturing wage is 32% higher than the U.S. manufacturing average wage. We need to help our citizens get the training they need to get these higher paying jobs.

The reality is that we have a global economy and there is, more and more, a global workforce. If companies cannot find skilled workers in the United States, they will find them in another country. This training program will help U.S. workers get the skills they need to stay competitive.

I want to explain my intent for the program established under Section 414 (c). I intend this program to be used for innovative approaches to solving our labor skills shortage; specifically, consortia and community-based programs. I intend the program to be used as a catalyst to bring small and medium sized businesses together to set up cooperative programs of skills training. I believe the best results can be gained from industry-driven programs. To have industry involved in and leading the skills training will ensure that workers are being trained for jobs that actually exist.

Ninety-nine percent of the 23 million businesses in the United States are small businesses. But, small businesses often do not have the resources to operate training programs by themselves. By joining together in consortia of other small and medium sized businesses with similar labor needs, with the Local Workforce Investment Boards established by the Workforce Investment Partnership Act signed into law this year, with community colleges, or labor organizations, or with State or local governments, small and medium sized businesses can participate in training courses that will increase the labor pool of skilled workers needed in their region.

Companies, however, do not normally cooperate in training workers. That is why the government is needed to provide the catalyst to bring companies together to cooperate on training. It is expected that the fee from the visas will generate approximately $50 million annually for the training program. It is my hope that the Secretary of Labor will consider, as she establishes these programs, requiring matching funds from the consortia. Nothing in this act precludes such matching funds. Matching funds will help ensure that the companies take an active role in the training program. The Secretary of Labor has the discretion to undertake this implementation approach. Of course, available federal funds are meant only to start the process—federal funding would end over time after which the consortia would continue the cooperative training programs alone.

Mr. President, let me give some examples of the type of program I am discussing. In the last few years, a small number of regional and industry-based training alliances in the United States have emerged, usually in partnership with state and local governments and technical colleges, that exemplify the type of program on which this provision in the manager's amendment is modeled. In Rhode Island, with help from the state's Human Resource Investment Council, regional plastics firms developed a skills alliance which then worked with a local community college to create a polymer training laboratory linked to an apprenticeship program that guarantees jobs for graduates. The Wisconsin Regional Training Partnership, a consortium of metal-working firms in conjunction with the AFL–CIO, refitted an abandoned mill with state-of-the-art manufacturing equipment to teach workers essential metal-working skills. In Washington, DC, telecommunications firms donated computers and helped set up a program to train public high school students to be computer network administrators. They then hired graduates of the program at entry-level salaries of $25,000–$30,000.

Without some kind of support to create alliances, such as created by the new provision in this act, small and medium sized firms just don't have the time or resources to collaborate on training. In fact, almost all the existing regional skills alliances report that they would not have been able to get off the ground without an independent staff entity, such as a college or labor organization, to operate the alliance. Widespread and timely deployment of these kinds of partnerships is simply not likely to happen without the incentives established by a federal initiative, which is created by this act. The training provision in the American Competitiveness and Workforce Improvement Act can help create successful new training models and templates that others can replicate across the nation.

I want to thank Senator ABRAHAM and Lee Liberman Otis and Stuart Anderson of his staff who worked tirelessly to ensure that the American Competitiveness and Workforce Improvement Act would pass the 105th Congress. I also want to thank Laureen Daly of my staff for all her dedicated efforts on this essential legislation.

We have accomplished something important for our workforce needs and for training in this legislation.

CERTIFICATION REGARDING CERTAIN IMF ASSISTANCE

Mr. CRAIG. Mr. President, I rise to commend Chairman MCCONNELL for the work he has done on the foreign operations portion of the Omnibus Appropriations bill.

The fiscal year 1999 foreign operations appropriations package is very different in size and character from the wasteful ones passed just a few years ago by liberal Congresses. It represents a sea change in the way Congress does business and a major victory for conservative, commonsense principles.

The U.S. Federal budget is now balanced—for the first time since 1969. This is the most positive economic policy development in the world today. There is room within that balanced budget for a limited, responsible program of foreign operations.

The chairman's work in this bill advances U.S. leadership and protects our national security, our economic interests, and American jobs, in a rapidly changing world.

For example, the way this bill deals with the International Monetary Fund is not the same old way of doing business.

This bill imposes new, tough standards of accountability and transparency on the IMF. If American taxpayers are going to invest in the IMF, hoping it will produce a more stable world economy, they should be able to see where their money is going.

I know that has been an important priority for Chairman MCCONNELL, as it has been for me.

I want to thank the chairman in particular for his support and assistance in making sure the final version of this bill included a provision we have worked on since the beginning of this year.

This provision covers autos, textiles and apparel, steel, and shipbuilding, as well as semiconductors. It is of extreme importance to the thousands of workers at Micron, an Idaho company that manufactures computer chips and is a world leader in semiconductor technology. This provision will safeguard many American jobs and is the result of bipartisan efforts.

This provision directs the Secretary of the Treasury to instruct the U.S. Executive Director at the IMF to exert the influence of the United States to oppose further disbursement of funds to the Republic of Korea unless the Secretary has given a certification that IMF funds are not being used to subsidize industries with a history of committing unfair trade practices against American companies and workers.

It is my understanding that the use of the term, ''exert the influence of the United States'' places a very high obligation on our Secretary of the Treasury and Executive Director to use all the means necessary to oppose disbursement of funds unless such certification has been given.

This effort needs to be persistent and comprehensive, at all levels, in order to achieve the desired result. It includes the use of the voice and vote of the United States at the IMF. This language also constitutes a commitment by the Secretary of the Treasury to the Congress to see that the influence of the United States is exerted in all respects.

I've spoken with the Secretary about this matter. It's characteristic of administration agencies and officials to

prefer having broad latitude and not being given such specific direction in legislation. However, I believe the substance of this provision is consistent with the Secretary's own intentions. The final language is the product of negotiation with the Administration.

Mr. MCCONNELL. I would concur with the Senator's interpretation of the effect of this provision. This provision creates an ongoing and overarching commitment. Accompanying report language should reassure the people of South Korea that our friendship for them remains strong, and that we are simply seeking to promote honest, open markets and fair competition.

Mr. KYL. Mr. President, while many parts of this bill concern me, the part that I am very proud of is a provision known as the Drug-Free Workplace Act of 1998. It has been my pleasure to have worked with Senator COVERDELL and I commend him for guiding the drug-free workplace bill through the Small Business Committee with a unanimous bipartisan vote. I would also like to thank Representatives PORTMAN, BISHOP, and SOUDER for their work in passing this important anti-drug legislation out of the House.

The Drug-Free Workplace Act of 1998 is an excellent example of how the federal government can work to encourage drug-free workplaces without placing heavy-handed mandates on businesses. It fosters partnerships between small businesses and organizations which have at least two years experience in carrying out drug-free workplace programs. It also will educate and encourage small businesses about the advantages of implementing drug-free workplace programs.

Small businesses often feel they lack the money or the expertise to implement drug testing programs. That is why the drug-free workplace bill performs such a worthwhile function. Many small firms would like to start drug testing programs but don't have the ability to overcome the start up costs. This anti-drug measure provides resources to assist and educate employers who want the help in implementing drug-free workplace programs.

As we all know, the American workforce is the main catalyst behind the tremendous economy that we are enjoying today. It is absolutely integral to a country's economic well being that it have a competent, able workforce. Our ability to maintain the high achievements of this workforce hinges largely on our ability to keep drugs out of the workplace.

Drug use can take a tremendous toll. For example, 70% of drug users are employed. Employees who use drugs: Have greater absenteeism; have increased use of health services and insurance benefits; have increased risk of accidents; and have decreased productivity.

The costs of drug use are not only confined to the user, just consider these disturbing statistics: Nearly half of all industrial accidents in the United States are related to drugs or alcohol; and drug and alcohol abusers file five times as many workman's compensation claims as non-abusers, and require 300 percent greater medical benefits.

Businesses need help dealing with the problem of drug use—especially small businesses. Thomas Donohue of the U.S. Chamber of Commerce testified before the House Subcommittee on Empowerment that a large impediment in the implementation of drug programs is the perceived costs and problems with the actual initiation of the programs.

The Drug-Free Workplace Act is fair to everyone. It's fair for the workers who are put at risk by their colleagues' drug abuse. It's fair to businesses, because it gives them the tools they need, but only if they want them. it's also fair to society, which ultimately foots the costly bill that drug abuse brings.

Mr. KERRY. Mr. President, I would ask my distinguished colleague and Chairman of the Committee on Finance for his attention with regard to a matter of some concern to the Savings Bank Life Insurance (SBLI) organizations in Massachusetts, New York, and Connecticut, as well as their operations in New Hampshire and Rhode Island.

As the Chairman knows, we had hoped this year, after a long consideration of the matter, to act on a proposal that would clarify the tax consequences of a state-mandated consolidation of an SBLI organization in which required payments to policyholders are made over a period of years. Under the current Internal Revenue Service (IRS) interpretation, such payments would be non-deductible redemptions of equity. After considerable effort, we believe we have succeeded in demonstrating that such an interpretation is incorrect. Of necessity, however, it appears that a statutory clarification will be required, and, unfortunately, it does not appear possible this year to consider this kind of matter in a tax measure.

SBLI entities and policyholders retain unique, long-recognized characteristics regarding voting rights and rights to surplus which set them apart from other insurance companies and policyholders and which form the basis for the needed clarification. The provision we had hoped would be considered this year would clarify that the Internal Revenue Code should treat additional policyholder dividends as deductible when mandated by state law.

While only the Massachusetts SBLI is immediately affected, the sister entities in New York and Connecticut could be adversely affected if the appropriate clarification is not made. Unfortunately, if we are unable to accomplish our objective soon, SBLI and its policyholders throughout New York and the New England region will be subjected to a tax inequity which will be unnecessarily passed on to the consumer. It is important to note that the Treasury Department again this year reiterated that it does not oppose this clarification.

I would observe that several of my colleagues including Senators KENNEDY, MOYNIHAN, D'AMATO, DODD, LIEBERMAN, GREGG, SMITH, CHAFEE, and REED have indicated their support in correspondence with our distinguished Finance Committee Chairman.

I respectfully ask the Finance Committee to consider this important measure in the context of comprehensive tax legislation next year.

Mr. ROTH. I thank my colleague from Massachusetts. I am well aware of your interest in this amendment, as well as the continued interest of the Senators from New York, New Hampshire, Connecticut and Rhode Island. The Senator raises important issues with regard to the uniqueness of such state-mandated payments. Unfortunately, as you know, we were not able to take up such issues during the 105th Congress. It would be my intention, though, to address this and other tax matters at the next available opportunity.

Mr. CRAIG. Mr. President, I rise to commend the leadership and the members of the Appropriations Committee for their hard work on this bill. They had to make hard decisions about scarce resources and have labored to do so fairly. I also appreciate the efforts to make sure the taxpayers hard-earned dollars are spent effectively and efficiently. While there are several provisions within this bill which I wholeheartedly support, I do not agree with every provision of this bill.

As you all may be aware, section 315 of the Interior portion of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 authorized the Recreational Fee Demonstration program. The Recreational Fee Demonstration Program is currently scheduled to expire on September 30, 1999. Language from the House Fiscal Year 1999 Interior and Related Agencies Appropriations Act to extend this demonstration program an additional two years (to the year 2001) has been included in the FY1999 Omnibus Consolidated Appropriations Act. I worked to keep similar language out of the Senate Interior appropriations bill and was disappointed to see the House language prevail in the final omnibus bill.

The issue here is that the House action was premature. I am not totally opposed to a fee demonstration program. In fact, when Congress authorized the Recreation Fee Demonstration Program in 1996, I voted in support of this legislation and have been a proponent of user-based fees. I believe that the program, in concept, has merits. I envisioned this demonstration program as having the potential to improve the condition and recreation services of public lands by making more financial resources available to areas that are used the most heavily, based on a modest fee allocated to those directly benefitting from the enjoyment of those lands. Recreation is important in

Idaho. Because 63 percent of our state is managed by the federal government, a majority of this recreation must take place on the public lands. In some of our premier areas the resource is being loved to death. Appropriated budgets will not see future large increases in recreation programs even though these areas will undoubtedly continue to be a popular local, and tourist, attraction.

As a member of the Senate Committee on Energy and Natural Resources, the authorizing committee with legislative jurisdiction over the fee demonstration program, as well as the chairman of the subcommittee of jurisdiction, I am committed to thorough oversight of this program with an eye toward consideration of any appropriate legislation to improve, continue, or terminate it depending on the information we gather and the experiences of the agencies.

On June 11, 1998, the Energy and Natural Resources Committee held an oversight hearing on the program's first full year of implementation. Valuable information was gathered from the agencies administering the programs and the users of the resource. We will continue to monitor this program during the next two years. A thorough review of the program, with answers to some serious questions, must be completed before extending the recreation fee demonstration program. Then we can accurately assess the merits and problems and decide how to continue. However, considering this issue settled at this early date will only lessen the authorizing committee's responsibility to evaluate the program and make any improvements that are warranted. We should act after, not before, this demonstration program has had a chance to demonstrate.

While I voted in favor of this bill for continuing necessary programs, some provisions, such as a premature extension of the recreation demonstration program, are not something I agree with or support. If more time is needed to test the fee demonstration project, it would have been more appropriate to extend the program nearer the end of three-year period rather than after only the first full year of the program. However, I will continue aggressive oversight of this program in an effort to improve it and possibly end it in areas where it clearly is not working.

Mr. BIDEN. Mr. President, included within this omnibus appropriations bill are two important pieces of legislation related to foreign policy. The first, produced on a bipartisan basis in the Foreign Relations Committee, is the ''Foreign Affairs Reform and Restructuring Act,'' which involves the institutional structure of, and funding for, the foreign affairs agencies of the U.S. government. The second bill is legislation necessary to implement the Chemical Weapons Convention, a treaty approved by the Senate in April 1997.

The Foreign Affairs Reform and Restructuring Act is not perfect, and unfortunately it differs in one critical respect from the original bill approved by the Senate 16 months ago. I say ''unfortunately'' because this bill does not contain a single dime for our UN arrears. Last year, Chairman HELMS and I agreed on a proposal to authorize the payment of $926 million in arrears to the United Nations, conditioned on a series of reforms in that body. The Senate approved the Helms-Biden legislation twice in 1997, first by a vote of 90–5 in June, then by a voice vote in November.

The obstacle to making good on our commitments to the United Nations? A small minority of members in the other body, who have insisted that our arrears payments to the United Nations should be held hostage to an unrelated issue regarding family planning. The specific provision—the so-called Mexico City amendment —would require the withholding of funds from foreign, non-governmental organizations which use their own funds to perform abortions or discuss the issue with foreign governments. The President has indicated on several occasions that he will veto any bill presented to him that contains the Mexico City language. Nonetheless, a handful of obstructionists in the other body march steadily ahead, determined to undermine U.S. foreign policy interests in order to advance their unrelated cause.

I deeply regret such irresponsible action by the other body, but it is emblematic of the reckless disregard that many in that body have for the important responsibilities the United States has as the world s leading superpower.

In the past few weeks, the Chairman and I attempted to include a $200 million down payment on our UN arrears, which would have been linked to certain of the conditions in the Helms-Biden legislation. But even this limited payment of our arrears proved to be too much for the members in the other body who have taken American foreign policy hostage.

It is essential that we find a way to repay our arrears next year. For better or for worse, the United Nations is a valuable means to advance our foreign policy and security interests around the world, by providing a forum for improved cooperation with other states and by allowing us, in some instances, to share the burdens and costs of world leadership.

Our status as a deadbeat is unquestionably hurting our interests, not only at the UN but with our leading allies—many of whom are owed money by the UN for peacekeeping operations they undertook, but for which we have not yet paid. The cost to our interests cannot be measured with precision, but the resentment against the United States for its failure to pay its back dues is having a corrosive effect on our agenda at the UN and elsewhere. It is bordering on scandalous that a big nation like ours, blessed with abundant wealth, has failed to pay its bills on time.

Next year, the President is expected to nominate Richard Holbrooke to be our representative to the United Nations. Ambassador Holbrooke's nomination offers us a chance for a fresh start in the negotiations on UN arrears and reforms. Mr. Holbrooke is one of the most creative diplomats and negotiators of our time, and I am confident he will bring fresh insights and endless energy to this important issue. I am also hopeful that the Chairman remains committed to trying to move legislation in the next Congress to repay the full amount agreed to last year in our negotiations.

Let me turn now to the provisions of the Foreign Affairs Reform and Restructuring Act that are contained in the omnibus bill. Much of the legislative history of bill is set forth in the conference report to H.R. 1757, which was approved by both houses last spring. But I would like to take a few minutes to summarize the bill and highlight several issues.

First, the legislation before us establishes a framework for the reorganization of the U.S. foreign policy agencies which is consistent with the plan announced by the President in April 1997. After several years of debate, last year the President agreed to the abolishment of two foreign affairs agencies, and their merger into the State Department. The first agency to be abolished will be the Arms Control and Disarmament Agency (ACDA), which will be merged into the State Department no later than April 1, 1999; the U.S. Information Agency (USIA) will follow no later than October 1, 1999. As with the President s plan, the Agency for International Development (AID) will remain a separate agency, but it will be placed under the direct authority of the Secretary of State. And, consistent with the President s proposal to seek improved coordination between the regional bureaus in the State Department and AID, the Secretary of State will have the authority to provide overall coordination of assistance policy.

The integration of ACDA and USIA into the State Department is not intended to signal the demise of the important functions now performed by these agencies. On the contrary, their merger into the Department is designed to ensure that the arms control and public diplomacy functions are key elements of American diplomacy.

In that regard, the bill establishes in law two new positions in the State Department, an Under Secretary of State for Arms Control and International Security, and an Under Secretary of State for Public Diplomacy. These senior officers will have primary responsibility for assisting the Secretary and Deputy Secretary of State in the formation and implementation of U.S. policy on these matters.

It is expected that the officials who will be named to these positions will be submitted to the Senate for advice and consent. The conference committee on H.R. 1757 rejected a proposal by the Executive Branch to seek authority to

place officials who are now in analogous positions in these newly-created positions.

One issue of particular concern regarding ACDA in the reorganization is the need to maintain the highest standards of competence and objectivity in the analysis of compliance with arms control and non-proliferation agreements. As the Foreign Relations Committee stated in its report last year, it is vital ''that the Under Secretary be able to call upon expert personnel in these areas who will not feel obligated to downplay verification or compliance issues because of any potential impact of such issues upon overall U.S. relations with another country.'' Chairman HELMS and I have urged the Secretary of State to find a way to make the official for compliance a Senate-confirmed, Presidential appointee.

The bill puts flesh on the bones of the President's plan with regard to international broadcasting. The President's proposal was virtually silent on this question, stating only that the ''distinctiveness and editorial integrity of the Voice of America and the broadcasting agencies would be preserved.'' The bill upholds and protects that principle by maintaining the existing government structure established by Congress in 1994 in consolidating all U.S. government-sponsored broadcasting—the Voice of America, Radio and TV Marti, Radio Free Europe/Radio Liberty, Radio Free Asia, and Worldnet TV—under the supervision of one oversight board known as the Broadcasting Board of Governors. Importantly, however, the Board and the broadcasters below them will not be merged into the State Department, where their journalistic integrity would be greatly at risk. Instead, the Broadcasting Board will be an independent federal entity within the Executive Branch. The Secretary of State will have a seat on the board, just as the Director of the USIA does now.

Second, the bill authorizes important funding for our diplomatic readiness, which has been severely hampered in recent years by deep reductions in the foreign affairs budget. This Congress has stopped the hemorrhaging in the foreign affairs budget, but I believe that funding for international programs remains inadequate, given our responsibilities as a great power.

Although the Cold War has ended, the need for American leadership in world affairs has not. Our diplomats represent the front line of our national defense; with the downsizing of the U.S. military presence overseas, the maintenance of a robust and effective diplomatic capability has become all the more important. Despite the reduction in our military readiness abroad, the increased importance of diplomatic readiness to our nation s security has not been reflected in the federal budget.

Significantly, this omnibus appropriations bill contains the emergency funding requested by the Administration for embassy security. The bombings of the U.S. embassies in East Africa in August demonstrate that many of our missions overseas remain highly vulnerable to terrorist attack; it is imperative that we provide the State Department the resources necessary to protect our employees serving overseas. We should understand, however, that the urgent funding in this bill is just the beginning of a long-term program to enhance security at embassies around the globe.

I am especially pleased that the Chemical Weapons Convention Implementation Act is also incorporated in the omnibus spending bill. The Senate passed this legislation unanimously in May of 1997, and we have waited since then for the leadership of the other body to accept that complying with our international commitments is a requirement, rather than a political football. The enactment of this measure will enable the United States to file the comprehensive data declarations required by the Convention, and therefore to demand that other countries' declarations be complete. The United States will now be able to accept inspections of private facilities, and therefore to request challenge inspections of suspected illegal facilities in foreign countries. The United States will finally be able also to protect confidential business information, acquired in declarations or on-site inspections, from release under the Freedom of Information Act. After nearly 17 months of waiting, it is about time.

In closing, I want to pay tribute to Chairman HELMS for his continued good faith and cooperation throughout the last two years on these and other issues. He has been the driving force behind the legislation to reorganize the foreign affairs agencies, and I congratulate him for his achievement. I also want to thank our colleagues in the other body, particularly the ranking member of the Committee on International Relations, LEE HAMILTON, who is retiring this year after over three decades of noble service to his district in Indiana and to the American people. We wish him well as he moves on to new challenges.

Mr. President, I want to reiterate that we are leaving important unfinished business—the payment of our back dues to the United Nations. It must be at the top of our agenda in the next Congress. I look forward to working with the Chairman and the Secretary of State to find a way to finish the job.

ALTERNATIVE FUEL TAX CREDITS

Mr. BURNS. Mr. President, I would like to clarify the intent of Congress regarding tax incentives for alternative fuels. These incentives are important tools for our nation's long-term energy policy.

Starting with the energy crisis in the 1970s, Congress has acted on numerous occasions to provide tax credits intended to develop alternative fuels. Prior Congresses took these steps in recognition of the need to encourage the development and use of alternative fuels which promise that we as a nation will never be dependent on others for our energy resources. For example, Section 29, which expired earlier this year, and Section 45, which is due to expire next June, were both intended to encourage the development of nonconventional fuels.

Today, our nation not only needs to continue its efforts to develop alternative fuel resources, but given our ever growing energy requirements, we must consider the environmental impact that conventional and nonconventional fuels have on our environment, particularly in light of the Clean Air Act.

In order to maximize the most efficient use of our nation's resources, Congress needs to commit to the development of clean alternative fuels. We need also to use our nation's technologies to develop environmentally clean alternative liquid fuels from coal.

In Montana, we have vast coal reserves. There are technologies that can upgrade the coal from these reserves and reduce current difficulties associated with the development of these fields. However, these technologies are not likely to be developed, and therefore these vast natural resources are not likely to be used, unless Congress provides incentives to develop clean alternative fuels.

I am concerned that we have not been able to fully discuss the merits of such incentives in our budget debate this past month. For example, an extension of Section 29 was included in the Senate version of the tax extenders, but that provision was not included in the final package.

I would urge my colleagues to bring this debate to the floor in the 106th Congress to ensure that the issue of encouraging the development of clean alternative fuels is a priority in our nation's energy policy.

Mr. LOTT. I agree with my colleague from Montana. As our nation continues to seek ways to improve environmental quality and to reduce the need for imported energy, several new technologies run the risk of not being developed if Congress does not act to provide incentives to develop clean alternative fuels.

These technologies provide two significant benefits to our nation. First, the use of alternative fuels reduces our reliance on foreign energy sources. Second, the technologies provide cleaner results for our environment.

For these reasons, I want to assure my colleague from Montana that I will make a priority of addressing the need for tax incentives to produce clean alternative fuels.

Mr. GRASSLEY. I agree with my colleagues from Montana and Mississippi about this very important issue. The development and use of alternative fuels are important to this nation, and

we must encourage their use and development.

Wind energy has long been recognized as an abundant potential source of electric power. A detailed analysis by the Department of Energy's Pacific Northwest Laboratory in 1991 estimated the energy potential of the U.S. wind resource at 10.8 trillion kilowatt hours annually, or more than three times total current U.S. electricity consumption. Wind energy is a clean resource that produces electricity with virtually no carbon dioxide emissions. There is nothing limited or controversial about this source of energy. Americans need only to make the necessary investments in order to capture it for power.

The Production Tax Credit, section 45 of the Internal Revenue Code was enacted as part of the Energy Policy Act of 1992. This tax credit is a sound low-cost investment in an emerging sector of the energy industry. I introduced the first bill that contained this tax credit, so you can be sure that I am sincere in my belief in the need to develop this resource. This tax credit currently provides a 1.5 cent per kilowatt hour credit for energy produced from a new facility brought on-line after December 31, 1993 and before July 1, 1999 for the first ten years of the facility's existence. Last Fall, I introduced a bill to extend this tax credit for five years. My legislation, S. 1459, currently has 22 cosponsors, including half of the Finance Committee. The House companion legislation, introduced by Congressman THOMAS, currently has 90 cosponsors, including over half of the Ways and Means Committee. These numbers are a strong testament to the importance of the section 45, and renewable fuels in general.

In addition, I plan to work to expand this tax credit to allow use of the closed-loop biomass portion of this tax credit. Switchgrass from my state and other Midwestern states, eucalyptus from the South, and other biomass, can be grown for the exclusive purpose of producing energy. This is a productive use of our land, and will be an important step in our use and development of alternative and renewable fuels.

I was very pleased to see that Congress expressed its understanding of the importance of alternative and renewable fuels by extending the ethanol tax credit in this year's T–2 legislation. These tax credits are a successful way of promoting alternative sources of energy. These tax credits are a cheap investment with high returns for ourselves, our children, our grandchildren and even their grandchildren. Congress needs to again pass this important legislation to ensure that these energy tax credits are extended into the next century.

Mr. MURKOWSKI. I concur with my colleagues. Implementation of the 1990 Clean Air Act amendments is creating a real need to develop clean alternative fuels.

For example, of the 64 remaining U.S. coke batteries, 58 are subject to closure as a result of the Clean Air Act. The steel industry can either use limited capital to build new clean coking facilities or they can choose to import coke from China, which uses 50 year old highly pollutant technologies. Restoring the Section 29 credit to encourage cleaner coker technologies will greatly reduce emissions and will slow our increasing dependence on foreign coke, at the same time creating jobs in the United States in both the steel and coal mining industries.

In addition, the United States has rich deposits of lignite and sub-bituminous coals. There are new technologies that can upgrade these coals to make them burn efficiently and economically, while at the same time significantly reducing air pollution.

This is proven technology, but to make the development of this technology throughout the nation feasible, the Congress needs to provide tax incentives.

Mr. ENZI. The people of Wyoming have always had very strong ties to our land. That is why the words ''Livestock, Oil, Grain and Mines'' appear on our state seal. Those words clearly reflect the importance of our natural resources to the people of my state, and our commitment to using our abundant natural resources wisely and for the benefit of current and future generations of Wyomingites and the people of this country.

Congress has determined the need to find newer and cleaner technologies. Wyoming is blessed with an abundance of clean burning coal reserves. It would seem to be a perfect match. We are eager to provide what is needed for our country's present and future fuel needs. But those reserves aren't likely to be developed unless we provide the incentives necessary to make it possible for the coal to be harvested in a safe and environmentally friendly manner.

Mr. ABRAHAM. I concur with my colleagues. The development and production of alternative fuels provides a real opportunity for the country to improve the environment while ensuring a constant, reasonably priced fuel supply. But recent efforts to provide such assurances have been hampered. For example, in the Small Business Job Protection Act of 1996, Congress extended the placed-in-service date for facilities producing synthetic fuels from coal, and gas from biomass for eighteen months.

However, progress in bringing certain facilities up to full production has been hampered by the Administration's 1997 proposal to shorten the placed-in-service date and because, in many cases, the technology used to produce the fuels is new. Such delays have created uncertainty regarding the facilities eligibility under the placed-in-service requirement of Section 29

While it is important that the Congress consider again this issue in the 106th Congress, I would also urge the Secretary to consider the facilities I mentioned qualified under Section 29 if they met the Service's criteria for placed-in-service by June 30, 1998 whether or not such facilities were consistently producing commercial quantities of marketable products on a daily basis.

Mr. CONRAD. I agree with my colleagues. Through the section 29 tax credit for nonconventional fuels, Congress has supported the development of environmentally friendly fuels from domestic biomass and coal resources. There are lignite resources in my state that could compete in the energy marketplace if we can find a reasonable incentive for the investment in the necessary technology. As soon as possible in the 106th Congress, I hope we will give this crucial subject the attention it deserves.

Mr. HATCH. I concur with my colleagues. This is a very important tax credit for alternative fuels. It is an issue of fairness, not one of corporate welfare.

Earlier this year I, along with 18 of my colleagues, introduced a bill that would extend for eight months the placed-in-service date for coal and biomass facilities. The need still exists to extend this date and I am very disappointed that this was not included.

Mr. BAUCUS. Mr. President, I want to join my colleagues in supporting tax incentives for alternative fuels. Our country has assumed a leadership role in the reduction of greenhouse gases because of the global importance of pollution reduction. As my colleagues have also pointed out, promotion of alternative fuels is not just an environmental issue, but an issue important to our domestic economy and independence as well. We cannot afford to slip back toward policies which will leave us dependent upon foreign sources of oil for our economic growth.

With the huge reserves of coal and lignite in the United States and around the world, as well as the tremendous potential for use of biomass, wind energy, and other alternatives, it is particularly important to our economy and the world's environment that new, more environmentally friendly fuels are brought to market here and in developing nations.

But bringing new technologies to market is financially risky. In particular, finding investors to take a new technology from the laboratory to the market is difficult because so many technical problems need full-scale testing and operations to resolve. Few investors are prepared to take on the risks associated with bringing a first-of-a-kind, full-sized alternative energy production facility on-line without some level of security provided by a partnership with the federal government.

Tax incentives represent our government's willingness to work with the private sector as a partner to bring new, clean energy technologies to the market. These incentives demonstrate our country's commitment to the future.

Mr. GRAHAM. There are two principle reasons I support extension of Section 29 and 45. First, in a period where America is continuing to increase its dependence on foreign oil, we need to develop alternative fuel technologies to prepare for the day when foreign supply of oil is reduced. These tax credits have spurred the production of fuel from sources as diverse as biomass, coal, and wind. America will desperately need fuel from these domestic sources when foreign producers reduce imports.

Second, the alternative fuels that earn these tax credits are clean fuels. For example, the capture and reuse of landfill methane prevents the methane from escaping into the atmosphere. I will support my colleagues in an effort next year to extend these provisions.

Mr. THURMOND. I join my colleagues in support of extending the tax credit for Fuel Production from Nonconventional Sources. Through this credit, Congress has emphasized the importance of establishing alternative energy sources, furthering economic development, and protecting the environment. The alternative fuels credit strikes a proper balance between each of these objectives. I support efforts to bring this issue to a satisfactory conclusion, early in the next Congress.

Mr. THOMAS. I strongly agree with my colleagues regarding the importance of the Section 29 tax credit. Wyoming has some of the nation's largest coal reserves and this tax credit gives producers an incentive to develop new and innovative technologies for the use of coal. I am disappointed that an extension of the Section 29 tax credit was not included in the Omnibus Appropriations package and urge my colleagues to make this matter a top priority during the 106th Congress.

Mr. ROTH. I understand my colleagues' concerns. For some time now I have been studying how to provide targeted incentives to develop clean alternative fuels. It is essential for Congress to develop sound tax policy for alternative energy to help protect our environment. Several weeks ago, I introduced legislation to provide such incentives for facilities that produce energy from poultry waste. I look forward to working with my colleagues on these issues early in the 106th Congress.

PERMANENT RESEARCH CREDIT

Mr. BINGAMAN. Mr. President, I would like to thank the distinguished chairman and ranking member of the Committee on Finance for their continuing work on the research and experimentation tax credit, which is extended through June of 1999 by this legislation. In my capacity as ranking member of the Joint Economic Committee, I have taken a strong personal interest in the research credit and how it can be made into an effective permanent incentive. It is potentially the most important incentive in our tax code for stimulating long-term economic growth, and I believe that we need to make every effort in the upcoming session of Congress to establish a permanent credit for research and development.

In the course of these efforts, we need to keep in mind the substantive issues that are intrinsic to the goal, shared by many of my colleagues, of a permanent effective R&D tax policy. Can we make the credit more equitable, to give all R&D-performing firms incentives to increase their R&D? Can it be made more effective for the industries that have historically invested heavily in research and development? Can it be made more accessible by small businesses, which are a growing sector of our nation's R&D and promise to be a leading source of high-wage job growth? And can it further encourage research partnerships—crossing the institutional boundaries of industry, universities, and public-benefit consortia—that lay the groundwork for our future technology and medicine through long-term R&D investments?

In the negotiations of the past few weeks, Congress came alarmingly close to not extending the credit at all. I am concerned that until we address the substantive issues outlined above, the R&D credit is likely to continue to teeter along in its current state of uncertainty, and that under its current structure it will perform less and less effectively, as an incentive and as an economic stimulus. I am joined in these concerns by economists who have studied the credit and by senior leaders of R&D-intensive corporations. As the distinguished chairman and ranking member know, I and other Senators have introduced legislation to address these issues in this Congress. Obviously, time does not permit us to address these issues at this point, but I would ask them whether they would be willing to have the Committee on Finance consider these issues in the next Congress, in preparation for further legislative action on the credit?

Mr. ROTH. I welcome the suggestion made by the Senator from New Mexico. I believe that the issues that the raises are important ones, and that his suggestions for comprehensive improvements are worthy of further consideration by the Committee. I am aware that several of our other colleagues, including Senators DOMENICI, HATCH, and BAUCUS, are also keenly interested in the future of the credit, and I look forward to working with all of our colleagues who are interested in these issues in the next Congress.

Mr. MOYNIHAN. I would agree with the chairman of the Committee that the issues raised by the Senator from New Mexico deserve further attention next year, and would also welcome the opportunity to work with him and with my other colleagues.

Mr. BINGAMAN. I thank the chairman and ranking member.

DEGRADATION OF SERVICE AT WILLISTON OFFICE NATIONAL WEATHER SERVICE

Mr. DORGAN. I would like to inquire of the distinguished Chairman of the Commerce, Justice, State Appropriations Subcommittee, Mr. GREGG, as to the intent of language in the FY99 conference report on National Weather Service operations at Williston, North Dakota.

Mr. GREGG. The conference report includes language which directs the Secretary of Commerce to ensure continuation of weather service coverage for the communities of Williston, North Dakota; Caribou, Maine; Erie, Pennsylvania; and Key West, Florida.

Further, the Conference provides full funding to the NWS for continued, effective operations at Williston and the other Weather Service offices mentioned.

Mr. DORGAN. I thank the Subcommittee Chairman for his commitment to this provision in the bill. The Commerce Secretary has agreed that closing the Williston weather station would amount to a degradation of weather service. It is critical, therefore, that Congress send a strong signal that the station at Williston be kept fully operational.

Mr. GREGG. I will tell the Senator from North Dakota that it is the intent of the conferees that the National Weather Service maintain operations at Williston and the other sites, and further that the NWS take no actions which would suggest an intent to close these offices. Any actions taken towards closure of these offices will signal to the Congress that there will be a resulting degradation of service.

Mr. DORGAN. Is it correct to say that the fact that specific funds are being provided to the National Weather Service to maintain operations at the offices which were identified in the 1995 Secretary's report signals that the Congress expects these offices to continue and that the NWS ought not to be taking any actions that would suggest that these offices will be closed?

Mr. GREGG. Yes, that is correct. We believe that with respect to these specific offices, including Williston, North Dakota, the NWS modernization plan has not sufficiently demonstrated that service will not be degraded without these offices. The Congress does not want the NWS to close these offices at this time and we are providing specific appropriations to ensure their continued operations. I would also add that we expect the NWS to use these additional funds to develop the appropriate systems to address the unique weather coverage shortfalls that exist for these specific communities.

I realize that the most difficult problem for Williston, North Dakota is the absence of local radar coverage at low altitudes. We expect that the NWS will use these funds and work cooperatively with the local residents in Williston to mitigate that concern.

REGISTRATION OF CONTAINER CHASSIS

Ms. SNOWE. Mr. President, I would like to explain section 109 of Division C regarding the registration of container chassis. This section addresses the application of registration fees to trailers

used exclusively for the purpose of transporting ocean shipping containers, which the Section refers to as ''container chassis.''

The section provides that a State, such as California, that requires annual registration and apportioned fees for container chassis may not limit the operation, or require the registration in the State, of a container chassis registered in another State, if the container chassis is operating under a trip permit issued by the non-registration State. Further, the non-registration State may not impose fines or penalties on the operation of such a container chassis for being operated in the non-registration State without a registration issued by that State. For example, the Attorney General of California or any other person in California, may not seek to impose fines or penalties from companies operating container chassis in California, when the container chassis are registered in another state such as Maine or Tennessee.

Further, under this language, a State that requires annual registration of container chassis and apportionment of fees for such registration may not deny the use of trip permits for the operation in the State of a container chassis that is registered under the laws of another State. A trip permit provides for a daily use fee that is the prorated annual registration fees for the vehicle. Under the section, a trip permit is required only on days when the container chassis is actually operating on the State's roads and not, for example, when it remains at an ocean terminal for the entire day.

This section also provides that a State, political subdivision or person may not, with respect to a container chassis registered in another State, impose or collect any fee, penalty, fine, or other form of damages which is based in whole or in part on the nonpayment of a State's registration related fees attributable to a container chassis operated in the State before the date of enactment of this section unless it is shown by the State, political subdivision or person that the container chassis was operated in the State without a trip permit issued by the State.

This provision is intended to prevent the imposition of any liability on this basis for the current and past practice of many companies in the container shipping industry which register chassis in one State and operate them in another State under trip permits issued by the non-registration State. The provision is intended to ensure that past and current practices which are consistent with the objectives of this section will not be the basis for the imposition of fees, penalties, fines or other forms of damages on this segment of the Nation's intermodal transportation system.

Using the congressional power to regulate interstate commerce, this section is intended to facilitate movement of containerized cargo in interstate commerce and to remove an unreasonable impediment to interstate commerce. It simplifies and rationalizes registration requirements for this critically important segment of the Nation's interstate intermodal transportation system.

It is important to note that extensive discussion and consideration was given to this section. Members from the Senate Commerce Committee, Appropriations Committee, and the House Appropriations and the House Transportation and Infrastructure Committee worked on this language and came to the conclusion that it is necessary. It is clearly the intent of both Chambers of Congress that States, such as California and others, which want to limit the operation of chassis that are not registered in their State, are prohibited from doing so. Further, it is clearly the intent of both Chambers of Congress that States, such as California and others, are prohibited from collecting fines or penalties from companies which register chassis in another State and operate under a trip permit issued by the State where the chassis is operated.

Mr. LEVIN. Mr. President, Yogi Berra, explaining the difficulty of playing in the afternoon sun and shadows of Yankee Stadium's notorious left field is reported to have commented, ''It gets late early.'' We have before the Senate a huge Omnibus Appropriations and Emergency Supplemental bill which spends more than $486 billion and legislates across a broad range of issues of great importance. We are faced now with this massive, sweeping legislation because the 105th Congress did not do its work. In the 105th Congress, it got late early.

From the very outset of this Congress, the majority leadership set a slow pace and avoided fully addressing the major issues before the Nation. The 105th Congress failed to reform our campaign finance laws, failed even to debate a patient's bill of rights, failed to act on legislation to reduce tobacco use by our young people, failed to even to take up serious regulatory reform, and failed to address the problems looming in the future of Social Security. In fact, this Congress, failed, this year to even meet its responsibility, under law, to pass a budget, the first time this has occurred. And, it failed to complete work on 8 of the 13 appropriations bills required to run the government. Two appropriations bills were never even debated by the Senate and a third was never passed. On top of that dozens of legislative proposals were added to this bill which were never debated and considered in the Senate.

The failure to pass the appropriations bills, as required, prior to end of the fiscal year on October 1, led directly to the process that confronts us with this monster Omnibus Appropriations bill today, a four thousand plus page bill which we were unable to even begin reading until yesterday.

The Founders of our Nation envisioned a careful contemplative legislative process which divided power and sought to assure that the people would be well represented. The process which we have recently witnessed was hardly that. It was a closed process, which greatly excluded Democrats in the House and Senate, enhancing the powers of the Republican leaders of the House and Senate and in an extra-Constitutional fashion bringing the President into a legislative role. Where the Congress was more fully represented, its representation was limited to the members and leaders of the Appropriations Committees of the House and Senate. This, despite the fact that legislation was included affecting the jurisdictions of many, if not all, of the authorizing committees. And then, the entire package was lumped together and dumped here on the Senate floor on a take it or leave it basis. Senators have no opportunity to attempt to amend this product, merely to vote yes or no. Never before in my memory have we been confronted with appropriations bills and legislative provisions on so massive a scale which have never even been considered in either the House or Senate.

The President, and Democrats in the Congress have won some important victories in this bill. However, even as we acknowledge and applaud those victories, we must be mindful of the precedents which we set when we accept this terrible process. Congress should not abdicate its responsibilities. That is why I joined with Senators BYRD and MOYNIHAN in fighting the line-item veto in the courts, a battle which was successful and that is why I am distressed by the process which creates the bill on the floor today, an ad-hoc process at best and a process which effectively disenfranchises many Americans by short-changing their representation, at worst. And that is why, although this legislation contains many provisions of which I approve, and although I applaud the work of the Administration and Democrats in Congress in winning important provisions in this bill, I do not support this wretched process and cannot in good conscience vote for this bill.

Among the most important positive aspects of this legislation is that the bill provides additional funding for education. The President and Democrats in the Congress put forward an education package early this year. This bill finally acts on key elements of that package, providing a $1.2 billion downpayment on reducing class size by hiring new teachers across the country. In addition, the bill includes $698 million for education technology, the $260 million that the President requested for child literacy, $871 million for summer jobs, a $301 million increase for title I, $491 million for Goals 2000, and a $313 million increase for Head Start.

Unfortunately, the bill excludes the President's school modernization initiative which would have leveraged nearly $22 billion in bonds to build and renovate schools. Hopefully, we can revisit this issue in the next Congress.

The bill includes $15.6 billion for National Institutes of Health, $2 billion more than FY'98 and $859 million more than the Administration request, $700 million for Maternal and Child Health Block grant, $9.4 million more than FY98, $105 million for Healthy Start to reduce infant mortality rates, $9.5 million more than FY98, $160 million for breast and cervical cancer screening, $16.2 million over FY98, and $2.5 billion for Substance Abuse and Mental Health Services, $341 million above FY98.

Also, I am pleased that the bill contains language which is a first step toward restructuring the home health care payment system. I have been concerned about this problem for some time now. I was an original co-sponsor of Senator COLLINS' Medicare Health Equity Act of 1998 I believe the provision in the Omnibus bill will create a payment system which is somewhat more equitable than the current system. Under our current system, health care providers in Michigan have too often been penalized for prudent efficient use of Medicare resources, and that is wrong.

In addition to the nearly six billion dollars in the bill for emergency assistance to farmers who have been hurt by low prices, drought and natural disasters, it contains important money for Michigan agriculture for research on subjects from fireblight to wood utilization. There is a provision to make apple growers in West Michigan, who suffered fireblight-related tree loss in disastrous storms, eligible for the Tree Assistance Program. The bill provides the President's request for an enhanced food safety incentive, plus an increase in the National Research Initiative of $7.4 million for nutrition, food quality and health. Some of these additional funds could and should be used by the Secretary to help develop safer substitutes for pesticides that might be discontinued in implementation of the Food Quality Protection Act. Also, the agreement includes $300,000 for a study of the WIC food package nutritional guidelines finally looking at the benefits of including dried fruit in WIC cereals.

I am pleased that the bill continues a moratorium on the use of funds to increase the CAFE standard for passenger cars and light-duty trucks. Given the low-price of gasoline and the continued high consumer demand for larger, safer vehicles, which are made most efficiently by U.S. manufacturers, increasing CAFE would only harm the U.S. economy and deprive consumers.

I am disappointed funding for the National Contaminated Sediments Task Force which I requested was not included in the bill. I am concerned that this will mean that the existing uncoordinated Federal approach will continue to fail in adequately cleaning up contaminated sediments and preventing further contamination.

There will be an additional $400,000 above the President's request split between operations and acquisition at Keweenaw National Historical Park. The bill includes $800,000 for land acquisition at Sleeping Bear Dunes National Lakeshore, and $2.25 million for the final phase for acquisition of lands from the Great Lakes Fishery Trust as part of the Consumers Energy Ludington settlement.

This agreement provides the budget request for the International Joint Commission so that negotiations with the Canadians can begin in earnest to prevent the export of Great Lakes water. The bill includes $6.825 million for the Great Lakes Environmental Research Laboratory in Ann Arbor. Funds ($50,000) for a study of the erosion problems in Grand Marais Harbor are also included. Unfortunately, the bill does not include the Senate's increase of $1 million above the budget request for the Great Lakes Fishery Commission to combat the sea lamprey in St. Mary's River.

Overall, the bill provides the highest level of funding for the Federal Highway Administration in history, at $25.5 billion. That is relatively good news, though, unfortunately, the negotiators have included over $300 million in new highway money to be handed to four different states in an apparent effort to bypass the allocation formulas in TEA–21 that were the subject of much debate earlier this year.

The bill does contain $10 million for new buses and bus facilities across facilities, and $600,000 for the Capital Area Transit Authority in Lansing. And, $200,000 for a study of the viability of commuter rail in Southeastern Michigan.

As a cosponsor of legislation to delay implementation of Section 110 of the 1996 Immigration Reform bill, which was scheduled to go into effect on September 30, 1998, requiring individuals entering the U.S. at the Canadian border to complete a visa card at the point of entry and register at the time of exit, I am pleased to note that this bill contains language delaying the provision for 30 months. However, it should be repealed, not just delayed.

I am pleased that the bill does not include the House version of the Auto Salvage Title bill since the House dropped the Levin amendment which I successfully attached to the Senate bill. The House version would have preempted state laws that provide tougher consumer protection.

I am also pleased that while the bill provides funding to replenish the IMF, it will push recipient countries to liberalize trade restrictions.

Mr. President, let me take a moment to comment on the national security provisions of the omnibus bill. First, I am pleased that this legislation includes the funding the President requested for United States participation in the NATO-led peacekeeping force in Bosnia.

If Congress had not provided this emergency funding, there would have been disastrous consequences for the readiness and the morale of our forces serving in, and in support of, Bosnia. We all regret that the implementation of the civilian aspects of the Dayton Accords has not gone as fast as we hoped it would, but Congress has done the right thing by providing the necessary funding to ensure the readiness of our forces.

This legislation provides a needed $1 billion in additional readiness funding that the President requested earlier this month for equipment maintenance, spare parts, and recruiting assistance.

This omnibus bill also contains the funds requested by the President for the Korean Peninsula Energy Development Organization, also known as KEDO. This funding is crucial to continuing the Agreed Framework between the United States and North Korea. That agreement is our best hope for denuclearizing North Korea and has provided tangible security benefits to our nation.

Previous legislation would have effectively prevented the funding of KEDO, and thus given North Korea an excuse for walking away from the Agreed Framework. That could have led North Korea to produce plutonium for nuclear weapons, which would cast the Korean Peninsula into an unnecessary and dangerous crisis. This outcome is the right one.

There are many positive aspects of this legislation for our national security, but I am disappointed that so much of the ''emergency'' funding in this bill for national security programs is not for readiness and not for emergencies, but for things the Defense Department and the administration never asked for, in particular the addition of $1 billion for ballistic missile defense. Of course, that $1 billion for ballistic missile defense cannot be spent unless the President submits an emergency request for these funds. I fully expect the Administration will exercise good judgement in deciding whether or not to request these funds as an emergency.

Not only is the money added to this bill for missile defense and intelligence programs going to fund programs that the administration did not request funding for on an emergency basis, again, these are programs for which the administration did not request funding at all.

Furthermore, with regard to missile defense, adding this funding is in direct contradiction to the testimony of the Secretary of Defense and other senior officials of the Department of Defense who told the Armed Services Committee that while there was one instance in which additional funds could accelerate a program, the Navy Upper Tier program, in general the Ballistic Missile Defense Organization is proceeding as fast as it can with all our missile defense programs and their development is constrained by technology, not funding availability.

In recent testimony to the Armed Services Committee, senior defense and

military leaders told us that the National Missile Defense (NMD) program is going as fast as it can, and that adding more money will not make it go faster. Deputy Secretary of Defense John Hamre told the Committee: ''As a practical matter, we are moving as fast as we can to develop the elements of an NMD system. Even with more money, we couldn't go any faster.'' He later emphasized that ''this is as close as we can get in the Department of Defense to a Manhattan Project. We are pushing this very fast.''

During that same hearing, General Joseph Ralston, the Vice Chairman of the Joint Chiefs of Staff, told the Committee that the NMD program enjoys a unique and privileged status within the Defense Department. He said: ''I know of no other program in the Department of Defense that has had as many constraints removed in terms of oversight and reviews just so we can deploy it and develop it as quickly as possible.''

On October 6th, Secretary of Defense William Cohen testified to the Armed Services Committee that the NMD program is being developed as fast as possible and additional money will not speed it up: ''I have talked to the head of the Ballistic Missile Defense Organization and he has assured me that no amount of money will accelerate that timetable . . .'' He went on to say that ''I cannot accelerate it no matter what we do.''

So, it is clear that the Defense Department is proceeding as fast as possible to develop a National Missile Defense system, and that more money will not make this go any faster. Furthermore, the Defense Department has told us that only one program could be accelerated with more money. I would note that Congress added $120 million to the Navy Upper Tier program this year to accelerate it, cut funds from other theater missile defense programs and made no attempt in the regular legislative process to add any money for National Missile Defense. So this unrequested missile defense money cannot speed up most of the programs that are now being developed. It is not clear what it would be for, but it is clear that the Defense Department never asked for it.

A few weeks ago, the members of the Joint Chiefs of Staff were criticized by some of my colleagues on the Armed Services Committee during our hearings with them for not speaking up soon enough or forcefully enough about concerns they had with aspects of our defense program.

Mr. President, it seems a little inconsistent to me for the Congress to criticize the Pentagon for not speaking up and then after they express themselves very clearly on the status of the missile defense program, we ignore their testimony and do the opposite of what they say.

I am also disappointed that this legislation perpetuates the practice of not fully funding our obligations to the United Nations. It is in the national security interest of the United States to have an effective United Nations and strong U.S. leadership within the United Nations. It is especially regrettable that this legislation moves us in the opposite direction in order to score political points on the abortion issue.

Mr. President, the bill that we are voting on today includes S. 2176, the Federal Vacancies Reform Act of 1998, with several amendments. This legislation clarifies and updates the current Vacancies Act, an 1868 law meant to encourage the Administration to make timely nominations to fill positions in the Executive Branch requiring the Senate's advice and consent.

First, the Vacancies Act provisions in this bill make it explicit that the Vacancies Act is the sole exclusive statutory authority for filling advice and consent positions on a temporary basis. It can no longer be argued that other general statutory authorities creating or organizing agencies supersede the Vacancies Act and authorize temporary officials, who have not been confirmed by the Senate, to serve indefinitely.

Second, the legislation updates the Vacancies Act in several significant respects to more accurately reflect the realities of today's nominations process. The clearance process for nominees requiring Senate confirmation has become much more complex than it was just a decade ago. Moreover, increasingly adversarial confirmation proceedings have required that background investigations and other steps in the vetting process be more thorough and lengthy. In recognition of this development, the legislation increases the time period that an individual can serve in an acting position from 120 days under current law to 210 days from the date of the vacancy. If a nomination is sent to the Senate during that 210 day period, an individual may serve in an acting capacity until the Senate has completed action on the nomination. Moreover, the legislation gives a new Administration an additional time period of 90 days to submit its nominations in the first year. The legislation allows first assistants, other Senate-confirmed officials, and other qualified high-level agency employees to serve as acting officials.

Finally, the legislation creates an action-enforcing mechanism to encourage our presidents to promptly submit nominations. Specifically, the legislation provides that if no nomination to fill a vacant position is submitted within the 210 day period, the position remains vacant and any duties assigned exclusively to the position by statute can be performed only by the agency head. As soon as a nomination is submitted, however, the legislation provides that an acting official can assume the job until the Senate acts on the nomination.

The legislation also includes an amendment I authored to address the problem of lengthy recesses or adjournments. The bill allows a person to serve in an acting capacity in a vacant position once a nomination is submitted, regardless of whether the nomination is submitted within or after the 210 day time period. This is a clarification the legislation makes to current law. However, there was no provision to allow a person to serve in an acting capacity after the 210 day time period if the nomination is made during a recess or adjournment of the Senate. My amendment, incorporated into the enacted legislation as section 3349d, provides that during such long recesses, the President's submission of a written notification that he or she intends to nominate a designated person promptly when the Senate reconvenes triggers the provision of the bill that allows a person to act in the position temporarily until the Senate acts on the nomination. This allows the President to fill a vacant position with an acting person during a long recess of the Senate provided the President has identified the person whose nomination will be submitted when the Senate returns.

Mr. President, I want to commend my colleagues Senator BYRD and Senator THURMOND for their leadership and sponsorship of legislation to amend the Vacancies Act. They identified a serious problem in the failure of Administrations past and present to comply with their responsibilities under the existing law to promptly nominate persons to fill advice and consent positions. They worked diligently to resolve the various conflicts over this legislation, and I am pleased we were able to bring this legislation to a responsible and timely conclusion.

As we adopt these reforms to the Vacancies Act, we should not forget that as Senators we have a corresponding duty to act promptly and responsibly on nominations once they are submitted by the Administration. We as the Senate rightfully want to protect our Constitutional prerogative to provide advice and consent on nominations. However, we must by the same token discharge these duties in a conscientious and timely manner.

Mr. President, I also want to mention one piece of legislation which the Congress failed to address this year and which was not folded into this Omnibus Appropriations bill in the final hours of this Congress. I am very disappointed that we were not able to enact legislation to improve the regulatory process this year. Senator THOMPSON and I sponsored S. 981, the Regulatory Improvement Act. We had two hearings on the bill and marked it up in the Governmental Affairs Committee back in March of this year. It was reported to the full Senate for consideration in May. The Administration signaled its support for the bill with certain agreed-to changes in July. And, we've been urging that the Majority Leader bring the bill to the floor since that time. The bill now has 17 Republican and 8 Democratic cosponsors.

S. 981 is a reasonable approach to improving the regulatory process by requiring cost-benefit analysis and risk

assessment for our most significant regulations. It would bring meaningful reform to the way the federal government adopts its regulations, and it would make the rulemaking process far more open and interactive. We lost a great opportunity this year and invested a lot of hard work and effort.

FURTHER RESEARCH ON FIBER POLYMER ADDITIVES IN ASPHALT AND CONCRETE IN CONNECTION WITH THE TRANSPORTATION APPROPRIATIONS ACT

Mr. THURMOND. Mr. President, I rise to engage in a brief colloquy with my colleague, the Honorable Chairman of the Transportation Appropriations Subcommittee, Senator RICHARD SHELBY.

Included in the Senate Appropriations Committee Report accompanying the Transportation and Related Agencies Appropriations Act for fiscal year 1999, is a provision directing that additional research be conducted on a product that I believe could greatly improve highway pavement quality and maintenance. I am speaking of the use of fiber polymer additives—also known as ''binders''—in asphalt and concrete, the use of which appears to yield significant results in pavement quality and longevity.

While only a limited amount of research has been completed on this product, the few applications tested under real world circumstances have shown very positive results. If this product is as good as it appears to be in initial test results, it would revolutionize the industry and save states and the Federal Government significant resources for use on other critical infrastructure needs.

Not only does this product appear to add significant longevity to pavement life, it also serves an environmental benefit. Mr. Chairman, as you know, recycling allows us to conserve our natural resources, it diverts additional material from our landfills, and saves energy. A company in my home state of South Carolina, Martin Color–Fi, Inc., has empirical data that shows substantially improved life expectancy for highways constructed with polymer additives in the pavement. Their success, and that of others in this area, is encouraging news for improving the quality and longevity of our Nation's highways.

I note that the Statement of Manager's language accompanying the Transportation title of the Omnibus Appropriations Act, unlike the Senate Committee report, does not specify the amount of funds in the Highway Research, Development and Technology Program for the Federal Highway Administration (FHWA) to conduct additional demonstrations of this technology. It is my understanding that Chairman SHELBY shares my commitment to this research. Further, it is my understanding that he and other members of the committee would join me in strongly encouraging FHWA to work with an academic institution, and give priority consideration to applying at least the amount of research funds specified in the Senate-passed Transportation Appropriations bill, in order to create an academic and industry-led consortium to demonstrate the application of polymer additives in pavement for civil engineering purposes.

Mr. SHELBY. Mr. President, it is my pleasure to stand shoulder-to-shoulder with my colleague from South Carolina, the distinguished President pro tempore, in this effort to increase funding for research into the use of polymer additives for asphalt and concrete pavement.

The Transportation Appropriations Subcommittee directed that $2 million be committed for further research into polymer additives. Limited resources prohibited us from committing additional resources to this effort.

The provision the Committee added to the Report was designed to respond to a shortfall in this area by directing federal research efforts into further study of the effects of polymer additives on pavement quality and performance.

I greatly appreciate the Senator from South Carolina's interest in this matter, and I look forward to working with him and the FHWA to ensure this research is completed and reported to the states and other interested parties in a timely fashion.

Mr. KERRY. There were legitimate reasons to vote against the omnibus appropriations bill. This process was an insult to the Congress. The Republic leadership has put the Congress in an untenable position by refusing to pass many appropriations bills in regular order. I chose to vote for this legislation because of the important things it does for Massachusetts and the nation, and because I do not believe it is useful to cast a protest vote. I am hopeful that in the 106th Congress we can engage in a true legislative process.

Today, the Senate will give final approval to legislation to preserve a balanced budget for the first time in more than a generation. A balanced federal budget has been a key objective for me since I came to the Senate in 1985.

The Federal government had run a deficit continuously for more than 30 years until last year. It soared to dangerous levels in the 1980s during the Reagan and Bush Administrations. As a result of these deficits, our national debt multiplied several times, exacting a heavy toll on our economy, increasing interest rates, squeezing federal spending and making debt service one of the largest expenditures in the Federal budget.

In 1993, following President Clinton's election, we began the long journey back from crushing deficits and toward fiscal responsibility by passing an enormously successful economic plan. The full power of our economy was unleashed: unemployment is at record low; interest rats are subdued; and economic growth continues to be strong. This path culminated in last years; agreement to balance the budget and provide substantial broad-based tax relief for working American families and small businesses.

This year's federal budget is a continuation along the path of fiscal responsibility. At the same time, it begins to address some of our most pressing problems in education.

I am pleased that the omnibus appropriations bill rejects the House Republican approach and expands spending on education. The bill includes funding to begin hiring one hundred thousand new teachers which will assist local school communities to reduce class size in the early grades to 18 students. One hundred thousand new teachers will allow more individual attention for students which will lead to better reading and math scores in the future.

The final bill also includes $75 million to recruit and prepare thousands of teachers to teach in high-poverty areas. It also includes $75 million to train new teachers in how to use technology so that they can better assist their students. This funding is focused on assisting the schools and teachers who need the most help.

We must do everything possible to increase the reading skills of our children so that they can compete in the global economy in the 21st century. This budget includes 260 million for the Child Literacy Initiative which will improve teachers' ability to teach reading, family literacy, and conduct tutor training to help children learn to read by the end of the third grade.

Five million children are locked into a school day that ends in the early afternoon and dumps them into empty apartments, homes or violent streets despite the fact that we know those post-school hours are when teen pregnancies occur, drug use begins, and juvenile crime flourishes. The budget agreement includes $200 million for after-school programs that will help keep 250,000 children of the streets and into learning.

We also must develop an educational system which prepares our children and young people for adulthood. Today, we are failing too many of our children with crumbling schools, overcrowded classrooms, and inadequately prepared teachers. The federal government provides a small amount of the total funding for public elementary and secondary education—less than seven percent of total public spending on K–12 education comes from the federal government, down from just under 10 percent in 1980. Reading scores show that of 2.6 million graduating high school students, one-third are below basic reading level, one-third are at basic, only one-third are proficient, and only 100,000 are at a world class reading level.

Mr. President, I am developing legislation for next year to help every school make a new start on their own. It will be built on challenge grants for schools to pursue comprehensive reform and adopt the proven best practices of any other school, funds to help

every school become a charter school within the public school system, incentives to make choice and competition a hallmark of our school systems, and the resources to help schools fix their crumbling infrastructure, get serious about crime, restore a sense of community to our schools, and send children to school ready to learn.

However, increased spending on education is meaningless if there are no adequate school facilities to teach our children. I am disappointed that the Democrats' proposed tax credit to build and renovate our nation's schools was not included in the final budget agreement. Too many schools now operate in substandard facilities which in some cases are dangerous to our children. Any initiatives to support education must also include an investment to modernize our school buildings.

America's children especially need support during the formative, preschool years in order to thrive and grow to become contributing adults. Additionally, adequate child care is not affordable or even available for too many families. That is why I believe we must provide more help to working families to pay for critically needed, quality child care, an early learning fund to assist local communities in developing better child care programs, and sufficient funding to double the number of infants and toddlers in Early Head Start. President Clinton shares this view and included in his 1999 budget proposal my recommendations on this issue. I am pleased that the final budget will also include $182 million to increase the quality and affordability of child care to assist our working families.

Transportation funding is also crucial to maintain our aging national highway infrastructure. I am very pleased that the Omnibus Appropriations bill contains an additional $100 million in highway funds for Massachusetts as well as approximately $80 million for important transportation projects around the state.

The Commonwealth has reached a critical juncture in its efforts to both complete in Central Artery and Tunnel project and also to maintain and upgrade roads and bridges throughout the state. As many of my colleagues are aware, the ISTEA reauthorization bill contained an unacceptably low level of highway funding for Massachusetts. In order to secure commitment not to delay Senate consideration of the ISTEA bill, Majority Leader LOTT, Democratic Leader DASCHLE, Senators CHAFEE, and BAUCUS committed to me, among other things, that Massachusetts would receive an additional $100 million in highway funds. The inclusion of this money in the omnibus bill represents the fulfillment of this promise. I wish to express my sincere appreciation to them for following through on their commitment. I also wish to thank Senators BYRD and LAUTENBERG for their help in securing this funding.

As noted above, the omnibus bill also contains $80 million for critical transportation projects around the state. It will provide millions of dollars to assist in completing the revitalization of historic Union Station in Worcester and Union Station in Springfield. It will also provide millions to support the construction of intermodal centers in Pittsfield and Westfield. Finally, the bill contains funds to support work on the North-South Rail Link in downtown Boston. It is my hope that his project will continue to receive the funding that it is so sorely deserves.

Since 1995, when the conservative Republicans took control of this body and forced upon the Congress the ''Contract-with-America,'' we continually have had to fight to retain existing environmental protections. This year, we were successful in deleting a number of provisions from the final budget that would have set back efforts to protect our Nation's natural resources—our forests, parklands, fisheries and wildlife.

The final budget supports our environment and improves the lives of the families around America by increasing funding for the clean water state revolving fund, the safe drinking water state revolving fund, protection of endangered species, preservation of precious lands, and the development of cleaner energy technologies. I also am very pleased that the final budget includes an additional $50 million for the cleanup of Boston Harbor to assist the 2.5 million ratepayers in 61 Boston area communities who will pay for the bonds which have primarily financed this project—$3.8 billion for the Boston Harbor sewage treatment project, and $2.8 billion required for combined sewer overflows (CSOs) and other water and wastewater infrastructure upgrades for the next 30 years.

I am pleased that Congress agreed to provide the full $17.9 billion the administration requested to replenish IMF capital funds. The IMF desperately needs this funding because financial crises in South Korea, Japan, and Indonesia greatly have depleted its resources. Without full funding, the IMF would be inhibited from continuing its support of economic recovery in these countries and others.

As the strongest political and economic power, the U.S. has a responsibility to step up to the plate and exercise its leadership in dealing with this problem. I agree that the IMF needs to make some reforms to achieve greater accountability and management of its programs. I believe that implementing the IMF reforms, as required under this bill, will be a strong step in the effort to achieve greater accountability and management of IMF programs. We must be assured that IMF rescue packages effectively will harness economic stability while relieving social and political tensions. The IMF must be a viable and demonstrable institution that can bring about real change for nations suffering under the strains of economic instability.

As ranking member of the Committee on Small Business, I must give the omnibus appropriations bill mixed marks with respect to showing Congress's support for SBA's small business assistance programs. I am pleased that the Omnibus Appropriations Act adequately funds SBA's disaster loan program and fully funds the agency's salaries and expenses. To do otherwise would have been irresponsible and detrimental to the nation's small businesses and victims of natural disasters. The bill takes positive steps with respect to women-owned and veteran-owned businesses. The funding for SBA's Women's Business Centers is doubled to $8 million, consistent with reauthorizing legislation enacted last year, and veteran outreach receives $750,000, the first funding for veteran-owned businesses since fiscal year 1995. The bill contains a modest increase for the Small Business Development Centers, which provide valuable business counseling and training to small businesses throughout the country. The SBA's venture capital program received significant increases in funding, and the cornerstone 7(a) loan guarantee program received substantial funding, although less than the administration requested for fiscal year 1999.

Unfortunately, although the omnibus appropriations bill contains some increased funding for SBA's successful Microloan program, I am disappointed that it fails to adopt the significant increases to the Microloan program, which the authorizing committees envisioned last year when Congress passed SBA's three-year reauthorization bill. That bill, which was reported out of the Committee on Small Business unanimously, made the Microloan program a permanent part of SBA's financial assistance portfolio and substantially increased authorization levels for both loans and technical assistance. Based on those legislative changes, the Administration requested that direct microloan be funded at the fully authorized level. During the appropriations process, Senator GRASSLEY and nine of our colleagues joined me in sending two letters to the Subcommittee leadership voicing our support for full funding of the Microloan program, including a specific request for increased and adequate technical assistance funding. In those letters we described the relationship between loans in the Microloan program and technical assistance. Simply put, adequate technical assistance funding is prerequisite to successful microlending. The microloan and technical assistance funding contained in this bill will allow only minimal, if any, growth in this program, which helps the nation's neediest borrowers.

I am also disappointed that the Economic Research arm of SBA's Office of Advocacy did not receive the $1.4 million, requested by the administration and passed by the Senate. The research performed by that office is highly respected and very valuable to work of

the Committees on Small Business in both bodies and to other small business policy makers.

I support the omnibus appropriations bill because I believe it is an acceptable compromise which keeps the federal government on the path of fiscal responsibility while beginning to fund critically needed and long overdue initiatives to assist America's children. I look forward to building on this budget to address the unfinished business of the American people in the 106th Congress.

EXTENSION OF THE GENERALIZED SYSTEM OF PREFERENCES

Mr. GRASSLEY. Mr. President, I am pleased that Congress has once again extended the Generalized System of Preferences as part of the omnibus appropriations bill. The GSP is important for many reasons. For instance, from a foreign relations standpoint it allows the U.S. to assist developing countries without the use of direct foreign aid.

It is also of great importance to American businesses. Many American businesses import raw materials or other products. The expiration of the GSP has forced these companies to pay a duty, or a tax, on some of these products. That's what a duty is: an additional tax. By extending the GSP retroactively, these companies will not be required to pay this tax. This tax is significant and can cost U.S. businesses hundreds of millions of dollars. So, Mr. President, it is very important that the GSP be extended and it is very appropriate that the Senate consider it as part of this bill.

It is essential to remember, however, that since its inception in the Trade Act of 1974, the GSP program has provided for the exemption of ''articles which the President determines to be import-sensitive.'' This is a very important directive and critical to our most import-effected industries. A clear example of an import-sensitive article which should not be subject to GSP and, thus, not subject to the annual petitions of foreign producers that can be filed under this program, is ceramic tile.

It is well documented that the U.S. ceramic tile market repeatedly has been recognized as extremely import-sensitive. During the past thirty-years, this U.S. industry has had to defend itself against a variety of unfair and illegal import practices carried out by some of our trading partners. Imports already dominate the U.S. ceramic tile market and have done so for the last decade. They currently provide approximately 60 percent of the largest and most important glazed tile sector according to 1995 year-end government figures.

Moreover, one of the guiding principles of the GSP program has been reciprocal market access. Currently, GSP eligible beneficiary countries supply almost one-fourth of the U.S. ceramic tile imports, and they are rapidly increasing their sales and market shares. U.S. ceramic tile manufacturers, however, are still denied access to many of these foreign markets.

Also, previous abuses of the GSP eligible status with regard to some ceramic tile product lines have been well documented. In 1979, the USTR rejected various petitions for duty-free treatment of ceramic tile from certain GSP beneficiary countries. With the acquiescence of the U.S. industry, however, the USTR at that time created a duty-free exception for the then-minuscule category of irregular edged ''specialty'' mosaic tile. Immediately thereafter, I am told that foreign manufacturers from major GSP beneficiary countries either shifted their production to ''specialty'' mosaic tile or simply identified their existing products as ''specialty'' mosaic tile on custom invoices and stopped paying duties on these products. These actions flooded the U.S. market with duty-free ceramic tiles that apparently had been superficially restyled or mislabeled.

In light of these factors, the U.S. industry has been recognized by successive Congresses and Administrations as ''import-sensitive'' dating back to the Dillon and Kennedy Rounds of the General Agreement on Tariffs and Trade (GATT). Yet during this same period, the American ceramic tile industry has been forced to defend itself from over a dozen petitions filed by various designated GSP-eligible countries seeking duty-free treatment for their ceramic tile sent into this market.

The domestic ceramic tile industry has been fortunate, to date, because both the USTR and the International Trade Commission have recognized the ''import-sensitivity'' of the U.S. market and have denied these repeated petitions. If, however, just one petitioning nation ever succeeds in gaining GSP benefits for ceramic tile, then all GSP beneficiary countries will be entitled to similar treatment. This could eliminate many American tile jobs and devastate the domestic industry. Therefore it is my strong belief that a proven ''import sensitive,'' and already import-dominated product, such as ceramic tile, should not continually be subjected to defending against repeated duty-free petitions, but should be exempted from the GSP program.

Mr. REED. Mr. President, it is a bittersweet task that brings us back to Washington for one last vote before the end of the 105th Congress. Today, we will complete our work on the fiscal year 1999 budget.

To be sure, there is much that I like about the Conference Report before us, but there are some provisions that I strongly disagree with. On balance, however, it is a budget that is worthy of support.

Like many of my colleagues, I must lament the process that has brought us to this point—20 days after the start of the fiscal year. The Conference Report that we are about to vote on is almost 4,000 pages long. We have been given only a few hours to examine it. None of us knows the complete contents of the legislation, and there has been no opportunity to debate or offer amendments.

Fortunately, we have avoided a budgetary train-wreck similar to the one that closed down the government in 1995. But, Mr. President, this year the train is extremely late, and to hear the debate in this chamber, nobody wants to take responsibility for driving the engine.

We have subverted the regular budgetary process, failing even to pass a Budget Resolution. The majority could not reconcile its own discordant priorities to pass this blueprint legislation, which is required by law.

On this side of the aisle, we had a definitive agenda: preserve the budget surplus to save Social Security, invest in education, pass health care reform legislation, pass campaign finance reform, and pass legislation to prevent the tobacco industry from preying on our youngsters.

The President made these goals clear in his State of the Union Address and later with his fiscal year 1999 budget proposal. Claims that the priorities on this side were hidden until the very end are false. We have been here all along, working toward goals that the American people recognize as important, and we have had some success in achieving these goals in this legislation. There are a few provisions of the Conference Report that I would like to highlight:

This legislation preserves the surplus to help save Social Security.

It includes $1.2 billion for efforts to reduce class-size, of which $5.6 million would be awarded to my home state of Rhode Island. The omnibus bill also allocates funding to improve teacher preparation and recruitment, a cause that I was actively involved with during the drafting of the Higher Education Act Amendments of 1998.

The budget bill also includes funding for critical reading legislation—$260 million to help address the serious declines in literacy levels that have left 40% of America's fourth graders without basic literacy skills. The newly created GEAR UP program would receive $120 million under the bill. This ambitious new initiative will help encourage youngsters living in high poverty areas to pursue their higher education goals.

Finally, this Conference Report contains $33 million for the construction of as many as five new Job Corps centers, including one in Rhode Island, which is one of only four states currently without a center.

On the negative side, $800 million in subsidies for the Tennessee Valley Authority (TVA) was slipped into this legislation. Neither House of Congress included this level of funding in its version of the Energy and Water Appropriations bill. The omnibus package also retains a poorly constructed rider that prevents the Occupation Safety and Health Administration (OSHA) from conducting inspections on small

farms in response to fatal accidents involving minors. I am committed to addressing both of these issues next year.

This Conference Report is also bad for what it does not contain. In particular, it lacks funding for school construction, which is required to help meet the $121 billion need for new and refurbished schools, nor does it include an important bipartisan initiative authored by Senators JEFFORDS and KENNEDY to help individuals with disabilities join the workforce while maintaining their essential Medicare and Medicaid coverage.

Finally, it fails to adequately fund the Leveraging Educational Assistance Partnership (LEAP), a federal-state program that is a major source of higher education grant aid. I worked hard with the other authors of the Higher Education Act Amendments to reauthorize and improve this program, and I believe the failure to sufficiently fund LEAP is short-sighted.

Mr. President, there is much that could be done to improve this Conference Report, but we must pass it to keep the government open. It is unfortunate that we have been put in the position of having to vote up or down on this hefty omnibus package with no opportunity to offer amendments, no opportunity for a substantive debate, and little chance to review the measure itself. Fast-Track budgeting at the end of a Congress is no way to make up for time squandered at the beginning. I hope that this is the last time we follow this kind of eleventh-hour, gerry-rigged process.

RYAN WHITE AIDS FUNDING UNDER TITLE IV

Mr. LAUTENBERG. I would like to engage the Chairman and Ranking Member of the Labor-Health and Human Services (HHS) Appropriations Subcommittee in a brief colloquy concerning pediatric AIDS demonstrations funded under Title IV of the Ryan White CARE Act.

Mr. SPECTER. I would be pleased to engage in a colloquy.

Mr. HARKIN. I, too, would be pleased to engage in a colloquy with the Senator from New Jersey.

Mr. LAUTENBERG. I would first like to commend and thank the Chairman and Ranking Member for their work to ensure our Nation's continued strong commitment to our children and families tragically infected with HIV by providing support for Title IV of the Ryan White CARE Act. Title IV programs are designed to coordinate health care and assure that it is focused on families' needs and based in their communities. These programs are the providers of care to the majority of children, youth, and families with HIV/AIDS in our country, ensuring these families have access to the comprehensive array of services they need. A portion of Title IV funds may be used to provide peer-based training and technical assistance through national organizations that collaborate with projects to ensure development of innovative models of family centered and youth centered care; advanced provider training for pediatric, adolescent, and family HIV providers; coordination with research programs, and other technical assistance activities.

The Senate report stated that the Committee intends for the Department to continue its Title IV support of the National Pediatric and Family HIV Resource Center located within the University of Medicine and Dentistry of New Jersey. The Title IV funding needed to support the Center's work is $1.1 million per year. Is it correct that the managers intend for the Department to continue to support the National Pediatric and Family HIV Resource Center?

Mr. SPECTER. Yes, the Senator from New Jersey is correct. The committee intends that the National Pediatric and Family HIV Resource Center should continue to receive adequate funding.

Mr. HARKIN. I concur with the Chairman.

Mr. LAUTENBERG. I thank the Chairman and Ranking Member for their support, and for their continued work in this very important component of our national HIV/AIDS strategy.

PARKINSON'S DISEASE FUNDING

Mr. COCHRAN. Mr. President, one year ago this body adopted, by a vote of 95 to 3, legislation increasing our nation's commitment to finding the cause and cure for a long overlooked, but truly devastating disorder: Parkinson's disease. I was proud to cosponsor and vote for the Morris K. Udall Parkinson's Disease Research Act, signed into law as part of the Fiscal 1998 Labor, Health and Human Services, Education and Related Agencies Appropriations Act. The Udall Act authorized $100 million in research focused on Parkinson's disease to be funded through the National Institutes of Health in fiscal year 1998, 1999 and beyond.

The passage of the Udall Act was a great accomplishment, particularly for the hundreds and thousands of victims, and their families and friends, who worked so diligently to bring this issue to the Congress and make us aware of the need for additional Parkinson's research funding. I would also like to commend the Senior Senator from Pennsylvania, one of the true champions of medical research, for his strong support of the Udall Act and Parkinson's research.

Mr. SPECTER. I appreciate the remarks of my friend from Mississippi. He is correct that Parkinson's disease is a very serious disability, but one for which medical science does hold great promise. In addition, I too would like to commend the efforts of the Parkinson's community who have worked tirelessly to achieve passage of the Udall Act and increase funding for Parkinson's research.

Mr. COCHRAN. Mr. President, I am concerned that the National Institutes of Health has implemented neither the letter nor the spirit of the Udall Act, and that funding for Parkinson's-focused research has not increased in a fashion consistent with Congressional intent. An independent analysis, conducted by Parkinson's researchers at institutions all around the country, of the grants NIH defined as its Parkinson's research portfolio for fiscal year 1997 indicates that a majority of the grants are in fact not focused on Parkinson's disease. Only 34 percent of the funding NIH claims is Parkinson's research is actually Parkinson's-focused research, as required by the Udall Act. As troubling as that is, the study also found that 38 percent of the funding has no relation whatsoever to finding a cause or cure for this terrible affliction.

It is my understanding from published NIH budgetary documents that $106 million is expected to be allocated to Parkinson's research in fiscal year 1999. My concern is that without more direction from Congress, the NIH will undermine the intent of the Udall Act by continuing to classify, as part of its Parkinson's portfolio, research that is not focused on Parkinson's disease and, in doing so, will allow meritorious and much-needed Parkinson's research projects to go unfunded. I propose that a hearing be held early in 1999 to address and clarify these matters.

Mr. SPECTER. The gentleman has brought up important issues, which warrant further discussion.

Mr. CRAIG. As a sponsor of the Udall Act and supporter of Parkinson's research funding, I appreciate the Chairman's interest in these matters. The NIH claimed to spend more than $89 million on Parkinson's research in 1997. The Congress set a baseline authorization of $100 million for Parkinson's research in the fiscal year 1998 bill making NIH appropriations and clearly stated in report language that Congressional intent was to increase the commitment of NIH resources to Parkinson's. Close review of NIH's Parkinson's funding practices indicates that most of the research funding they define as Parkinson's is, in fact, not focused on Parkinson's at all. The NIH claimed to spend more than $89 million on Parkinson's research, in FY 1997. In reality, we later discovered that less than $31 million—just more than one third—of that research was truly focused on Parkinson's. Obviously there seems to be some disconnect here. Congress needs to be as clear as possible when communicating our intent to NIH, and diligent when overseeing their funding practices with regard to Parkinson's. I agree with Senator COCHRAN that hearings should be held early next year to address these issues, and I look forward to working with him, the Chairman, and others to see this resolved.

Mr. SPECTER. I thank the gentleman from Idaho and look forward to future discussions on his suggestions. It is a pleasure to recognize the sponsor of the Udall Act, and someone who remains very close to Mo and the Udall family, the distinguished Senator from Arizona.

Mr. MCCAIN. I thank my friend from Pennsylvania. The Senator is correct that this is an issue of personal importance to me, and I appreciate his support as we work to defeat this terrible disease. I would also like to acknowledge the tremendous efforts of the Parkinson's community—courageous individuals in my state and all across the country who have worked so hard to pass the Udall Act and continue to work to achieve its full funding.

There are an estimated one million Americans living with Parkinson's disease, and the nature of its symptoms are such that they impact heavily on families and loved ones as well. Add to these staggering human costs the fiscal burden of health care expenses and lost productivity, and it's easy to see that Parkinson's deserves to be a higher national priority. Parkinson's disease also represents a real research opportunity, where an investment of funds is likely to yield improved therapies sure to reduce both the personal and financial costs to our families and our nation.

To realize this opportunity, though, it is up to Congress and the NIH to ensure that these funds get allocated to research focused on Parkinson's. Chairman SPECTER and others in this body have worked hard to ensure that NIH has the overall funding it needs to aggressively pursue research opportunities like those relating to Parkinson's. I have received a letter dated May 21, 1998 from NIH Director, Dr. Harold Varmus, which includes a chart indicating that the NIH will spend over $106 million on Parkinson's research in fiscal year 1999. I look forward to working with my colleagues and the NIH to see that this funding goes for research principally focused on the cause, pathogenesis, and/or potential therapies or treatments for Parkinson's disease as mandated by the Udall Act.

Mr. SPECTER. I thank the gentleman for his remarks, and look forward to continuing to work with him on these matters. Now I would like to recognize the other Senate sponsor of the Udall Act, another Senator with a deep and sincere connection to Parkinson's disease, the gentleman from Minnesota, Senator WELLSTONE.

Mr. WELLSTONE. I thank the Senator, and commend him for his support on this very important issue. I also wish to thank my friend, Senator MCCAIN, for joining me last year in sponsoring the Udall Act.

I believed when we passed the Udall Act last year we had begun to change a sad history of chronic underfunding of Parkinson's by the NIH. It was a very personal victory for me—and for all those who fought so hard to see the Udall Act enacted into law.

I am here today, along with my colleagues, in an effort to fulfill the promise of the Udall Act and the commitment we in Congress made to people with Parkinson's, their families and those researchers dedicated to curing this disease. I find it very disheartening to learn that so little of the research NIH claims to devote to Parkinson's is actually Parkinson's-focused as called for by the Utall Act. it was our intent and it is our obligation to ensure that at least $100 million in research specifically focused on Parkinson's is allocated. And if it takes stronger language, more oversight, or congressional hearings to guarantee it gets done, then that's what we must do.

Members of the Senate have expressed their interest in seeing the Udall Act fully funded in fiscal year 1999, and we have taken some positive steps this year to accomplish that goal. But our work is not done. The ultimate goal is not legislative accomplishments. It is not adding more dollars to this account or that one. The ultimate goal is to find a cure for this horrible, debilitating disease so that more people don't have to suffer the way my parents and our family did, or the way Mo Udall and his family does, or the way countless families do every day in this country. By passing the Udall Act we made a promise to put the necessary resources into the skilled hands of researchers dedicated to finding that cure. I intend, as I know my colleagues and those in the Parkinson's community intend, to do everything I can to fulfill that promise.

Mr. SPECTER. I thank the Senator from Minnesota and all of my colleagues for their remarks today about Parkinson's research funding through the NIH. I look forward to working closely to address the concerns expressed here today.

SPRINGFIELD, VT, WORKFORCE DEVELOPMENT CENTER

Mr. JEFFORDS. Mr. President, I would like to engage my good friend and colleague, the Chairman of the Subcommittee on Labor, Health and Human Services and Education Appropriations in a colloquy regarding a provision in this legislation that is of great importance to me.

Mr. SPECTER. I would be pleased to join my good friend and colleague in a colloquy.

Mr. JEFFORDS. The Springfield region of Vermont currently faces a crisis in the machine tool industries. Six major machine tool employers in the area indicate that more than 50 percent of their workforce will retire within the next five to seven years. This will create the need for highly skilled employees to fill more than 700 positions in machine technology. In addition, other employers in the areas of information technology, hospitality and travel, financial services and food services industries indicate that they have an urgent need for a responsive education delivery system designed to meet their growing demand for skilled labor. I understand that the conference report includes funds for the Springfield Workforce Development Center to implement innovative training and vocational education strategies to meet the education, workforce and economic development needs of the region.

Mr. SPECTER. The Senator is correct. The Appropriations Committee recommendation includes funding for the Springfield Workforce Development Center, and this recommendation is retained in the conference agreement on the omnibus bill.

MEDICAL UNIVERSITY OF SOUTH CAROLINA

Mr. HOLLINGS. May I enjoin the Senator from Pennsylvania in a colloquy?

Mr. SPECTER. I would be pleased to hear from the Senator from South Carolina.

Mr. HOLLINGS. I would like to clarify an item contained in the statement of the managers of the omnibus appropriations bill. In the health facilities section of the Health Resources and Services Administration, reference is made to a project intended for the Medical University of South Carolina. Inadvertently, the word ''Medical'' was not included in the statement of the managers; however, that word's inclusion was clearly the intent of the managers.

Mr. SPECTER. I thank the Senator for his clarifying statement.

HEPATITIS C FUNDING

Ms. MIKULSKI. Will the chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee yield for a question?

Mr. SPECTER. I will be pleased to yield to the Senator from Maryland.

Ms. MIKULSKI. As the chairman knows, hepatitis C is the most common blood-borne infection in the United States. The CDC estimates that there are 4 million Americans—or 2 percent of the population—that are infected. Each year there are 10,000 deaths due to hepatitis C and the death total will increase to 30,000 a year unless something is done to intervene with the progression of this disease in the United States. Unfortunately, the vast majority of people infected with hepatitis C are not even aware that they are infected because the disease is ''silent'' without symptoms sometimes for decades. Meanwhile these infected individuals may be passing the disease on, causing new infections to occur each year. We need to break this cycle by helping individuals learn they have hepatitis C and by getting them to seek counseling, testing, and treatment of their infection and begin to understand the seriousness of this epidemic.

Additional funds are needed to support both a targeted look back effort to reach the 300,000 Americans who have hepatitis C as a result of exposure to blood products prior to 1992, when blood was not adequately screened for hepatitis C and a general media campaign to alert other Americans infected by hepatitis C. These funds are needed to fund cooperative efforts of State and local health departments and national voluntary health agencies such as the American Liver Foundation to identify, educate, counsel, test and refer for treatment those infected. The efforts should be bolstered by a toll-free hotline to help provide information and

counseling. In addition, since not everyone can afford private testing, some of these funds should be made available to public health agencies for clinic testing and other testing options, including FDA-approved telemedicine testing services.

The chairman and the committee have some very strong report language focused on this issue and the chairman is well aware of this problem. I compliment him for the guidance he has given to the CDC on this issue. I have been informed by the CDC that $48 million is needed and at a minimum $16 million is needed just to begin to address this epidemic in fiscal year 1999. Can this amount be found within the totals recommended by the conferees?

Mr. SPECTER. I thank the Senator for her question. I agree that more needs to be done by CDC to address the hepatitis C epidemic. The conferees have provided a substantial increase for Infectious Diseases at CDC and I will urge the CDC to allocate increased resources to this matter.

Ms. MIKULSKI. I thank the chairman of the Labor, Health and Human Services, and Education Appropriations subcommittee for his response. Again, I compliment him and the ranking member, TOM HARKIN, for their hard work on the Labor/HHS appropriations bill.

DREXEL UNIVERSITY INTELLIGENT INFRASTRUCTURE INSTITUTE

Mr. SPECTER. Mr. President, I have sought recognition to thank the chairman of the Transportation Appropriations Subcommittee for having included in this legislation funding for the Drexel University Intelligent Infrastructure Institute. I have been pleased to have worked with Drexel for several years on obtaining funding to establish the institute, which will focus on the link between intelligent transportation systems and transportation infrastructure. Drexel has teamed up with the Delaware River Port Authority to study that agency's infrastructure, which includes four major bridges that provide critical links in the east coast corridor. Congress has previously appropriated $750,000 toward this project and authorized establishment of the institute in the TEA–31 legislation enacted earlier this year.

It is my understanding that it is the intent of the managers for the Transportation Appropriations bill that the $500,000 provided for the institute shall be made available pursuant to the provisions of section 5118 of TEA–21, which specifically authorizes the establishment of the Institute.

Mr. SHELBY. I want to thank the Senator from Pennsylvania for his comments and to confirm his understanding with respect to the Drexel Institute. As noted in the Senate committee report, the funds allocated within the Statement of Managers are to be made available for the purposes expressed in section 5118 of TEA–21.

THE AMERICAN COMPETITIVENESS AND WORK FORCE IMPROVEMENT ACT

Mr. GRAMS. Mr. President, I rise in support of the compromise H–1B visa legislation included in the omnibus appropriations bill. I am pleased a compromise was achieved that has now passed the House by a vote of more than two to one.

With the demand in this country rising for this category of highly skilled workers currently in short supply in the U.S., I believe there is a need to temporarily increase this visa category. The engine now driving our successful economy is being fueled in large part by growth in the information technology industry. I am told these high tech industries account for about one-third of our real economic growth. According to the Information Technology Industry Data Book, 1998–2008, the domestic revenue from the U.S. information technology industry is projected to be $703 billion for the year 2000.

With this sudden surge in industry growth, the United States has found itself unprepared to supply the large numbers of math and engineering graduates necessary to support this growth. In fact, American schools are producing fewer math and engineering graduates than in the past.

We have been forced to address this current imbalance by temporarily allowing needed high-tech workers to work in our country. This is necessary until we can develop the expertise we need in the country.

This compromise bill will do just that. For the next 3 years, additional workers from foreign countries will be allowed to work here. During this time, Americans will be educated to fill these jobs through scholarships and job training financed by fees collected from employers petitioning for the current foreign workers. We must do more to ensure our work force meet the demands of a growing, more sophisticated economy—that we have the educated work force we need to continue to prosper and provide better jobs for Americans.

There are other important issues covered by the bill including increased penalties for violations of law by employers, random investigations of employers sponsoring H–1B visas by the Department of Labor and protection of ''whistleblowing'' employees. I think this compromise is something that will help us now and in the future. I urge its passage.

Mr. KOHL. Mr. President, I rise today in opposition to the Omnibus Consolidated and Emergency Supplemental Appropriations Act before us. This was not an easy decision because there are many parts of this legislation I support. But, on balance, I cannot support a bill that is in essence sloppy—both in the process by which it was constructed and in its content.

We are asked today to vote—up or down—on a bill that contains eight of thirteen appropriations bills that fund the government and almost $500 billion in government spending, nearly 30 percent of our budget. We have one vote, little debate, and no chance of amendment on what has been described as the largest piece of spending legislation in recent history. And beyond the spending sections of the bill, it also includes various pieces of authorizing legislation—seven different drug bills, home health care reform, and Internet tax moratorium, a tax cut that will cost $9.2 billion over the next nine years among other items.

This is a huge measure—a measure that the esteemed Senator BYRD has called a ''monstrosity,'' and he is right. It is a measure that, in its entirety, few have seen and no one understands. Yet today, we are asked to say ''yes'' or ''no'' to it. How can we say ''yes'' to a budget that we have not read, have not participated in its drafting, have not even seen? To do so would be irresponsible and undemocratic.

In saying this, I mean no disrespect to those of my colleagues who have worked very hard to try to make this process fair. The negotiators were caught in a bind that all of Congress has a responsibility for creating: We let partisanship and politics get in the way of passing a thoughtful budget this year, and so now we are stuck slapping a budget together at the last minute.

I commend the negotiators for doing the best they could. All parties were as responsive as this terrible situation allowed. The Democratic leadership in the Senate and Representative OBEY were vigilant in trying to protect the interests of Wisconsin during negotiations, and they were successful in doing some good for our State and in avoiding a great deal of bad.

I also do not mean to suggest that there are no items in this legislation that I support. There are many good policies, provisions and priorities established here.

For the most part, I am pleased with the final form of the Treasury-General Government appropriations bill which I worked on as the Subcommittee's Ranking Member. Controversial language tampering with the Federal Election Commission's staff was dropped. Important language guaranteeing adequate contraceptive coverage to federal employees was retained. And many important law enforcement and financial agencies were funded at adequate levels. In addition, that bill allocated money for fighting the war on drugs in my State—an additional $1.5 million to expand the Milwaukee High Intensity Drug Trafficking Area (HIDTA) and additional funds for expanding the Youth Crime Gun Interdiction Imitative operating now in Milwaukee.

The Omnibus bill also makes a strong investment in the education of our children, starting from early childhood education and continuing through higher education. The bill increases funding for the Child Care and Development Block Grant to over $1.18 billion,

an increase of $182 million. This includes a continuation of the $19.1 million set-aside for resource and referral programs, which help parents locate quality, affordable child care in their communities. In addition, we increased funding for Head Start by over $300 million, increased funding for Disadvantaged Students (Title I) by over $300 million, increased Special Education funding by over $500 million, and provided $1.1 billion to local school districts to help reduce class size in the early grades. We also provided over $300 million more for Student Aid, including an increase in the maximum Pell Grant to $3,125.

In addition to investing in our children, the bill also ensures that we take care of our nation's elderly. Despite the fact that the House eliminated funding for LIHEAP, we were able to restore that funding to its full amount of $1.1 billion, ensuring that the elderly will not have to choose between food and heat during the cold winter months. We also increased funding for the Administration on Aging, including a $3 million increase for the Ombudsman program, which serves as an advocate for the elderly in long-term care facilities.

This appropriations measure also includes vital funding for highways and transit at the historic levels approved by Congress as part of the Transportation Equity Act earlier this year and a strong level of investment in airport improvement. In addition, the transportation piece of the omnibus bill funds a number of Wisconsin specific items, including Wisconsin statewide bus programs that play a crucial role in our welfare to work efforts, the renovation of the Milwaukee Train Station, crash and congestion prevention technology funding for the State, commuter rail planning and grade crossing mitigation funds for Southeastern Wisconsin and funding for the Coast Guard's Great Lakes' icebreaker and Seagoing Buoy Tender replacement programs.

The transportation piece of the omnibus package includes an important authorization provision affecting Milwaukee, Wisconsin's East West Corridor project. In the ISTEA reauthorization debate, the future of this project fell victim to politics and backroom dealing. Specifically, a provision was attached to the reauthorization legislation, the Transportation Equity Act or so-called TEA–21 law, which sought to undermine the framework of local decision making created by the original ISTEA in 1991. Worse still, this TEA–21 provision had not been debated as part of either the House or Senate reauthorization bills, but was added to the final bill at the eleventh hour despite the objections of those Members of Congress most impacted.

As a member of the Transportation Appropriations Subcommittee, I attempted to mitigate the damage done by the TEA–21 provision by attaching an amendment to the Senate Transportation Appropriations bill for Fiscal Year 1999. My amendment reaffirms the right of local officials to decide what transportation projects best fit the needs of their community. It simply makes sure that all parties who deserve to be at the decision making table have an equal seat at that table. I am pleased that a compromise version of my amendment is included in the omnibus package. It is my sincere hope that State and local officials will now work together to move ahead expeditiously with the East West Corridor improvements. Fairness has won the day, now consensus and cooperation must yield progress on a project of vital importance to the economy and quality of life in Southeastern Wisconsin.

I also am pleased several provisions I worked for throughout the year have made it into the portion of the bill covering Commerce-Justice-State appropriations. Most importantly, the legislation includes more than a threefold increase in crime prevention spending through Title V, a juvenile crime prevention program I authored six years ago. The funding level was increased from $20 million to $70 million. This should provide WI with around $1 million in prevention spending next year, a big boost from the approximately $340,000 it received last year out of the lower funding level.

The bill also extends a limited number of important tax provisions in a fiscally responsible manner—meaning these provisions are paid for, but not at the expense of the social security surplus. In particular, I strongly support the acceleration of the increase in the deduction for health insurance of the self-employed and the permanent extension of income averaging. Both these measures will go a long way to ease the tax burdens of Wisconsin's farmers and small business people. When we return in the spring, it is my hope that we will approve the reforms necessary to preserve the long term viability of social security, as well as enact more additional targeted, fiscally sound tax relief measures, such as my Child Care Tax Credit.

Finally, I applaud the Administration for recognizing the financial crisis that is sweeping the agricultural sector of the Midwest this summer. The legislation also wisely adds more money for market losses and drought in the southern U.S.

In addition, this bill does more than recognize the current problems in rural America. Although modest, the bill provides more financial help to maintain the viability of Wisconsin agriculture by appropriating $17 million more for agricultural research than last year, allowing the University of Wisconsin to develop the new technologies that will soon be the new production practices used by farmers. Soil and Water Conservation programs spending will increase by $8 million, enhancing programs like the Environmental Quality Improvement Program (EQIP). An additional $23 million was added for the Administration's Food Safety Initiative which includes money to increase the surveillance, research and education relating to food-borne illnesses. And finally, Congress agreed to pay dairy farmers for the transitioning of the industry to a more market oriented system as ordered by the last farm bill. Dairy producers will receive an estimated $200 million for agreeing to end the price support system in 1999.

However, I still have significant concerns that Congress decided to postpone the consolidation of the milk marketing orders required by the 1996 Farm Bill and to extend the Northeast Dairy Compact. Our outdated, unfair pricing system must come to an end. It was wrong to use this bill to extend its life—and the life of a controversial regional price fixing scheme—both policies that hurt competitive Wisconsin family farmers.

Another major problem with this bill is the use of the budget surplus to fund over $20 billion ''emergency'' spending. Certainly, some of these funds will go to meet truly unanticipated and urgent needs—like military deployments, natural disaster recovery efforts, and a response to the farm crisis sweeping the center of the nation. These are one-time, compassionate and necessary expenditures that must be made regardless of budget rules.

Unfortunately, a significant portion of the so-called ''emergency'' money is not for true emergencies. For example, $1.3 billion is for military readiness—a worthy goal, but one that we ought to budget for as part of our annual budget process. I certainly hope it is not news to anyone that we expect our military to be ready to defend us. In addition, $50 million of that money is for ''morale, welfare, and recreation.'' Again, I agree with the goal of keeping our troops fit and content—but doing so should be a priority in every year's budget, not an off-budget item described as an ''unanticipated need.''

Many of us have argued that we ought not to use the budget surplus as an excuse to abandon fiscal discipline. We still need to save—for the Social Security obligations and health care needs of an aging population, for the rainy day that world economic instability may bring about, for the trust of the American taxpayer who expect us to use their tax dollars wisely. We succeeded in balancing the budget; it makes no sense to celebrate by unbalancing it again.

I am also concerned about the pork that is the inevitable result of the haphazard and closed process that produced this legislation. I do not know what it is now, but I do know it will show up as we—and the public and the press—pore over the 8000 pages of this legislation over the next few weeks.

In the end, as with any vote, the final decision has to be a result of weighing the good and the bad. No bill is perfect; most are the result of compromise. But

in this bill, the balance of good and bad is tipped by the undemocratic and irresponsible manner in which it was written. I will vote no this morning, and I urge my colleagues to join me.

Mr. KYL. Mr. President, for the better part of the last year, we have been considering what to do with projected budget surpluses should they ever materialize. Some people suggested setting aside the excess money to help save Social Security. Some wanted to use a portion for tax relief, or paying down the national debt. I believe there was merit in each of those ideas.

It did not take long, however, for all of the good ideas to be swept aside once the surplus actually materialized. Just three weeks after confirming that the federal government achieved its first budget surplus in a generation, we have a bill before the Senate that proposes to use a third of the surplus to increase spending on government programs other than Social Security, tax relief, or repayment of the national debt.

I am very disappointed that we find ourselves in this situation. President Clinton pledged in his State of the Union address to ''save every penny of any surplus'' for Social Security, yet he was the first in line with a long list of programs to be funded out of the budget surplus. And Congress appears willing to go along. I, for one, intend to vote against this raid on a surplus that should be saved for Social Security or tax relief.

Mr. President, the Congressional Budget Office tells my office that it has not yet determined the cost of the omnibus spending bill, and may not be able to do so for some time. However, if you total the figures included in the conference report, it appears that the cost will approach $520 billion—that is, if funding for the International Monetary Fund and emergency agriculture money is included. I am looking at Division A of the bill—for mandatory and discretionary programs.

That compares to $447 billion for the same programs only a year ago. In other words, we are being asked to approve a bill that proposes to increase spending 16 percent in a single year. That does not even take into account the extra spending—another $21 billion—that is to be financed out of the budget surplus.

That is just too much. To put things into perspective, the average increase provided by the FY99 spending bills I supported earlier in the year amounted to just 0.1 percent—a spending freeze, in effect. If we are to keep the budget balanced and preserve our options on how to use the budget surplus, we need to follow a more responsible path. This bill, with its raid on the budget surplus, represents a dangerous return to the old ways of budget-busting, bigger government.

Mr. President, let me say a few things about the process that spawned this bill. Eight of the regular appropriations bills are wrapped into this package. A so-called emergency spending bill is attached, bringing the total cost of the legislation to over a half-trillion dollars. It is massive. It is no way to do the people's business responsibly.

I recognize that our leadership had little choice but to make the best of a bad situation, given President Clinton's propensity to shut the government down if he does not get his way. Indeed, one of the President's representatives admitted as much to the Majority Leader a few weeks ago when he said the White House would shut down the government if it was in its political interest to do so. That is reprehensible.

Still, our leadership did manage to secure some very good things in this bill—things that I would support if they could be separated out and considered on their own merits. Important funding for our nation's defense, anti-drug efforts, and increased law enforcement in Indian country is included. There are resources for 1,000 new Border Patrol agents, provisions to alleviate problems in the implementation of new border-security systems, funding for the National Institutes of Health, and programs to help victims of domestic violence.

However, by failing to prioritize spending, the bill simply throws more money at bad programs as well as good ones. It is easy to please everyone by spending more and more money. Yet that is a sure prescription for a return to the customary budget deficits we worked so hard to eliminate.

The fact is, this bill was written by a handful of congressional Members and staff and the White House behind closed doors. Most Members of Congress have not had a chance to review it, debate it, or offer amendments. That means our constituents have been shut out of the process. This is a risky and dangerous precedent that I believe we will come to regret.

Mr. President, while there are a number of good items in this bill—items I support—on balance, I believe it blurs the difference between two competing philosophies of government and, as I said before, represents a dangerous return to the old ways of budget-busting, bigger Government, and less freedom.

I will vote no.

Mr. FAIRCLOTH. Mr. President, I rise in support of this legislation. There are many good things about this bill. It is not perfect—but we shouldn't let the perfect be the enemy of the good. In our constitutional process, the Republican majority cannot get everything it wants and with a very liberal White House, we are forced to compromise in order to keep the Government functioning.

The most important thing the American people need to know is that this year the Congress has balanced the budget for the first time in 30 years. Next year, in 1999, we will balance it again. Because we have stopped the growth of the Federal Government, we finally have stopped spending more than we collect, and giving the bill to our children and grandchildren to pay in the future.

Let me discuss the many positive provisions in this bill. First, we have increased defense spending for an anti-ballistic missile defense. This involves the very core of our national security. And I should note, this is the first Congress to increase defense spending since 1985.

We have included provisions to reduce the spread of obscene material over the Internet. Also, we have doubled the number of Customs agents to block child pornography coming in from overseas.

In an area that I have particularly been interested in, we have attached real reforms to the IMF funding, rather than giving funds to the IMF with no strings attached as the President would have liked us to.

We have provided funding for new teachers, but maintained local control over the hiring—and—we have prevented national Federal testing of students.

We have included seven major proposals to fight the war on drugs. Bill Clinton has mocked the seriousness of drug use and it has showed. Drug use among teens has been on the rise during the Clinton administration.

We are funding increases in health care research, particularly cancer research and breast cancer research. We kept our commitment from last year to dramatically increase spending in the fight against cancer. The bill also contains a requirement that requires insurance companies to cover breast reconstructive surgery for women afflicted with breast cancer.

On the tax side, we have extended the research and development tax credit, which is important to North Carolina.

Further, we are changing the tax laws to permit 100% deductibility of health insurance for self employed individuals.

And this is another important point that is often overlooked by the media. This is the first Congress to cut taxes in 16 years. And in this bill, we have again reduced taxes for the self employed.

This is in stark contrast to the Clinton tax increase of 1993, the largest in the history of the U.S.

For North Carolina specifically, there are a number of positive provisions. We have received money for a program called LEARN North Carolina, which will provide important curriculum information to our teachers and classrooms over the Internet throughout North Carolina.

The Congress again provided funding for the Reading Together program which has fifth graders tutoring second graders in reading—it is a truly remarkable program that has shown very positive results in increasing the reading skills of elementary students.

The bill provides funding for the North Carolina Center for the Prevention of School Violence, in order to reduce violence in schools.

We have provided money to save a national landmark, the Cape Hatteras Lighthouse.

The bill will provide additional funding for the North Carolina Criminal Justice Information Network, which will help our state troopers identify criminal suspects on the spot during traffic steps. It will save the lives of our police officers.

In order to stop crime before it happens, we have provided funding for gang resistance in troubled parts of North Carolina.

For transportation, we have secured $10 million for light rail in the Triangle. In Charlotte, we have $3 million for the planning of light rail in that booming area of the state.

For our farmers, unlike the White House proposal, we have made sure that North Carolina farmers can receive aid if they are hit by low prices. Also, in order to keep our farmers competitive in the global marketplace, we have provided millions in agriculture research for North Carolina.

These are just a few of the items that have been secured for our state.

As I said, Mr. President, this is not a perfect bill.

We are spending too much money under the guise of ''emergency'' spending. Under the banner of ''emergency'' spending, we have funds for the Bosnian mission, the Year 2000 compliance, farm aid and embassy security funds. While we can't desert our troops in Bosnia now, we can find other spending cuts to pay for this mission, if it continues. We need funds to fix the Year 2000 problem, but we can find other cuts to offset this spending. And, we need funds to make our foreign missions more secure. I am willing to vote for these new funds now, but I can vow that I will seek spending reductions in the next year to offset them.

For this reason, I am also introducing legislation today that would require the President to submit a budget next year identifying spending cuts so that we can pay for the twenty billion in ''emergency'' spending that we have spent in this bill. We must preserve the surplus for Social Security, and emergency or no emergency, we have to find cuts in government so that we do not fritter away the surplus.

In conclusion, this bill, on balance, is a bill for a better national defense, better schools and better health care. For that reason, I plan to support it.

OLYMPIC AND AMATEUR SPORTS ACT AMENDMENTS OF 1998

Mr. STEVENS. Mr. President, this legislation includes the Olympic and Amateur Sports Act Amendments of 1998, a bill that Senator CAMPBELL joined me in cosponsoring to update the federal charter of the U.S. Olympic Committee and the frame-work for Olympic and amateur sports in the United States.

This framework is known as the ''Amateur Sports Act,'' because most of its provisions were added by the Amateur Sports Act of 1978 (P.L. 95–606). The Act gives the U.S. Olympic Committee certain trademark protections to raise money—and does not provide recurring appropriations—so therefore does not come up for routine reauthorization.

The Amateur Sports Act has not been amended since the comprehensive revision of 1978—a revision which provided the foundation for the modern Olympic movement in the United States. The bill we will soon pass does not fundamentally change the Act because our review showed us that is still fundamentally sound. We believe the modest changes we will make will ensure that the Act serves the United States well in the 21st Century.

The significant changes which have occurred in the world of Olympic and amateur sports since 1978 warrant some fine-tuning of the Act. Some of the developments of the past 20 years include: (1) that the schedule for the Olympics and Winter Olympics has been alternated so that games are held every two years, instead of every four—significantly increasing the workload of the U.S. Olympic Committee; (2) that sports have begun to allow professional athletes to compete in some Olympic events; (3) that even sports still considered ''amateur'' have athletes who with greater financial opportunities and professional responsibilities than we ever considered in 1978; and (4) that the Paralympics—the Olympics for disabled amateur athletes—have grown significantly in size and prestige.

These and other changes led me to call for a comprehensive review of the Amateur Sports Act in 1994. The Commerce Committee has held three hearings since then. At the first and second—on August 11, 1994 and October 18, 1995—witnesses identified where the Amateur Sports Act was showing signs of strain. We postponed our work until after the 1996 Summer Olympics in Atlanta, but on April 21, 1997, held a third hearing at the Olympic Training Center in Colorado Springs to discuss solutions to the problems which had been identified.

By January, 1998, we'd refined the proposals into possible amendments to the Amateur Sports Act, which we discussed at length at an informal working session on January 26, 1998 in the Commerce Committee hearing room. The bill that Senator CAMPBELL and I introduced in May reflected the comments received in January, and excluded proposals for which consensus appeared unachievable. With the help of the U.S. Olympic Committee, the Athletes Advisory Council, the National Governing Bodies' Council, numerous disabled sports organizations, and many others, we continued to fine tune the bill until it was approved by the Commerce Committee in July.

I will include a longer summary of the bill for the RECORD, but will briefly explain its primary components: (1) the bill would change the title of the underlying law to the ''Olympic and Amateur Sports Act'' to reflect that more than strictly amateurs are involved now, but without lessening the amateur and grass roots focus reflected in the title of the 1978 Act; (2) the bill would add a number of measures to strengthen the provisions which protect athletes' rights to compete; (3) it would add measures to improve the ability of the USOC to resolve disputes—particularly close the Olympics, Paralympics, or Pan-American Games—and reduce the legal costs and administrative burdens of the USOC; (4) it would add measures to fully incorporate the Paralympics into the Amateur Sports Act, and update the existing provisions affecting disabled athletes; (5) it would improve the notification requirements when an NGB has been put on probation or is being challenged; (6) it would increase the reporting requirements of the USOC and NGB with respect to sports opportunities for women, minorities, and disabled individuals; and (7) it would require the USOC to report back to Congress in five years with any additional changes that may be needed to the Act.

Mr. President, I am the only Senator from President Ford's Commission on Amateur Sports who is still serving. It has therefore been very helpful to have Senator CAMPBELL—an Olympian himself in 1964—involved in this process. Over my objection he has included an amendment the package to name the Act after me. There are many others who deserve recognition for their work to bring about the 1978 Act, and since he has prevailed, I will accept this honor on their behalf. I ask unanimous consent that my summary of the major components of the bill be printed in the RECORD.

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

SUMMARY OF MAJOR PROVISIONS OF SECTION 142, THE OLYMPIC AND AMATEUR SPORTS ACT AMENDMENTS OF 1998

Section 142 of the omnibus bill is based on S. 2119, the Olympic and Amateur Sports Act Amendments of 1998, a bill introduced by Senators STEVENS and CAMPBELL on May 22, 1998 and approved by the Senate Commerce Committee in July of 1998. Summary of major provisions:

Olympic and Amateur Sports Act—The federal charter of the U.S. Olympic Committee (USOC) and framework for Olympic and amateur sports in the United States is commonly known as the ''Amateur Sports Act'' because most of its provisions were enacted as part of the Amateur Sports Act of 1978 (P.L. 95–606). Section 142 would officially rename the underlying Act as the ''Olympic and Amateur Sports Act.'' An amendment by Senator CAMPBELL changed section 142 to rename the underlying Act as the ''Ted Stevens Olympic and Amateur Sports Act.''

Paralympics—Section 142 incorporates the Paralympics into the Olympic and Amateur Sports Act, so that the Act clearly reflects the equal status between able-bodied and disabled athletes. It continues the original focus of the Act to integrate disabled sports with able-bodied National Governing Bodies (NGB's), but allows the USOC to recognize paralympic sports organizations if integration does not serve the best interest of a

sport or if the NGB for the sport objects to integration. The USOC is officially recognized as the national Paralympic committee.

Athletes—The amendments require the creation of an Athletes' Advisory Council and National Governing Bodies' Council to advise the USOC. The amendments also require that at least 20 percent of the USOC Board be comprised of active athletes. The USOC already carries out these provisions but is not required to do us under existing law. The amendments require the USOC to hire an ombudsman for athletes nominated by the Athletes' Advisory Council who will provide advice to athletes about the Olympic and Amateur Sports Act, the relevant constitution and bylaws of the USOC and NGBs, and the rules of international sports federations and the International Olympic Committee (IOC) and International Paralympic Committee (IPC), and who will assist in mediating certain disputes involving the opportunity of amateur athletes to compete. The amendments also require the NGBs to disseminate and distribute to athletes, coaches, trainers, and others, all applicable rules and any changes to the rules of the NGB, USOC, international sports federation, IOC, IPC, and Pan-American Sports Organization. Section 142 clarifies that NGBs must agree to submit to binding arbitration with respect to opportunity-to-compete issues at the request of the affected athlete under the Commercial Rules of the American Arbitration Association, but gives USOC authority to alter the Commercial Rules with the concurrence of the Athletes' Advisory Council and National Governing Bodies Council, or by a two-thirds vote of the USOC Board of Directors;

USOC Administrative/Cost Saving—The amendments allow the USOC to remove certain lawsuits against it to federal court. The amendments require the USOC to keep an agent for service of process only in the State of Colorado, rather than all 50 States. Under the amendments, the USOC is required to report to Congress only every four years, instead of annually. The report, however, is required to include data on the participation of women, disabled individuals, and minorities. Section 142 protects the USOC against court injunction in selecting athletes to serve on the Olympic, Paralympic, or Pan-American teams within 21 days of those games if the USOC's constitution and bylaws cannot provide a resolution before the games are to begin.

National Governing Bodies—The amendments in section 142 allow the USOC/NGBs not to send to the Olympics, Pan-American Games, or Paralympics athletes who haven't met the eligibility criteria of the USOC and appropriate NGB, even if not sending those athletes will result in an incomplete team. The amendments allow NGBs to establish criteria on a sport-by-sport basis for the ''active athletes'' that must comprise at least 20 percent of their boards of directors and other governing boards. Under the amendments, the USOC, AAC, and NGB Council will set guidelines, but an NGB will be able to seek exceptions to the guidelines from the USOC. Section 142 includes improved notification and hearing requirements by the USOC when an NGB is being challenged to be replaced or being put on probation.

Trademark—The amendment gives USOC trademark protection for the Pan-American Games, Paralympics, and symbols associated with each. As passed, it does not grandfather entities which have previously used these words or symbols. However, the USOC is directed not to pursue any actions against entities which already used such words or symbols on the date of the enactment of section 142 until Congress has the opportunity to legislatively address this matter. Section 142 also includes a provision to minimize the effects of the trademark protections in the Olympic and Amateur Sports Act on certain businesses in Washington State.

Special Report—The amendments in section 142 require the USOC to submit a report to Congress at the end of five years on the implementation of the provisions of section 142 and any additional changes the USOC believes are needed to the Olympic and Amateur Sports Act.

THE AMERICAN FISHERIES ACT

Mr. STEVENS. Mr. President, we've reached agreement to include the American Fisheries Act in the legislation being passed today (as title II of division C of the bill). This Act will not only complete the process begun in 1976 to give U.S. interests a priority in the harvest of U.S. fishery resources, but will also significantly decapitalize the Bering Sea pollock fishery.

The Bering Sea pollock fishery is the nation's largest, and its present state of overcapacity is the result of mistakes in, and misinterpretations of, the 1987 Commercial Fishing Industry Vessel Anti-Reflagging Act (the ''Anti-Reflagging Act''). In 1986, as the last of the foreign-flag fishing vessels in U.S. fisheries were being replaced by U.S.-flag vessels, we discovered that federal law did not prevent U.S. flag vessels from being entirely owned by foreign interests. We also discovered that federal law did not require U.S. fishing vessels to carry U.S. crew members, and that U.S. fishing vessels could essentially be built in foreign shipyards under the existing regulatory definition of ''rebuild.'' The goals of the 1987 Anti-Reflagging Act therefore were to: (1) require the U.S.-control of fishing vessels that fly the U.S. flag; (2) stop the foreign construction of U.S. flag vessels under the ''rebuild'' loophole; and (3) require U.S.-flag fishing vessels to carry U.S. crews.

Of these three goals, only the U.S. crew requirement was achieved. The Anti-Reflagging Act did not stop foreign interests from owning and controlling U.S. flag fishing vessels. In fact, about 30,000 of the 33,000 existing U.S.-flag fishing vessels are not subject to any U.S. controlling interest requirement. The Anti-Reflagging Act also failed to stop the massive foreign shipbuilding programs between 1987 and 1990 that brought almost 20 of the largest fishing vessels ever built into our fisheries as ''rebuilds.'' Today, half of the nation's largest fishery—Bering Sea pollock—continues to be harvested by foreign interests on foreign-built vessels that are not subject to any U.S.-controlling interest standard.

On September 25, 1997, I introduced the American Fisheries Act (S. 1221) to fix these mistakes. Senators from almost every fishing region of the country joined me in support of this effort, including Senator BREAUX, Senator HOLLINGS, Senator GREGG, Senator WYDEN, and Senator MURKOWSKI. As introduced, the bill had three primary objectives: (1) require the owners of all U.S.-flag fishing vessels to comply with a 75 percent U.S.-controlling interest standard (similar to the standard for other commercial U.S.-flag vessels that operate in U.S. waters); (2) remove from U.S. fisheries at least half of the foreign-built factory trawlers that entered the fisheries through the Anti-Reflagging Act foreign rebuild grandfather loophole and that continued to be foreign-owned on September 25, 1997; and (3) prohibit the entry of any new fishing vessels above 165 feet, 750 tons, or with engines that produce greater than 3,000 horsepower.

I am pleased to report that the package we are approving today accomplishes all three of the main objectives of S. 1221 as introduced.

I wish to thank Senator GORTON for his tremendous effort in this. For almost a decade now, he and I have had various disagreements about the Bering Sea pollock fishery and issues relating to the Anti-Reflagging Act. At the Commerce Committee hearing in March, and later, at an Appropriations Committee markup in July, Senator GORTON plainly expressed his concerns with S. 1221. In August, however, he spent considerable time with representatives from the Bering Sea pollock fishery and by sheer will managed to develop a framework upon which we could both agree. After he presented the framework to me, we convened meetings in September that went around the clock for five days. Those meetings included Bering Sea pollock fishery industry representatives, industry representatives from other North Pacific fisheries, the State of Alaska, North Pacific Council members, the National Marine Fisheries, the Coast Guard, the Maritime Administration, environmental representatives, and staff for various members of Congress and the Senate and House committees of jurisdiction.

At the end of those meetings, a consensus had been achieved among Bering Sea fishing representatives on an agreement to reduce capacity in the Bering Sea pollock fishery. For the next three weeks, we drafted the legislation to give effect to the agreement, and spent considerable time with the fishing industry from other fisheries who were concerned about the possible impacts of the changes in the Bering Sea pollock fishery. The legislation we are passing today includes many safeguards for other fisheries and the participants in those fisheries. By delaying implementation of some measures until January 1, 2000, it also provides the North Pacific Council and Secretary with sufficient time to develop safeguards for other fisheries.

This legislation is unprecedented in the 23 years since the enactment of the Magnuson-Stevens Act. With the council system, Congressional action of this type is not needed in the federal fisheries anymore. However, the mistakes in the Anti-Reflagging Act and the way it was interpreted created unique problems in the Bering Sea pollock fishery that only Congress can fix. The North Pacific Council simply does not have the authority to turn back the clock

by removing fishery endorsements, to provide the funds required under the Federal Credit Reform Act to allow for the $75 million loan to remove capacity, to strengthen the U.S.-control requirements for fishing vessels, to restrict federal loans on large fishing vessels, or to do many other things in this legislation.

While S.1221 as introduced was more modest in scope, I believe the measures in this agreement are fully justified as a one-time corrective measure for the negative effects of Anti-Reflagging Act.

I ask unanimous consent that the section-by-section analysis I have prepared be printed in the RECORD.

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

SECTION-BY-SECTION SUMMARY

DIVISION A

Section 120.—Appropriation

Section 120 appropriates a total of $30 million for the American Fisheries Act and other purposes. Specifically, it provides: (1) $20 million for the federal contribution to the reduction of capacity in the Bering Sea/Aleutian Islands (BSAI) pollock fishery; (2) $750,000 for the cost under the Federal Credit Reform Act of providing a $75 million loan to the fishing industry for the reduction of capacity in the BSAI pollock fishery; (3) $250,000 for the cost under the Federal Credit Reform Act of providing loans totaling $25 million to communities that participate in the western Alaska community development quota program to enable those communities to increase their participation in BSAI and other North Pacific fisheries; (4) $1,000,000 for the cost under the Federal Credit Reform Act of providing a loan of up to $100 million to the BSAI crab industry if a fishing capacity reduction program is implemented in that fishery under section 312(b) of the Magnuson-Stevens Act; (5) $6 million to the Secretary of Commerce for the costs of implementing subtitle II of the American Fisheries Act; and (6) $2 million to the Secretary of Transportation, primarily to the Maritime Administration for the costs of implementing subtitle I.

DIVISION C—TITLE II

SUBTITLE I—FISHERY ENDORSEMENTS

Section 201.—Short Title

This section establishes the title of the legislation as the ''American Fisheries Act.'' The provisions of title II of division C draw substantially from S. 1221 (also called the American Fisheries Act), which was introduced on September 25, 1997, and cosponsored by Senators Breaux, Murkowski, Hollings, Wyden, and Gregg. A hearing to review S. 1221 was held by the Senate Commerce Committee on March 26, 1998, and a related hearing was held by the House Resources Committee on June 4, 1998.

Section 202.—Standard for Fishery Endorsements

Subsection (a) of section 202 amends section 12102(c) of title 46, United States Code to require at least 75 percent of the interest in entities that own U.S.-flag vessels in the fishing industry (including fishing vessels, fish tender vessels and floating processors) to be owned and controlled by citizens of the United States. U.S.-flag vessels in the fishing industry that are owned by individuals must be owned by a citizen of the United States under the requirement of section 12102(a)(1) of title 46, which allows only an individual who is a citizen of the United States to own a vessel that is eligible for documentation. Section 12102(c) of title 46, as amended by subsection (a), would require section 2(c) of the Shipping Act, 1916 to be applied in determining whether an entity meets the 75 percent requirement. Section 2(c) of the Shipping Act, 1916 states the following:

''Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever [emphasis added] control of any interest in the corporation in excess of 25 per centum is confered upon or permitted to be exercised by any person who is not a citizen of the United States.''

The application of section 2(c) is intended to ensure that vessels with a fishery endorsement are truly controlled by citizens of the United States. The amendments made by subsection (a) make clear that the term 'corporation' as used in section 2(c) of the Shipping Act, 1916 means a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity for the purposes of applying section 2(c) to section 12102(c) of title 46, United States Code.

Subsection (a) also amends section 12102(c) (by adding a new paragraph (2)) to statutorily prohibit some of the types of control which are impermissible under the standard. A new paragraph (3) would prohibit vessels with a fishery endorsement from being leased to a non-citizen of the United States for use as a fishing vessel (to harvest fish) even if the control requirements are satisfied. A new paragraph (4) would allow a person not eligible to own a vessel with a fishery endorsement to nevertheless have an interest greater than 25 percent in the vessel, if the interest is secured by a mortgage to a trustee who is eligible to own a vessel with a fishery endorsement and who complies with specific requirements in the law and other requirements prescribed by the Secretary, and if the arrangement does not violate the 75 percent control requirements.

Subsection (a) amends section 12102(c) with a new paragraph (paragraph (5)) that would exempt the following vessels from the 75 percent standard, provided the owners of the vessels continue to comply with the fishery endorsement law in effect on October 1, 1998: (1) vessels engaged in fisheries under the authority of the Western Pacific Fishery Management Council; and (2) purse seine vessels engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone or pursuant to the South Pacific Regional Fisheries Treaty. Fishery endorsements issued by the Secretary for these vessels would be valid only in those specific fisheries and the vessels would not be eligible to receive a fishery endorsement to participate in other fisheries unless the owner complied with the 75 percent standard.

Paragraph (6) of section 12102(c), as amended by subsection (a), would prevent new large fishing vessels from entering U.S. fisheries, including former U.S.-flag fishing vessels that have reflagged in recent years to fish in waters outside the U.S. exclusive economic zone. Specifically, it would prohibit the issuance of fishery endorsements to vessels greater than 165 feet in registered length, of more than 750 gross registered tons, or that have an engine or engines capable of producing a total of more than 3,000 shaft horsepower unless: (1) the vessel had a valid fishery endorsement on September 25, 1997 (the day that S. 1221 was introduced), is not placed under foreign registry after the date of the enactment of the American Fisheries Act, and, if the vessel's fishery endorsement is allowed to lapse or is invalidated after the date of the enactment of the American Fisheries Act, an application for a new fishery endorsement is submitted to the Secretary within 15 business days; or (2) the owner of the vessel demonstrates to the Secretary that a regional fishery management council has recommended and the Secretary of Commerce has approved specific measures after the date of the enactment of the American Fisheries Act to allow the vessel to be used in fisheries under that council's authority. The regional councils have the authority and are encouraged to submit for approval to the Secretary of Commerce measures to prohibit vessels that receive a fishery endorsement under section 12102(c)(6) from receiving any permit that would allow the vessel to participate in fisheries under their authority, so that a vessel cannot receive a fishery endorsement through measures recommended by one council, then enter the fisheries under the authority of another Council.

Subsection (b) amends section 31322(a) of title 46, United States Code, to require that a preferred mortgage with respect to a vessel with a fishery endorsement have as a mortgagee only: (1) a person that meets the 75 percent U.S.-controlling interest requirement; (2) a state- or federally-chartered financial institution that meets a majority (more than 50 percent) U.S.-controlling interest requirement; or (3) a person using a trustee under the authority of, and in compliance with, section 12102(c)(4) of title 46, as amended by this Act.

Section 203—Enforcement of Standard

Subsection (a) of section 203 specifies that amendments in section 202 take effect on October 1, 2001, roughly three years from the date of the expected enactment of the American Fisheries Act. As introduced, S. 1221 would have required compliance with the new standard 18 months after enactment. The extended implementation period is intended to provide additional time for the fishing industry to prepare for the new requirements, as well as time for the Secretary of Transportation to prepare to carry out the requirements.

Subsection (b) requires final regulations to implement subtitle I to be published in the Federal Register by April 1, 2000, 18 months before the new requirements go into effect, and requires that the regulations specifically identify: (1) impermissible transfers of ownership or control; (2) transactions that will require prior agency approval; and (3) transactions that will not require prior agency approval. Subsection (b) prohibits the Secretary of Transportation from issuing any letter rulings before publishing the final regulations. It is the intent of Congress that there be a full opportunity for the public to comment on the regulations implementing the new requirements before any decisions are made with respect to specific vessels or vessel owners. During the implementation of the 1987 Anti-Reflagging Act, numerous letter rulings were issued by the Coast Guard prior to the publication of final regulations to implement the U.S.-control requirements, which limited the Coast Guard's ability to address valid concerns about the regulations. The implementation process set out in subsection (b) will provide an 18 month period for the Secretary of Transportation to promulgate regulations and fully review public

comments, followed by an 18 month period in which the fishing industry can obtain letter rulings before the new requirements take effect to avoid disruptions where possible. This framework allows time for the Secretary of Transportation to consult with Congress if the Secretary has concerns about Congressional intent or identifies any technical or other amendments needed to give full effect to the American Fisheries Act.

Subsection (c) requires the Maritime Administration (MarAd), rather than the Coast Guard, to administer the new U.S.-ownership and control requirements for vessels 100 feet in registered length and greater. MarAd will use a more thorough process than has been used in the past to ensure compliance with the new requirements. The process will be based on the process for federal loan guarantees and subsidies. The owners of vessels 100 feet and greater will be required to file an annual statement to demonstrate compliance with section 12102(c), based on an existing citizenship affidavit required to be filed under certain MarAd regulations. Paragraph (2) of subsection (c) directs MarAd to rigorously scrutinize transfers of ownership and control of vessels, and identifies specific areas in which MarAd should pay particular attention.

Subsection (d) directs the Secretary of Transportation to establish the requirements for the owners of vessels less than 100 feet to demonstrate compliance with the new requirements, and allows the Secretary to decide whether the Coast Guard or MarAd should be the implementing agency. Subsection (d) further directs the Secretary to minimize the administrative burden on individuals who own and operate vessels that measure less than 100 feet.

Subsection (e) directs the Secretary of Transportation to revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46 whose owner does not meet the 75-percent ownership and control requirement or otherwise fails to comply with that section.

Subsection (f) increases the penalties for fishery endorsement violations. Specifically, it would make the owner of a vessel with a fishery endorsement liable for a civil penalty of up to $100,000 for each day the vessel is engaged in fishing if the owner has knowingly falsified or concealed a material fact or knowingly made a false statement or representation when applying for or renewing a fishery endorsement. This increased penalty is intended to discourage willful noncompliance with the new requirements.

Subsection (g) provides limited exemptions from the new U.S.-control and ownership requirements in section 12102(c) of title 46 for the owners of five vessels (the EXCELLENCE, GOLDEN ALASKA, OCEAN PHOENIX, NORTHERN TRAVELER, and NORTHERN VOYAGER) under certain conditions. It exempts the owners after October 1, 2001 only until more than 50 percent of the interest owned and controlled in the entity that owns the vessel changes. The exemption applies only to the present owners, and the subsection not only requires all subsequent owners to comply the 75 percent standard, but requires even the present owners to comply if more than 50 percent of the interest owned and controlled in that owner changes after October 1, 2001. The exemption also automatically terminates with respect to the NORTHERN TRAVELER or NORTHERN VOYAGER if the vessel is used in a fishery other than under the jurisdiction of the New England or Mid-Atlantic fishery management councils, and automatically terminates with respect to the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX if the vessel is used to harvest fish.

Section 204—Repeal of Ownership Savings Clause

Section 204 would repeal the U.S.-ownership and control grandfather provision of the 1987 Anti-Reflagging Act, which was interpreted by the Coast Guard (and later upheld by the U.S. Court of Appeals for the D.C. Circuit, see 298 U.S. App. D.C. 331) to ''run with the vessel,'' thereby exempting about 90 percent of the U.S.-flag fishing industry vessels in existence today from any U.S.-ownership and control requirements. The American Fisheries Act and provisions of section 204 require that the owners of all vessels comply with the new U.S.-ownership and control requirements when those requirements take effect on October 1, 2001 (except as provided in section 12102(c)(5) of title 46, as amended by the American Fisheries Act (Hawaii exemption), and in section 203(g) of the American Fisheries Act (five specific vessels)).

SUBTITLE II—BERING SEA POLLOCK FISHERY

Section 205—Definitions

Section 205 provides definitions for the following terms used in subtitle II: (1) Bering Sea and Aleutian Islands Management Area; (2) catcher/processor; (3) catcher vessel; (4) directed pollock fishery; (5) harvest; (6) inshore component; (7) Magnuson-Stevens Act; (8) mothership; (9) North Pacific Council; (10) offshore component; (11) Secretary; and (12) shoreside processor.

Section 206—Allocations

Section 206 establishes new allocations in the pollock fishery in the BSAI beginning in 1999. Subsection (a) requires 10 percent of the total allowable catch of pollock to be allocated as a directed fishing allowance to the western Alaska community development quota program. Subsection (b) requires an additional amount from the total allowable catch to be allocated for the incidental catch of pollock in other groundfish fisheries (including the portion of those fisheries harvested under the western Alaska CDQ program). Of the remainder, subsection (b) requires 50 percent to be allocated as a directed fishing allowance for catcher vessels that deliver to shoreside processors, 40 percent to be allocated as a directed fishing allowance for catcher/processors and catcher vessels that deliver to catcher/processors, and 10 percent to be allocated as a directed fishing allowance for catcher vessels that deliver to motherships. Section 206 clarifies that the 10 percent of pollock allocated to the western Alaska CDQ program is allocated as a target species, consistent with the present method of allocation and with Congressional intent with the respect to the target species allocations required under section 305(i) of the Magnuson-Stevens Act for the western Alaska CDQ program. The section is intended to ensure the continuation of the present system under which the bycatch in the pollock CDQ fishery and the bycatch in the non-pollock groundfish CDQ fisheries are not counted against the CDQ allocations.

Section 207—Buyout

Subsection (a) directs the Secretary of Commerce, using special authority added in 1996 to the title XI loan program, to provide a loan of $75 million to the shoreside processors and catcher vessels that deliver to the shoreside processors to remove fishing capacity from the BSAI pollock fishery. Subsection (b) sets out the terms for the repayment of the loan, requiring the shoreside processors and catcher vessels that deliver to those processors to pay on an equal basis sixtenths (0.6) of one cent per pound of pollock beginning in the year 2000 and continuing until the loan is fully repaid (probably for around 25 years). Subsection (c) authorizes appropriations of an additional $20 million for the removal of fishing capacity from the BSAI pollock fishery, for a total of $95 million.

Subsection (d) establishes the payment formula for the removal of fishing capacity. Paragraph (1) of subsection (d) requires $90 million to be paid by the Secretary to the owners of the nine catcher/processors (also called factory trawlers) listed in section 209, subject to the conditions that one of the vessels (the AMERICAN EMPRESS) not be used outside of the U.S. exclusive economic zone (EEZ) to harvest stocks that occur within the U.S. EEZ, and that eight of the vessels be scrapped by December 31, 2000. Paragraph (2) of subsection (d) requires the payment of $5 million to either the owners of certain catcher/processors listed in section 208(e), or to owners of catcher vessels eligible under section 208(b) and the 20 catcher/processors eligible under section 208(e), depending on whether or not a contract to implement a fishery cooperative has been filed by December 31, 1998. These payments totaling $95 million are for the removal of fishing capacity only, and are in no way intended as compensation for any allocation adjustments, nor should they be construed to create any right of compensation for any allocation adjustments or any right, title, or interest in or to any fish in any fishery. Subsection (d) authorizes the Secretary of Commerce to reduce the payments by any amount owed to the federal government which has not been satisfied by the owners of the vessels.

Subsection (e) allows the Secretary to suspend any or all of the federal fishing permits held by the owners who receive payments under subsection (d) if the vessel identified in paragraph (1) of section 209 is used outside of the U.S. exclusive economic zone (EEZ) to harvest stocks that occur within the U.S. EEZ, or if the other eight catcher/processors identified in section 209 are not scrapped by December 31, 2000.

Subsection (f) allows the repayment period for the $75 million loan to the shoreside processors and catcher vessels that deliver to the shoreside processors to be paid back over as many as 30 years. The general authority for fishing capacity reduction loans under the title XI program allows a repayment period of only up to 20 years.

Subsection (g) directs the Secretary of Commerce to publish proposed regulations to implement the fishing capacity reduction program under title XI and under the Magnuson-Stevens Act by October 15, 1998. This program was enacted on October 11, 1996 as part of the Sustainable Fisheries Act (P.L. 104–297), yet the proposed regulations to implement the program have not yet been published for review. Subsection (g) is intended to bring about the expeditious publication of the proposed regulations.

Section 208—Eligible Vessels and Processors

Subsection (a) of section 208 establishes the criteria for the catcher vessels that, beginning on January 1, 2000, will be eligible to harvest the pollock allocated under section 206(b)(1) for processing by the inshore component. To be eligible a vessel must: (1) have delivered at least 250 metric tons of pollock in the BSAI directed pollock fishery (or at least 40 metric tons if the vessel is less than 60 feet in length overall) to the inshore component in one of 1996 or 1997, or before September 1, 1998; (2) be eligible for a license under the license limitation program; and (3) not be eligible under subsection (b) to deliver pollock to catcher/processors. Any vessel which cannot meet these criteria will be ineligible as of January 1, 2000 to harvest the pollock allocated for processing by the inshore component.

Subsection (b) lists the particular catcher vessels and establishes criteria for other

catcher vessels that, beginning on January 1, 1999, will be eligible to harvest pollock allocated under section 206(b)(2) for processing by catcher/processors. In addition to the seven listed vessels, any catcher vessel which (1) delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the BSAI directed pollock fishery to catcher processors in 1997, and (2) is eligible for a license under the license limitation program, will also be eligible as of January 1, 1999 to harvest pollock allocated for processing by catcher/processors. Any vessel which is not listed or cannot meet these criteria will be ineligible as of January 1, 1999 to harvest the pollock allocated for processing by catcher/processors.

Subsection (c) lists the particular catcher vessels and establishes criteria for other catcher vessels that, beginning on January 1, 2000, will be eligible to harvest pollock allocated under section 206(b)(3) for processing by motherships. In addition to the twenty listed vessels, any catcher vessel which (1) delivered at least 250 metric tons of pollock from the BSAI directed pollock fishery to motherships in one of 1996 or 1997, or before September 1, 1998, (2) is eligible for a license under the license limitation program, and (3) is not eligible under subsection (b) to deliver pollock to catcher/processors, will also be eligible as of January 1, 2000 to harvest pollock allocated for processing by motherships. Any vessel which is not listed or cannot meet these criteria will be ineligible as of January 1, 2000 to harvest the pollock allocated for processing by motherships.

Subsection (d) lists the three motherships that will be eligible beginning on January 1, 2000 to process the pollock allocated under section 206(b)(3). Any vessel which is not listed will be ineligible as of January 1, 2000 to process the pollock allocated for processing by motherships in the BSAI directed pollock fishery.

Subsection (e) lists the particular catcher/processors that, beginning on January 1, 2000, will be eligible to harvest pollock allocated under section 206(b)(2) for processing by catcher/processors. In addition to the twenty vessels listed, under paragraph (21) of subsection (e), any catcher/processor which harvested more than 2,000 metric tons of pollock in the BSAI directed pollock fishery in 1997, and is eligible for a license under the license limitation program, will be eligible to harvest a small portion of the pollock allocated under section 206(b)(2). The vessel or vessels eligible under paragraph (21) are prohibited from harvesting more than one-half percent in the aggregate of the pollock allocated under subsection 206(b)(2). This provision is intended to allow a small number of catcher/processors (perhaps as few as one) to continue to harvest the relatively small amount of pollock they harvested in the past while relying primarily on other fisheries. The last sentence of subsection (e) would allow the catcher/processors listed in paragraphs (1) through (20) to continue to be eligible for a fishery endorsement even if it is ultimately determined that the vessel did not satisfy the foreign rebuild grandfather provisions of the 1987 Anti-Reflagging Act—provided that the owner of the vessel complies with all other requirements for a fishery endorsement. The removal of nine catcher/processors in section 209 is intended to address the overcapacity concerns that resulted from the entry under the Anti-Reflagging Act of foreign built vessels contrary to Congressional intent.

Subsection (f) establishes the criteria for shoreside processors to which the catcher vessels eligible under section 208(a) may deliver pollock from the BSAI directed pollock fishery beginning on January 1, 2000. To be eligible, a shoreside processor (which may include moored vessels) must have processed more than 2,000 metric tons of pollock in the inshore component of the BSAI directed pollock fishery during each of 1996 and 1997. Any shoreside processor that processed pollock in the inshore component in 1996 or 1997, but processed less than 2,000 metric tons, would be allowed under paragraph (1)(B) to continue processing up to 2,000 metric tons per year after January 1, 2000. Paragraph (2) of subsection (f) would allow the North Pacific Council to recommend (and the Secretary to approve) the entry of additional shoreside processors to process the allocation under section 206(b)(1) if the total allowable catch for pollock increases by more than 10 percent above the 1997 total allowable catch, or if any of the shoreside processors eligible to process more than 2,000 metric tons is lost.

Subsection (g) establishes requirements for the replacement of any of the vessels eligible to harvest pollock under section 208 if the vessel is lost by an event other than the willful misconduct of the owner or agent of the owner.

Subsection (h) allows vessels and shoreside processors for which an application for eligibility under section 208 has been filed to be allowed to participate in the BSAI directed pollock fishery until the Secretary of Commerce can make a final determination about the eligible of the vessel or shoreside processor. This subsection is intended to minimize disruptions in the event the Secretary is unable to complete determinations for all vessels and processors prior to the effective dates of the eligible criteria.

Subsection (i) clarifies that eligibility under section 208 does not confer any right of compensation if the eligibility is subsequently revoked or limited, does not create any right to any fish in any fishery, and does not waive any provision of law otherwise applicable to an eligible vessel or shoreside processor. Section 208 simply prevents the participation of vessels and shoreside processors not listed or that do not meet the eligibility criteria, and ineligible vessels and shoreside processors similarly have no right of compensation or right to any fish of any kind.

Section 209—List of Ineligible Vessels

Section 209 identifies nine catcher/processors that, effective December 31, 1998, are permanently ineligible for fishery endorsements. Section 209 also extinguishes all claims associated with the vessels that could qualify the owners of the vessels for any limited access system permit.

Section 210—Fishery Cooperative Limitations

Subsection (a) of section 210 requires all contracts implementing a fishery cooperative in the BSAI directed pollock fishery and all material modifications to those contracts to be filed with the North Pacific Council and Secretary of Commerce, and requires information about the contracts to be made available to the public. With the limitations in section 208 on further entry into the BSAI directed pollock fishery, the American Fisheries Act increases the likelihood that fishery cooperatives will be formed under the 1934 Act (15 U.S.C. 521 et seq.) that allows fishermen to ''act together . . . in collectively catching, producing, preparing for market, processing, handling, and marketing'' fish and fish products without being subject to federal anti-trust laws. The 1934 Act does not require the public disclosure of the details from contracts implementing fishery cooperatives, nor does it include many of the other restrictions and limitations in section 210 that would apply to fishery cooperatives in the BSAI directed pollock fishery. Subsection (a) will require at a minimum the public disclosure of the parties to the contract, the vessels involved, the amount of fish each vessel is expected to harvest, and, after the fishing season, the amount of fish (including bycatch) each vessel actually harvested. In addition, the North Pacific Council and Secretary may require other information that they deem appropriate from participants in a fishery cooperative for public disclosure.

Subsection (b) allows the catcher vessels that deliver pollock to shoreside processors to form fishery cooperatives with fewer than the whole class of vessels eligible under section 208(a) so that they will be able to compete in the event that fishery cooperatives are formed in the other BSAI directed pollock fishery sectors which have fewer vessels. Paragraph (1) requires the Secretary to establish a separate allocation within the allocation under section 206(b)(1) if at least 80 percent of the catcher vessels that delivered most of their pollock in the previous year to a shoreside processor decide to form a fishery cooperative to deliver pollock to that shoreside processor and that processor has agreed to process the pollock. The allocation for those vessels would be equal to the average percentage those vessels caught in the aggregate in 1995, 1996, and 1997. If a fishery cooperative is formed, other catcher vessels that delivered most of the their catch to that shoreside processor would be required to be allowed to join the fishery cooperative under the same terms and conditions as other participants at any time before the calendar year in which fishing under the cooperative will begin. Vessels which participate in a fishery cooperative will not be allowed to harvest any of the pollock that remains in the ''open access'' portion of the allocation under section 206(b)(1). The ''open access'' portion will be equal to the average percentage that the vessels which do not elect to participate in fishery cooperatives caught in the aggregate in 1995, 1996, and 1997. The vessels eligible to harvest pollock allocated for processing by shoreside processors would continue to have the authority to form a fishery cooperative on a class-wide basis as well.

Subsection (c) requires at least 8.5 percent of the pollock allocated under section 206(b)(2) for processing by catcher/processors to be available for harvesting by the catcher vessels eligible under section 208(b). This requirement will help ensure that the traditional harvest of those catcher vessels will not be reduced. The catcher vessels may participate in a fishery cooperative with the 20 catcher/processors eligible under section 208(e), but may participate during 1999 only if the contract implementing the fishery cooperative includes penalties to prevent the catcher vessels from exceeding their traditional harvest levels in other fisheries. Under a fishery cooperative, vessel owners have more control over the time during which they will fish, and without these provisions in 1999, the catcher vessels could target other fisheries during the time they would traditionally be participating in the BSAI directed pollock fishery. By the year 2000, the North Pacific Council will have been able to recommend (and the Secretary to approve) any measures needed to protect other fisheries.

Subsection (d) extends the 1934 fishery cooperative authority to motherships for purposes of processing pollock if 80 percent of the catcher vessels eligible to harvest the pollock allocated for processing by motherships decide to form a fishery cooperative. The possible extension of this authority would not begin until January 1, 2000, and would remain in effect only for the duration of the contract implementing the fishery cooperative. If a fishery cooperative is formed, other catcher vessels eligible to harvest the pollock allocated for processing by

motherships would be required to be allowed to join the fishery cooperative under the same terms and conditions as other participants at any time before the calendar year in which fishing under the cooperative will begin.

Subsection (e) prohibits any individual or any single entity from harvesting more than 17.5 percent of the pollock in the BSAI directed pollock fishery to ensure competion. Presently in that fishery, a single entity in that fishery harvests close to 30 percent of the pollock in the BSAI directed pollock fishery. In addition, paragraph (2) of subsection (e) directs the North Pacific Council to establish an excessive share cap for the processing of pollock in the BSAI directed pollock fishery. Paragraph (3) requires any individual or entity believed by the North Pacific Council or Secretary to have exceeded the harvesting or processing caps to submit information to MarAd, and requires MarAd make a determination as soon as possible. If an individual or entity owns 10 percent or more of another entity, they will be considered to be the same entity as that other entity for the purposes of the harvesting and processing caps.

Subsection (f) requires contracts that implement fishery cooperatives in the BSAI directed pollock fishery to include clauses under which the participants will pay landing taxes established under Alaska law for pollock that is not landed in the State of Alaska. The failure to include the clause or to pay the landing taxes results in the permanent revocation of the authority to form fishery cooperatives under the 1934 Act for the parties to the contract implement the fishery cooperative and the vessels involved in the fishery cooperative.

Subsection (g) specifies that the violation of any of the provisions of section 210 (fishery cooperative limitations) or section 211 (protections for other fisheries and conservation measures) constitutes a violation of the prohibited acts section of the Magnuson-Stevens Act and is subject to the civil penalties and permit sanctions under section 308 of the Magnuson-Stevens Act. In addition, subsection (g) specifies that any person found to have violated either of section 210 or 211 is subject to the forfeiture of any fish harvested or processed during the commission of the violation.

Section 211—Protections for Other Fisheries; Conservation Measures

Subsection (a) of section 211 directs the North Pacific Council to submit measures for the consideration and approval of the Secretary of Commerce to protect other fisheries under its authority and the participants in those fisheries from adverse impacts caused by the subtitle II of the American Fisheries Act or by fishery cooperatives in the BSAI directed pollock fishery. The Congress intends for the North Pacific Council to consider particularly any potential adverse effects on fishermen in other fisheries resulting from increased competition in those fisheries from vessels eligible to fish in the BSAI directed pollock fishery or in fisheries resulting from any decreased competition among processors.

Subsection (b) includes specific measures to restrict the participation in other fisheries of the catcher/processors eligible to participate in the BSAI directed pollock fishery (other than the vessel or vessels eligible under paragraph (21) of section 208(e)). While these types of limitations are appropriately for the North Pacific Council to develop, the catcher/processors eligible under section 208(e) may form a fishery cooperative for 1999 before the North Pacific Council can recommend (and the Secretary approve) necessary limitations. The restrictions in subsection (b) would therefore take effect on January 1, 1999 and remain in effect thereafter unless the North Pacific Council recommends and the Secretary approves measures that supercede the restrictions. Subparagraphs (A) and (B) of paragraph (2) prohibit the catcher/processors eligible to participate in the BSAI directed pollock fishery from exceeding the aggregate amounts of targeted species and bycatch in other fisheries that catcher/processors from the BSAI directed pollock fishery caught on average in 1995, 1996, and 1997. Subparagraph (C) prohibits those catcher/processors from fishing for Atka mackerel in the eastern area of the BSAI or from exceeding specific percentages in the central area or western area. The limitations in subparagraphs (A), (B), and (C) do not ensure that the BSAI pollock-eligible catcher/processors will be able to harvest any amount of fish, they simply establish additional caps after which those catcher/processors, as a class, will be prohibited from further fishing.

Paragraph (3) of section 211(b) prohibits the catcher/processors eligible to participate in the BSAI directed pollock fishery from processing any of the pollock allocated for processing by motherships or shoreside processors in the BSAI directed pollock fishery and from processing any species of crab harvested in the BSAI. Paragraph (4) prohibits the BSAI pollock-eligible catcher/processors from harvesting any fish in the Gulf of Alaska, from processing any groundfish harvested in area 630 of the Gulf of Alaska, from processing any pollock in the Gulf of Alaska other than as bycatch, and from processing in the aggregate a total of more than 10 percent of the cod harvested in areas 610, 620, and 640 of the Gulf of Alaska. Paragraph (5) prohibits BSAI-eligible catcher/processors and motherships from harvesting or processing fish in any fishery under the authority of another regional fishery management council unless the council authorizes their participation, with the exception of the Pacific whiting fishery under the Pacific Council's authority, where the catcher/processors and motherships are already participating.

Paragraph (6) of section 211(b) requires the BSAI pollock eligible catcher/processors to carry two observers on board and to install scales on board and weigh all fish harvested by the vessel while participating in pollock and other groundfish fisheries under the North Pacific Council's authority. The requirements of paragraph (6) take effect in 1999 for catcher/processors that will harvest pollock allocated to the western Alaska community development quota program, and in 2000 for the other BSAI pollock-eligible catcher/processors.

Subsection (c) of section 211 requires the North Pacific Council to submit measures by July 1, 1999 to prevent the expanded participation of BSAI pollock-eligible catcher vessels in other fisheries as a result of BSAI pollock fishery cooperatives and to protect processors in other fisheries from any adverse effects caused by subtitle II of the American Fisheries or by BSAI pollock fishery cooperatives. Paragraph (1) of subsection (c) allows the Secretary to restrict or change the BSAI pollock fishery cooperative authority for catcher vessels delivering to shoreside processors (including by allowing those vessels to deliver to shoreside processors other than those which are BSAI pollock-eligible) if the North Pacific Council does not recommend measures by July 1, 1999 or if the Secretary determines that those measures are not adequate.

Paragraph (2)(A) prohibits the BSAI pollock-eligible motherships and shoreside processors from processing in the aggregate more crab in fisheries under the North Pacific Council's authority than the percentage of crab those motherships and shoreside processed in the fishery in the aggregate and on average in 1995, 1996, and 1997. The intent of paragraph (2) is to protect processors that are not BSAI pollock-eligible from increased competition from the shoreside processors who may have a financial advantage as a result of the increased pollock allocation under the American Fisheries Act or by receiving pollock under a fishery cooperative. Paragraph (2)(B) directs the North Pacific Council to establish excessive share harvesting and processing caps in the BSAI crab and non-pollock groundfish fisheries for similar purposes.

Paragraph (3) of subsection (c) directs the Pacific Council to submit any measures that may be necessary to protect fisheries under its authority by July 1, 2000 and allows the Secretary of Commerce to implement measures if the Pacific Council does not submit measures or if the measures submitted are determined by the Secretary to be inadequate.

Subsection (d) give the North Pacific Council the authority with approval of the Secretary to publically disclose information on a vessel-by-vessel basis from any of the groundfish fisheries under the Council's authority that may be useful in carrying out the requirements of the Magnuson-Stevens Act which require the avoidance of bycatch. The North Pacific Council is directed to use this new authority to the maximum extent necessary to fully implement the bycatch measures added to the Magnuson-Stevens Act by the 1996 Sustainable Fisheries Act.

Subsection (e) creates a special federal loan program within the existing title XI loan program to allow communities eligible to participate in the western Alaska community development quota program to increase their participation in the Bering Sea pollock fishery by purchasing all or part of an ownership interest in vessels and shoreside processors.

Section 212—Restriction on Federal Loans

Section 212 amends the title XI loan program to prohibit federal loans for the construction or rebuilding of vessels that will be used to harvest fish and that are greater than 165 feet, of more than 750 tons, or that have an engine or engines capable of producing a total of more than 3,000 shaft horsepower. The prohibition does not apply to vessels to be used only in the menhaden fishery or a tuna purse seine fishery outside the U.S. EEZ or in the area of the South Pacific Regional Fisheries Treaty.

Section 213—Duration

Subsection (a) of section 213 explains that the provisions of the American Fisheries Act take effect upon its enactment, except where other effective dates are specified. The allocations in section 206, BSAI pollock eligibility criteria/lists of vessels in section 208, and fishery cooperative limitations in section 210 remain in effect only until December 31, 2004, and are repealed on that date except to the extent the North Pacific Council has recommended, and the Secretary has approved measures to give effect to those sections thereafter.

Subsection (b) clarifies that except as specifically provided, none of the provisions in subtitle II of the American Fisheries Act limit the authority of the North Pacific Council or the Secretary of Commerce under the Magnuson-Stevens Act. Subsection (c) sets out specific circumstances under which the North Pacific Council may submit measures to supersede provisions of subtitle II. The Council may submit measures to supersede any of the provisions of subtitle II, with the exception of the provisions of section 206 (BSAI pollock allocations) and section 208 (eligibility criteria/vessels), for conservation

purposes, to mitigate adverse effects in other fisheries or in the BSAI pollock fishery, or to mitigate adverse effects on the participants in the BSAI directed pollock fishery that only own only one or two vessels. If the Council does submit such measures, the measures must take into account all factors affecting the fisheries and be imposed fairly and equitably to the extent practicable among and within the sectors in the BSAI directed pollock fishery. With respect to the allocations in section 206, the Council may submit measures to increase the allocation to the western Alaska community development quota program for the year 2002 and thereafter if the Council determines that the program has been adversely affected by any provision of subtitle II of the American Fisheries Act. To the extent of its authority under the Magnuson-Stevens Act, the Council has general authority to submit measures that affect or supersede the fishery cooperative limitations in section 210. Paragraph (3) of section 213(c) identifies the specific authority of the Council to submit different catch-year criteria for the calculation of the allocations for catcher vessels that deliver to shoreside processors and that form fishery cooperatives.

Subsection (d) requires the North Pacific Council to report to the Secretary of Commerce and to the Congress by October 1, 2000 on the implementation and effects of subtitle II of the American Fisheries Act.

Subsection (e) requires the General Accounting Office to submit a report to the North Pacific Council and the Secretary of Commerce by June 1, 2000 on whether subtitle II of the American Fisheries Act has negatively affected the market for fillet or fillet blocks, and requires the North Pacific Council to submit for Secretarial approval any measures it determines appropriate to mitigate any negative effects that have occurred.

Section (f) specifies that if any of the provisions of the American Fisheries Act are held to be unconstitutional, the remainder of the Act shall not be affected.

Section (g) specifies that in the event the new U.S. ownership and control requirements or preferred mortgage requirements of subtitle I of the American Fisheries Act are deemed to be inconsistent with an existing international agreement relating to foreign investment with respect to a specific owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, that the provision shall not apply to that specific owner or mortgagee with respect to that particular vessel to the extent of the inconsistency. Section (g) does not exempt any subsequent owner or mortgagee of the vessel, and is therefore not an exemption that ''runs with the vessel.'' In addition, the exemption in section (g) ceases to apply even to the owner on October 1, 2001 of the vessel if any ownership interest in that owner is acquired by a foreign individual or entity after October 1, 2001.

Customary international law and the United Nations Conference on the Law of the Sea (article 62) clearly protect the right of a coastal nation to harvest the living resources of its exclusive economic zone. Many of the bilateral treaties to which the United States is a party that might otherwise involve U.S. fisheries or investments in U.S. fisheries include specific exemptions for fishing vessels and for measures to protect the fishery resources. For example, the Treaty of Friendship, Commerce, and Consular Rights between the United States and the Kingdom of Norway (1932) provides that ''[n]othing in this Treaty shall be construed to restrict the right of either [the United States or Norway] to impose, on such terms as it may see fit, prohibitions or restrictions designed to protect human, animal, or plant health or life'' (emphasis added). The Treaty and Protocol between the United States and Japan Regarding Friendship, Commerce, and Navigation (1953) provides that ''Notwithstanding any other provision of the present Treaty, each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, national fisheries, and inland navigation'' (Article XIX(6); emphasis added). Similarly, the Agreement between the United States and the Republic of Korea Regarding Friendship, Commerce, and Navigation (1957) provides that ''each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation, and national fisheries'' (Article XIX(3); emphasis added).

While Congress does not believe that any of the requirements of the American Fisheries Act violate any international agreements relating to foreign investment to which the United States is a party, subsection (g) is included as a precaution. If the citizenship or preferred mortgage requirements in subtitle I are deemed to be inconsistent with such an international agreement, only the current owner on October 1, 2001 to which the international agreement applies will be grandfathered, and to the extent that any interest in that owner/entity is sold, the interest must be sold to citizens of the United States until the owner/entity comes into compliance with the 75 standard.

Mr. HARKIN. Mr. President, the legislation that is pending provides funding for nearly all domestic discretionary programs for the upcoming year. As we know, it combines 8 of the 13 regular spending bills, as well as a large number of other unrelated legislative provisions.

It truly is a legislative behemoth, and is one which I have very mixed feelings about. One part I don't have any mixed feelings about is the process, particularly for the unrelated nonappropriation measures. It is the worst that I have witnessed in my years in Congress. Here we have a 40-pound, nearly 4,000-page bill which not only includes over half of the year's appropriations bills, but countless other unrelated measures, many of which were never debated and never brought to the floor of the Senate. Then we are given less than a day—just a matter of hours—to look it over.

That certainly is not any way to do the people's business. In fact, I say that the Republican leadership in the Senate and the House has shown a tremendous disrespect for the taxpayers' dollars.

This is really a cavalier treatment of taxpayers dollars when you think about the way this bill was put together. Nobody knows how much is in there. Billions of dollars are being spent, and a lot of it was never debated or shown the light of day in either the House or the Senate. The taxpayers deserve a little bit better treatment for their tax dollars than that.

Before I get into my other concerns, I want to speak about what I see as one of the true bright spots, which will lead me to vote in favor of the overall measure, even with all my misgivings about it, and that is the progress it makes toward improving the quality and affordability of education, health care and job training for American families.

As the ranking member on the Appropriations Subcommittee on the Department of Health and Human Services and Education, I want to focus my comments initially on that section of the bill.

First, I want to thank Senator SPECTER for his outstanding leadership on the legislation. He has worked tirelessly to put together a strong, bipartisan bill. I want to publicly thank Bettilou Taylor, Jim Sourwine, Jack Chow, Mary Deitrich, Mark Laisch and Jennifer Stiefel. I also thank those on my staff, on the minority side—Marsha Simon and Ellen Murray—for their long and hard work in taking care of all of the important details of the legislation. They literally have been here around the clock for the last several weeks putting the bill and report together.

I also extend my sincere appreciation to our colleagues in the House—Chairman PORTER and ranking member OBEY. There were many significant differences between our two bills and it required much work to bridge the gulf. I appreciate their willingness to work with us to craft a strong Labor-HHS-Education bill to send to the President.

The Labor-HHS-Education component of this bill is notable in a number of areas. It makes many vital investments in the human infrastructure of our Nation.

Mr. President, I am very pleased that the bill before us provides the biggest funding increase in history in our search for medical breakthroughs. Almost every day, the paper has a new story about one advance or another in medical research. New therapies, more effective intervention and treatment strategies—we are making great progress. We aren't suffering from a shortfall of ideas, but a shortfall of resources.

At the present time, the National Institutes of Health is able to fund only one-fourth of their peer-reviewed grant proposals. As a result, too many worthy projects never get off the ground. The tragedy is that the 3 of 4 unfunded grants could have led to a cure for breast cancer, or a more effective treatment for Parkinson's disease, or a way to reverse spinal chord injury.

This must change, and the pending legislation provides a generous 15 percent increase for the NIH and is the first step toward doubling the budget for biomedical research.

Another important victory for improved health is the inclusion of a proposal I authored to substantially improve research on complementary and alternative medicine. Consumers need and deserve reliable information about these promising therapies. And, if appropriately implemented, the new National Center for Complementary and Alternative Medicine at NIH will provide just that.

Mr. President, one of the great disappointments of the 105th Congress was the defeat by the Republican leadership of comprehensive legislation to protect

children from tobacco. Their action is costly: Every day, more than 3,000 young people will start smoking, and one-third will die prematurely from tobacco-related diseases.

I am pleased, however, that the bill before us makes at least a very modest downpayment on fighting tobacco. It provides $46 million to fund antitobacco activities—the largest increase for preventing and treating the addiction, disease, and death caused by tobacco use. The CDC will receive additional funding to help communities keep tobacco products out of the hands of children, help smokers kick the habit, and combat the tobacco industry's daily multimillion dollar misinformation campaigns.

I want to be clear, however, that this is by no means a replacement for comprehensive reform. We should make reform of the tobacco scourge a major agenda item for the next Congress.

Another important drug problem—and tobacco is a drug problem—facing us in this Nation is the scourge of methamphetamine. It is ravaging my State and other States in the Midwest. So I am pleased that the bill before us includes my proposal to expand support for prevention and treatment of meth addiction. It also contains a significant increase to boost our law enforcement efforts to combat this problem. But I am extremely disappointed that the leadership blocked inclusion of my Comprehensive Methamphetamine Control Act. Their action, I think, is extremely shortsighted and is a defeat for our efforts to get tougher on methamphetamine.

The bill before us includes the important initiative to combat fraud, waste and abuse in Medicare. It would expand nationwide a program I started 2 years ago to train retired nurses, doctors, accountants, insurance writers, and other professionals to be expert resources in their local communities to help fellow seniors identify and report suspect cases of abuse. The Senior Waste Patrol, as it is known, has been a great success in Iowa and the 11 other States in which it now exists on a pilot program basis. This bill, as I said, will extend the Senior Waste Patrol to every State in the Nation. I believe it will be one of the keys that we will have in really cutting down on the waste, fraud and abuse that is so rampant in Medicare.

Mr. President, for the last several years, I have worked to eradicate abusive child labor around the world, and I am pleased that the legislation provides resources to help end this exploitative practice here at home and around the world.

The bill signals a strong commitment by the United States to ending this unconscionable practice of child labor by providing a $27 million increase, from $3 million to $30 million, to the International Programme for the Elimination of Child Labor, otherwise known as IPEC. In the past, IPEC initiatives have been instrumental in reaching agreements in Bangladesh for child garment workers, and in Pakistan for the children making soccer balls. As a result, thousands of these children in both countries have been moved from factories to schools. This increase for IPEC will ensure that we can do in those countries and in other countries to get child laborers out of factories and into schools.

However, if we intend to lead the world in ending this terrible practice of child labor, we must here lead by example. I am deeply concerned about the rising incidence of child labor in our own country. Although no official estimate exists, studies place the number of illegally employed children in the U.S. at between 300,000 a 800,000. To respond to the problem, this legislation has fully funded the President's child labor initiative by providing $15 million for migrant education and $5 million for at-risk youth in agriculture. Additionally, $4 million was added for 36 new investigators to enforce child labor laws. We must make eradication of child labor a top priority, and these resources will make that possible.

I do want to publicly thank and compliment Secretary of Labor Herman for her leadership in this area and for her focus and determination to crack down on the use of child labor in our country. She has taken great leadership on this. The additional funding we put in this bill will enable her to do her job even more effectively.

Mr. President, this legislation makes some significant investments in education, which are critical to the future of our country. The bill provides an additional $2.1 billion—that's $2.1 billion more than last year—to improve our Nation's schools and help them meet the needs of our schoolchildren.

There are many problems facing our nation's schools. 14 million students attend classes in schools that are literally crumbling around them; too many students are in classes that are too big; and too many children do not have a safe place to be in the hours after school. We can and must address these important matters.

The pending legislation provides us with a good foundation. The bill provides additional resources through the Title I program to reduce class size and it fully funds the President's after-school initiative.

However, I was disappointed that we could not hold on to the funds provided in the Senate bill to help modernize and repair our nation's crumbling schools.

I might add that I just came back, like so many Senators, last night from my home State to discover that in my State of Iowa over one-third—36 percent—of the elementary and secondary schools in Iowa don't even meet the fire and safety codes. I know that our State is very good. If it is that bad in Iowa, it has to be bad in other States, too.

That is why the money is needed so desperately from the Federal Government—to help rebuild the infrastructure of our schools, not just in meeting the fire and safety codes but to make sure that they are wired, that they get the technology that they need to hook-up to the Internet, and to get the technology to our kids in elementary and secondary schools.

The legislation also makes other important investments in education. The bill provides a $500 million increase for special education and additional funds for Head Start to make sure that students are ready to start school.

Education must be our Nation's top priority and while I am pleased with the investments made in this legislation, we must recognize that this is just the first step forward. Our future depends on us to do even more next year and the year after.

The bill provides new funding to higher and train up to 100,000 new teachers, increases the maximum Pell grant to its highest level ever, $3,125, and provides additional resources for child care and eliminates cuts to worker protection programs.

Mr. President, I am also pleased that the final bill restored the massive cuts contained in the House bill for the Summer Jobs Program and the Low-Income Heat and Energy Assistance Program. These cuts in the House bill—not in the Senate bill—unfairly targeted some of our Nation's most needy citizens, and had to be reversed. I am glad it was reversed.

As has been the case in recent years, the appropriations committees was confronted with a number of legislative riders. This is a source of continuing frustration for our committee because we continue to believe there should be no authorizing legislation on appropriations bills.

The House bill included an amendment to the Individuals With Disabilities Education Act, or IDEA, that would have given school officials expanded authorities to remove children with disabilities from school. I vigorously opposed that amendment, because it would have removed critical civil rights protections for children with disabilities—this on the heels of just a little over a year ago, after years of negotiation, when Congress enacted the 1997 amendments to IDEA. These amendments made a number of important changes to the law, including provisions governing the discipline of children with disabilities. The '97 amendments give schools new tools for addressing the behavior of children with disabilities, including more flexible authorities for removing children with disabilities engaged in misconduct involving weapons, drugs, or behavior substantially likely to result in injury. More information is needed on the implementation of these amendments before any additional changes to the law are considered by the Congress.

For example, I keep hearing from some people that if a child with a disability brings a gun to school there is nothing they can do with them, but if

a nondisabled kid brought a gun to school they could expel them. Nothing could be further from the truth. If any child, such as a child with disabilities, under IDEA brings a gun, a weapon, a drug to school, they can be immediately dismissed, expelled, for up to 10 days, and then placed in an alternative setting for 45 more days. Again, people can expel a child right away who brings a gun or a dangerous weapon to school.

I just say that as a way of pointing out that there is a lot of misinformation out there about the law, because the law was changed last year, and the rules and regulations have not yet been promulgated by the Department of Education. Hopefully, that will be done prior to the end of this year.

Again, I would like to close these remarks on this section of the bill by thanking Chairman SPECTER for his outstanding leadership throughout the process of putting this part of the bill together.

I therefore support the recommendation of the conferees for a GAO study on the discipline of children with disabilities in lieu of making any changes to the authorizing legislation itself. The conference agreement charges GAO with obtaining information on how the '97 amendments have affected the ability of schools to maintain safe school environments conducive to learning. In order to enable the Congress to differentiate between the need for amendments as opposed to better implementation of the law, it is critical that GAO look at the extent to which school personnel understand the provisions in the IDEA and make use of the options available under the law.

For example, in the past, there has been considerable confusion and misunderstanding regarding the options available to school districts in disciplining children with disabilities. The GAO should determine whether schools are using the authorities currently available for removing children. These include: removing a child for up to 10 school days per incident; placing the child in an interim alternative educational setting; extending a child's placement in an interim alternative educational setting; suspending and expelling a child for behavior that is not a manifestation of the child's disability; seeking removal of the child through injunctive relief; and proposing a change in the child's placement.

In addition, the law now explicitly requires schools to consider the need for behavioral strategies for children with behavior problems. I continue to believes that the incidence of misconduct by children with disabilities is closely related to how well these children are served, including whether they have appropriate individualized education plans, with behavioral interventions where necessary. Again, to enable the Congress to interpret information on the effect of the IDEA on dealing with misconduct, this GAO report should provide information on the extent to which the schools are appropriately addressing the needs of students engaged in this misconduct. I would be opposed to giving school officials expanded authority for removing children who engage in misconduct, if such misconduct could be ameliorated by giving these children the services to which they are entitled. We need information on the effect of appropriate implementation of the IDEA on the ability of schools to provide for safe and orderly environments, and that is what the GAO study should evaluate.

Finally on this matter, I want to emphasize that the provisions in the IDEA for removing children are only needed in those cases in which parents and school officials disagree about a proposed disciplinary action. Therefore, it is important that the GAO study also provides us information on the extent to which parents are requesting due process hearings on discipline-related matters and the outcomes of three hearings.

Turning to another important component of this bill, Mr. President, I'd like to talk for a few minutes about agriculture. Since early summer, I have been working, along with a number of my colleagues, to inform this body about the very serious economic crisis gripping our nation's agriculture sector and to develop an emergency assistance package. Farm families and rural communities are not currently sharing in the prosperity of our broader economy. With farm income down over 20 percent from just two years ago, our farm economy is suffering its worst downturn in over a decade.

There are ominous signs that unless we turn this situation around, we are on the path to a full-blown agricultural depression on a scale of the 1980s farm crisis. My State of Iowa simply cannot stand to go down that road again, nor can our nation.

So I am pleased that through our concerted efforts, this bill includes a substantial package of emergency assistance for America's farmers. President Clinton vetoed the first Agriculture appropriations bill. He was right to do so. It was woefully inadequate. So we brought it back. And that veto by the President set the stage for the extensive improvements that we now have in this bill.

This bill increases funding by about 85 percent above the amount that was in the vetoed bill for assistance to replace income lost because of low commodity prices—an 85-percent increase over the bill that was vetoed. This is a victory but a partial victory. While this bill will provide a good deal of assistance in the form of a one-time payment, it falls far short of what is needed for the future.

This bill really has been a ''missed opportunity'' in which we could have put underneath the so-called Freedom to Farm bill a farm income safety net, but did not. When the so-called Freedom to Farm bill was passed in 1996, commodity prices were high and the safety net was thrown out the window. But prices go down as well as go up.

Since 1996 farm commodity prices have plummeted across our country. Now it is clear that the 1996 farm bill has failed, and has failed drastically, in protecting against disastrous losses in farm income. The bill that is before us just plows more money right into the Freedom to Farm payment system, which has already proven itself incapable of responding to low commodity prices.

We proposed a better way. We proposed to focus assistance more carefully on farmers who really need it because of low prices. We proposed to direct the benefits towards actual farmers instead of toward landlords. We proposed to restore a farm income safety net responsive to commodity prices. And we proposed to link assistance to actual production to avoid windfalls for those choosing not to plant the supported crop. Lastly, we supported a measure of fiscal responsibility so that rising commodity prices would limit USDA farm program spending.

Despite all of these advantages, the Republican majority rejected any alternative to the Freedom to Farm payment scheme. So what is going to happen is farmers will get a payment this fall. Even farmers who chose not to plant a crop will get a payment for it. They will get a payment having no relationship to the market price—just a flat payment across the board—fairly generous for those commodities with relatively better prices, much too little for commodities suffering the worst price losses. Also, a good number of farmers who will not be farming next year will get payments this fall, and somehow that will all have to be sorted out.

With fixed cash payments, landlords are in a great position to put the pressure on and claim a lot of that money in the form of rent for next year. Again, farmers fortunate enough to produce a good crop and whose commodities already have high prices and who are not suffering will still get a payment. This scheme makes no sense whatsoever. And yet it is strictly the triumph of ideology over practicality. The Republican ideology is not to have any farm income safety net and if there is a crisis to throw money at it.

So what we have done for the farm crisis is we have just thrown a lot of money at it. Well, that will help for this year, but it still won't be as good as what we proposed. Equally important, this bill does nothing toward restoring a farm income safety net for the longer term. What we proposed would have provided more income support for farmers and done so in a way that helps farmers deal with the practical reality of commodity markets. But, no, the Republican majority's ideology said we are going to stick with Freedom to Farm no matter what. And yet we know that a majority of farmers, a majority, a huge majority of the farmers wanted to take the caps off of marketing loan rates and they wanted to have some storage payments. Why?

So they could take the bumper crop we are having this year, store it, wait for the grain prices to go up and market it later on.

Well, this bill gives them nothing in this regard. Oh, they will get a payment this fall. But it will not be as much income protection as what we would have provided by taking the caps off of the marketing loan rates. Will it help? Sure, it will help. But it is a wasteful and fundamentally unsound way of helping our farmers.

Well, as I said, Republicans just decided to throw money at the problem—a triumph of ideology over practicality.

One last point. One of my biggest concerns about this bill is the $9 billion add-on to the Pentagon budget—$9 billion thrown in at the last minute. Despite the rhetoric from the Republican side, precious little of this fiscally irresponsible add-on is targeted at troop readiness and other emergencies in the military.

Congressional leadership talks a lot about shortages of spare parts and about troop pay problems. So where are the proposals to fix the Pentagon's antiquated supply system? Where are the proposals to increase pay for the troops? Not in this bill. But there is $1 billion for star wars. There are billions more in pork barrel projects not requested by the Pentagon. And at the same time that this bill piles on the Pentagon pork, it is shortchanging reform. The General Accounting Office and the Pentagon's own inspector general constantly report rampant waste and mismanagement in the military's purchasing and supply system, yet this bill lets the waste and mismangement continue unchecked, and throws in a few more gold-plated weapons systems to boot.

What a boondoggle. What a boondoggle. We talk about troop readiness, so where does this bill put the money? It puts it into star wars. It puts it into pork projects that the Pentagon doesn't want, some more gold-plated weapons systems, but precious little in fact, for troop readiness.

I have mixed feelings about this 40-pound, 4,000-page whopper that we have before us. It has some important provisions that we worked together on in a bipartisan fashion—to improve medical research, for example, and to improve education. A number of the components of this bill truly will improve the lives of hard-working American families, but the bill also has a number of awful provisions, add-ons, fiscally irresponsible giveaways.

In the end, I will vote for it because I believe the good does outweigh the bad, but I want to be clear that if this bill were in the many separate pieces of legislation as it should have been, a lot of them I would have voted against, and I don't think a lot of them would ever have gotten through this body.

As I have said earlier, and as many of my colleagues have said, this process which we just went through is bad for Americans. This is no way to do the Nation's business. The Republican leadership, as I said earlier, has treated our taxpayer dollars cavalierly. This is no way to flagrantly throw around the hard-earned tax dollars of the taxpayers of this country, to throw it away on boondoggles, to throw it away on items that were never debated or saw the light of day in the Senate or the House.

I can only hope that the next Congress will not go through this exercise again. I hope the leadership of the next Congress will get the appropriations bills through on time, will debate these matters openly so that we can have the opportunity to discuss them openly, so we will know what is in the bills before we vote on them. I think Senator ROBERT BYRD of West Virginia said it best—as I read in the newspaper. He said, ''Only God knows what's in this bill.''

Well, I don't know, Mr. President, I don't know if we will ever know what all is in this bill, but I am certain, certain as I am standing here, we are going to see inquiring reporters, investigative journalists who will begin looking at this bill. They will begin looking at all of those hidden items, and I bet you piece by piece, bit by bit, it is going to come out, maybe next month, maybe in January, maybe in March, all of the little hidden things that were in there. And I say, shame on this Congress, shame on the leadership for treating the American taxpayers this way. We have got to do better in the way we do the Nation's business.

Mr. President, I yield the floor.

OPPOSITION TO DELETION OF THE AGJOBS AMENDMENT

Mr. SMITH of Oregon. Mr. President, as we take up the Omnibus appropriations bill, I would like to take this opportunity to express my extreme disappointment that the Agricultural Job Opportunity Benefits and Security Act amendment, known as AgJOBS, was eliminated from the Omnibus bill.

The bipartisan AgJOBS amendment received a veto proof majority vote of 68–31 when it was added to the Commerce, Justice, State Appropriations bill earlier this year. We had a golden opportunity to reform the current bureaucratic H–2A immigrant visa program that has made fugitives out of farmworkers and felons out of farmers. The amendment would have created a workable system for recruiting farm workers domestically and preventing our American crops from rotting in the fields.

Unfortuantely, the Clinton Administration was content with the status quo and threatened to veto the Omnibus bill if the balanced AgJOBS amendment was included.

Mr. President, I find the Administration's veto threat quite troubling since the Omnibus appropriations bill contains a multi-billion dollar disaster relief package for traditional program-crop agriculture to help deal with losses sustained as a result of the world financial crisis.

The disaster relief goes to producers who already have a long history of reliance on federal assistance, yet the farm disaster bill does nothing to help producers of labor intensive commodities—fruits, vegetables, and horticultural specialties—who are not supported by the government and who are facing a crisis of nationwide labor shortages created by our own government. This crisis has been exacerbated by our current unworkable legal foreign worker program.

A farmworker shortage ultimately affects America's ability to compete in the world agriculture market. According to the United States Department of Agriculture data, about three off-farm jobs are sustained by each on-farm production job. Therefore, nearly three times as many U.S. workers will lose their U.S. jobs as the number of foreign farmworkers kept out of the United States increases.

Mr. President, I also cannot understand the inconsistency of the Administration enacting the H–1B high-tech worker bill and not enacting H–2A reform as embodied in our AgJOBS bill.

Our AgJOBS bill contains worker benefits far in excess of those provided by the H–1B high-tech worker bill. Our bill guarantees above-prevailing wages for lower wage occupations, free housing to both U.S. and foreign workers recruited from outside the local area, reimbursement of inbound and return transportation costs to both U.S. and foreign workers recruited from outside the local area, and penalties that include lifetime program debarment for violations. The H–1B requires only the prevailing wage without any housing or transportation benefits and provides a maximum penalty of a 3-year debarment.

Mr. President, we cannot continue to allow our farmers and farmworkers to be trapped in a system that rewards illegal labor practices and punishes the most vulnerable.

As we address reform of the H–2A immigrant visa program early next year, I hope my colleagues will work with me to finally safeguard basic human rights, provide a reliable documented work force for farmers, and reward legal conduct to both farmers and farmworkers.

QUINCY LIBRARY GROUP LEGISLATION

Mrs. FEINSTEIN. Mr. President, I am very pleased that the Quincy Library Group bill has been included in the omnibus appropriations bill. This legislation embodies the consensus proposal of the Quincy Library Group, a coalition of environmentalists, timber industry representatives, and local elected officials in Northern California, who came together to resolve their long-standing conflicts over timber management on the national forest lands in their area.

The Quincy Library Group legislation is a real victory for local consensus decision making. It proves that even some of the most intractable environmental issues can be resolved if

people work together toward a common goal.

I first met the Quincy Library Group back in 1992 when I was running for the Senate, and was then very impressed with what they were trying to do.

The members of the Quincy Library Group had seen first hand the conflict between timber harvesting and jobs, environmental laws and protection of their communities and forests, and the devastation of massive forest fires. Their overriding concern was that a catastrophic fire could destroy both the natural environment and the potential for jobs and economic stability in their community. They were also concerned the ongoing stalemate over forest management was ultimately harming both the environment and their local economy.

The group got together and talked things out. They decided to meet in a quiet, non-confrontational environment—the main room of the Quincy Public Library. They began their dialogue in the recognition that they shared the common goal of fostering forest health, keeping ecological integrity, assuring an adequate timber supply for area mills, and providing economic stability for their community.

One of the best articles I have read about the Quincy Library Group process recently appeared in the Washington Post. Mr. President, I ask unanimous consent that this article be printed in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mrs. FEINSTEIN. Mr. President, after dozens of meetings and a year and a half of negotiation, the Quincy Library Group developed an alternative management plan for the Lassen National Forest, Plumas National Forest, and the Sierraville Ranger District of the Tahoe National Forest.

In the last 5 years, the group has tried to persuade the U.S. Forest Service to administratively implement the plan they developed. While the Forest Service was interested in the plan developed, they were unwilling to fully implement it. Negotiations and discussions began in Congress. This legislation is the result.

THE QUINCY LIBRARY GROUP LEGISLATION

Specifically, the legislation directs the Secretary of Agriculture to implement the Quincy Library Group's forest management proposal on designated lands in the Plumas, Lassen and Tahoe National Forests for five years as a demonstration of community-based consensus forest management. I would like to thank Senators MURKOWSKI, BUMPERS, and CRAIG, Representatives HERGER and MILLER, as well as the Clinton Administration, for the thoughts they contributed to the development of the final bill.

The legislation establishes significant new environmental protections in the Quincy Library Group project area. It protects hundreds of thousands of acres of environmentally sensitive lands, including all California spotted owl habitat, as well as roadless areas. Placing these areas off limits to logging and road construction protects many areas that currently are not protected, including areas identified as old-growth and sensitive watersheds in the Sierra Nevada Ecosystem Project report.

However, in the event that any sensitive old growth is not already included in the legislation's off base areas, the Senate Energy and Natural Resources Committee provided report language when the legislation was reported last year, as I requested, directing the Forest Service to avoid conducting timber harvest activities or road construction in these late successful old-growth areas. The legislation also requires a program of riparian management, including wide protection zones and streamside restoration projects.

The bottom line is that the Quincy Library Group legislation will provide strong protections for the environment while preserving the job base in the Northern Sierra—not just in one single company, but across 35 area businesses, many of them small and family-owned.

The Quincy Library Group legislation is strongly supported by local environmentalists, labor unions, elected officials, the timber industry, and 27 California counties. The House approved the Quincy Library Group legislation by a vote of 429 to one last year. The Senate Energy Committee reported the legislation last October. The legislation has been the subject of Congressional hearings and the focus of nationwide public discussion.

I thank my colleagues for ensuring that this worthy pilot project has a chance.

EXHIBIT NO. 1

[From the Washington Post, Oct. 11, 1998]

GRASS-ROOTS SEEDS OF COMPROMISE

(By Charles C. Mann and Mark L. Plummer)

Every month since 1993, about 30 environmentalists, loggers, biologists, union representatives and local government officials have met the library of Quincy—a timber town in northern California that has been the site of a nasty 15-year battle over logging.

Out of these monthly meetings has emerged a plan to manage 2.4 million acres of the surrounding national forests. Instead of leaving the forests' ecological fate solely to Washington-based agencies and national interest groups, the once-bitter adversaries have tried to forge a compromise solution on the ground—a green version of Jeffersonian democracy. When the House of Representatives, notorious for its discord on environmental legislation, approved the plan 429–1 in July 1997, the Quincy Library Group became the symbol for a promising new means of resolving America's intractable environmental disputes.

The Quincy Library Group is one of scores of citizens' associations that in the past decade have brought together people who previously met only in court. Sometimes called ''community-based conservation'' groups, they include the Friends of the Cheat River, a West Virginia coalition working to restore a waterway damaged by mining runoff; the Applegate Partnership, which hopes to restore a watershed in southwestern Oregon while keeping timber jobs alive, and Envision Utah, which tries to foster consensus about how to manage growth in and around Salt Lake City.

Like many similar organizations, the Quincy Library Group was born of frustration. In the 1980s, Quincy-based environmental advocates, led by local attorney Michael B. Jackson, attempted with varying success to block more than a dozen U.S. Forest Service timber sales in the surrounding Plumas, Lassen and Tahoe national forests. The constant battles tied the federal agency in knots and almost shut down Sierra Pacific Industries, the biggest timber company there, imperiling many jobs. The atmosphere was ''openly hostile, with agitators on both sides,'' says Linda Blum, a local activist who joined forces with Jackson in 1990 and aroused so much opprobrium that Quincy radio hosts denounced her on the air for taking food from the mouths of the town's children.

Worn down and dismayed by the hostility in his community, Jackson was ready to try something different. He got a chance to do so late in 1992, when Bill Coates, a Plumas County supervisor, invited the factions to talk to each other, face to face. Coates suggested that the group work from forest-management plans proposed by several local environmental organizations in the mid-1980s. By early 1993, they were meeting at the library and soon put together a new proposal. (The Forest Service eventually had to drop out because the Federal Advisory Committee Act, which places cumbersome requirements on groups who meet with federal agencies.) Under this proposal, timber companies could continue thinning and selectively logging in up to 70,000 acres per year, about the same area being logged in 1993 but drastically lower than the 1990 level. Riverbanks and roadless areas, almost half the area covered by the plan, would be off-limits.

The Quincy group asked the Forest Service to incorporate its proposal into the official plans for the three national forests, but never got a definite answer. Convinced that the agency was too dysfunctional to respond, in 1996 the group took its plan to their congressman, Wally Herger, a conservative Republican. Herger introduced the Quincy proposal in the House, hoping to instruct the agency to heed the wishes of local communities. It passed overwhelmingly—perhaps the only time that Reps. Helen Chenoweth (R-Idaho), a vehement property-rights advocate, and George Miller (D-Calif.) one of the greenest legislators on Capitol Hill, have agreed on an environmental law. Then the bill went to the Senate—and slammed into resistance from big environmental lobbies.

From the start, the Quincy group had kept in touch with the Wilderness Society, the Natural Resources Defense Council and the Sierra Club. The three organizations offered comments, and the Quincy group incorporated some. Still, the national groups continued to balk, instead submitting detailed criteria necessary to ''merit'' their support. When the Quincy plan became proposed legislation, the national groups stepped up their attacks. The Quincy approach, said Sierra Club legal director Debbie Sease, had a ''basic underlying flaw'' using a cooperative, local decision-making process to manage national assets. Jay Watson, regional director of the Wilderness Society, said: ''Just because a group of local people can come to agreement doesn't mean that it is good public policy.'' And because such parochial efforts are inevitably ill-informed and always risk domination by rich, sophisticated industry representatives, the Audubon Society warned, they are ''not necessarily equipped

to view the bigger picture.'' Considering this bigger picture, it continued, ''is the job of Congress, and of watchdog groups like the National Audubon Society.''

Many local groups regard national organizations as more interested in protecting their turf than in achieving solutions that advance conservation. ''It's interesting to me that it has to be top-down,'' said Jack Shipley, a member of the Applegate Partnership. ''It's a power issue, a control issue.'' The big groups' insistence on veto power over local decision-making ''sounds like the old rhetoric—either their way or no way,'' Shipley says. ''No way'' may be the fate of the Quincy bill. Pressured by environmental lobbies, Sen. Barbara Boxer (D-Calif.) placed a hold on it in the Senate.

Despite the group's setback, community-based conservation efforts like Quincy provide a glimpse of the future. Under the traditional approach to environmental management, decisions have been delegated to impartial bureaucracies—the Forest Service, for example, for national forests. Based on the scientific evaluations of ecologists and economists, the agencies then formulate the ''right'' policies, preventing what James Madison called ''the mischief of faction.''

But today, according to Mark Sagoff of the University of Maryland Institute for Philosophy and Public Policy, it is the bureaucrats who are beset by factions; big business and environmental lobbies. For these special-interest groups, he argues, ''deliberating with others to resolve problems undermines the group's mission, which is to press its purpose or concern as far as it can in a zero-sum game with its political adversaries.'' The system ''benefits the lawyers, lobbyists and expert witnesses who serve in various causes as mercenaries,'' he says, ''but it produces no policy worth a damn.''

In contrast, community-based conservation depends on all sides acknowledging the legitimacy of each other's values. Participants are not guaranteed to get exactly what they want; no one has the power to stand by and judge the ''merit'' of the results. Although ecology and economics play central roles, ecologists and economists have no special place. Like everyone else, they must sit at the table as citizens, striving to make their community and its environment a better place to live.

In short, Quincy's efforts and those like it represent a new type of environmentalism: republican environmentalism, with a small ''r.'' This new approach cannot address global problems like climate change. Nor should it be routinely accepted if a local group decides on irrevocable changes in areas of paramount national interest—filling in the Grand Canyon, say. But even if some small town would be foolish enough to decide to do something destructive, there's a whole framework of national environment laws that would prevent it from happening. And, despite the resistance of the national organizations, the environmental movement should not reject this new approach out of hand. Efforts to protect the environment over the past 25 years have produced substantial gains, but have lately degenerated into a morass of litigation and lobbying. Community-based conservation has the potential to change things on the ground, where it matters most.

Mr. CRAIG. It is agreed that certain language added to the Quincy Library Group Forest Recovery and Economic Stability Act after the bill was proposed by Congressman WALLY HERGER related to grazing within the pilot project areas may have introduced ambiguities that could lead to adverse effects. Is there any intent for the Quincy Library Group legislation to negatively impact grazing in general?

Mrs. FEINSTEIN. No, neither the authors of the bill, nor the Quincy Library Group ever intended to negatively impact grazing generally.

Mr. CRAIG. What does ''specific location'' as referred to in subsection (c)(2)(C) of the legislation mean? Can the riparian management or SAT guidelines referred to by this legislation be applied to the entire pilot project area?

Mrs. FEINSTEIN. The only location where these guidelines would apply to grazing is where cattle are actually in the work area and at the same time a QLG activity is taking place. The QLG resource management activities include building defensible profile zones, single or group tree selection thinning, and riparian management projects.

Mr. CRAIG. Will the SAT riparian management guidelines referred to in this measure apply to riparian management projects outside of the pilot project area or to grazing activities within the pilot project area where no riparian management activities are taking place?

Mrs. FEINSTEIN. Under the terms of this bill the SAT guidelines affecting grazing will apply only to the specific work area location and only at the specific time that projects are conducted within the pilot project area. The applicability of these guidelines outside of the pilot project area is not addressed by this legislation.

CHILDREN'S ONLINE PRIVACY

Mr. BRYAN. Mr. President, the Children's Online Privacy Act was reported out of Committee by voice vote. Because of time constraints at the end of the session, we have been unable to file a Committee Report before offering it as an amendment on the Senate floor. Accordingly, I wish to take this opportunity to explain the purpose and some of the important features of the amendment.

In a matter of only a few months since Chairman MCCAIN and I introduced this bill last summer, we have been able to achieve a remarkable consensus. This is due in large part to the recognition by a wide range of constituencies that the issue is an important one that requires prompt attention by Congress. It is also due to revisions to our original bill that were worked out carefully with the participation of the marketing and online industries, the Federal Trade Commission, privacy groups, and First Amendment organizations.

The goals of this legislation are: (1) to enhance parental involvement in a child's online activities in order to protect the privacy of children in the online environment; (2) to enhance parental involvement to help protect the safety of children in online fora such as chatrooms, home pages, and pen-pal services in which children may make public postings of identifying information; (3) to maintain the security of personally identifiable information of children collected online; and (4) to protect children's privacy by limiting the collection of personal information from children without parental consent. The legislation accomplishes these goals in a manner that preserves the interactivity of children's experience on the Internet and preserves children's access to information in this rich and valuable medium.

I ask unanimous consent that a summary of the bill's provisions be printed in the RECORD.

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

Sec. 1301. Short Title

This Act may be cited as the ''Children's Online Privacy Protection Act of 1998.''

Sec. 1302. Definitions

(1) *Child:* The amendment applies to information collected from children under the age of 13.

(2) *Operator:* The amendment applies to ''operators.'' This term is defined as the person or entity who both operates an Internet website or online service and collects information on that site either directly or through a subcontractor. This definition is intended to hold responsible the entity that collects the information, as well as the entity on whose behalf the information is collected. This definition, however, would not apply to an online service to the extent that it does not collect or use the information.

The amendment exempts nonprofit entities that would not be subject to the FTC Act. The exception for a non-profit entity set forth in Section 202(2)(B) applies only to a true not-for-profit and would not apply to an entity that operates for its own profit or that operates in substantial part to provide profits to or enhance the profitability of its members.

(7) *Parent:* The term ''parent'' includes ''legal guardian.''

(8) *Personal Information:* This is an online children's privacy bill, and its reach is limited to information collected online from a child.

The amendment applies to individually identifying information collected online from a child. The definition covers the online collection of a first and last name, address including both street and city/town (unless the street address alone is provided in a forum, such as a city-specific site, from which the city or town is obvious), e-mail address or other online contact information, phone number, Social Security number, and other information that the website collects online from a child and combines with one of these identifiers that the website has also collected online. Thus, for example, the information ''Andy from Las Vegas'' would not fall within the amendment's definition of personal information. In addition, the amendment authorizes the FTC to determine through rulemaking whether this definition should include any other identifier that permits the physical or online contacting of a specific individual.

It is my understanding that ''contact'' of an individual online is not limited to e-mail, but also includes any other attempts to communicate directly with a specific, identifiable individual. Anonymous, aggregate information—information that cannot be linked by the operator to a specific individual—is not covered by this definition.

(9) *Verifiable Parental Consent:* The amendment establishes a general rule that ''verifiable parental consent'' is required before a

web site or online service may collect information online from children, or use or disclose information that it has collected online from children. The amendment makes clear that parental consent need not be obtained for each instance of information collection, but may, with proper notice, be obtained by the operator for future information collection, use and disclosure. Where parental consent is required under the amendment, it means any reasonable effort, taking into consideration available technology, to provide the parent of a child with notice of the website's information practices and to ensure that the parent authorizes collection, use and disclosure, as applicable, of the personal information collected from that child.

The FTC will specify through rulemaking what is required for the notice and consent to be considered adequate in light of available technology. The term should be interpreted flexibly, encompassing ''reasonable effort'' and ''taking into consideration available technology.'' Obtaining written parental consent is only one type of reasonable effort authorized by this legislation. ''Available technology'' can encompass other online and electronic methods of obtaining parental consent. Reasonable efforts other than obtaining written parental consent can satisfy the standard. For example, digital signatures hold significant promise for securing consent in the future, as does the World Wide Web Consortium's Platform for Privacy Preferences. In addition, I understand that the FTC will consider how schools, libraries and other public institutions that provide Internet access to children may accomplish the goals of this Act.

As the term ''reasonable efforts'' indicates, this is not a strict liability standard and looks to the reasonableness of the efforts made by the operator to contact the parent.

(10) *Website Directed to Children:* This definition encompasses a site, or that portion of a site or service, which is targeted to children under age 13. The subject matter, visual content, age of models, language, or other characteristics of the site or service, as well as off-line advertising promoting the website, are all relevant to this determination. For example, an online general interest bookstore or compact disc store will not be considered to be directed to children, even though children visit the site. However, if the operator knows that a particular visitor from whom it is collecting information is a child, then it must comply with the provisions of this amendment. In addition, if that site has a special area for children, then that portion of the site will be considered to be directed to children.

The amendment provides that sites or services that are not otherwise directed to children should not be considered directed to children solely because they refer or link users to different sites that are directed to children. Thus a site that is directed to a general audience, but that includes hyperlinks to different sites that are directed to children, would not be included in this definition but the child oriented linked sites would be. By contrast, a site that is a child-oriented directory would be considered directed to children under this standard. However, it would be responsible for its own information practices, not those of the sites or services to which it offers hyperlinks or references.

(12) *Online Contact Information:* This term means an e-mail address and other substantially similar identifiers enabling direct online contact with a person.

Sec. 1303. Regulation of Unfair and Deceptive Acts and Practices

This subsection directs the FTC to promulgate regulations within one year of the date of enactment prohibiting website or online service operators or any person acting on their behalf from violating the prohibitions of subsection (b). The regulations shall apply to any operator of a website or online service that collects personal information from children and is directed to children, or to any operator where that operator has actual knowledge that it is collecting personal information from a child.

The regulations shall require that these operators adhere to the statutory requirements set forth in Section 203(b)(1):

1. *Notice*.—Operators must provide notice on their sites of what personal information they are collecting online from children, how they are using that information, and their disclosure practices with regard to that information. Such notice should be clear, prominent and understandable. However, providing notice on the site alone is not sufficient to comply with the other provisions of Section 202 that require the operator to make reasonable efforts to provide notice in obtaining verifiable parental consent, or the provisions of Section 203 that require reasonable efforts to give parents notice and an opportunity to refuse further use or maintenance of the personal information collected from their child. These provisions require that the operator make reasonable efforts to ensure that a parent receives notice, taking into consideration available technology.

2. *Prior Parental Consent*.—As a general rule, operators must obtain verifiable parental consent for the collection, use or disclosure of personal information collected online from a child.

3. *Disclosure and Opt Out for a Parent Who Has Provided Consent*.—Subsection 203(b)(1)(B) creates a mechanism for a parent, upon supplying proper identification, to obtain: (1) disclosure of the specific types of personal information collected from the child by the operator; and (2) disclosure through a ''means that is reasonable under the circumstances'' of the actual personal information the operator has collected from that child. It would be inappropriate for operators to be liable under another source of law for disclosures made in a good faith effort to fulfill the disclosure obligation under this subsection. Accordingly, subsection 203(a)(2) provides that operators are immune from liability under either federal or state law for any disclosure made in good faith and following procedures that are reasonable. If the FTC has not issued regulations, I expect that such procedures would be judged by a court based upon their reasonableness.

Subsection 203(b)(1)(B) also gives that parent the ability to opt out of the operator's further use or maintenance in retrievable form, or future online collection of information from that child. The opt out of future collection operates as a revocation of consent that the parent has previously given. It does not prohibit the child from seeking to provide information to the operator in the future, nor the operator from responding to such a request by seeking (and obtaining) parental consent. In addition, the opt out requirement relates only to the online site or sites for which the information was collected and maintained, and does not apply to different sites which the operator separately maintains.

Subsection 203(b)(3) provides that if a parent opts out of use or maintenance in retrievable form, or future online collection of personal information, the operator of the site or service in question may terminate the service provided to that child.

4. *Curbing Inducements to Disclose Personal Information*.—Subsection 203(b)(1)(C) prohibits operators from inducing a child to disclose more personal information than reasonably necessary in order to participate in a game, win a prize, or engage in another activity.

5. *Security Procedures*.—Subsection 203(b)(1)(D) requires that an operator establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected online from children by that operator.

Exceptions to Parental Consent: Subsection 203(b)(2) is intended to ensure that children can obtain information they specifically request on the Internet but only if the operator follows certain specified steps to protect the child's privacy. This subsection permits an operator to collect online contact information from a child without prior parental consent in the following circumstances: (A) collecting a child's online contact information to respond on a one-time basis to a specific request of the child; (B) collecting a parent's or child's name and online contact information to seek parental consent or to provide parental notice; (C) collecting online contact information to respond directly more than once to a specific request of the child (e.g., subscription to an online magazine), when such information is not used to contact the child beyond the scope of that request; (D) the name and online contact information of the child to the extent reasonably necessary to protect the safety of a child participant in the site; and (E) collection, use, or dissemination of such information as necessary to protect the security or integrity of the site or service, to take precautions against liability, to respond to judicial process, or, to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation related to public safety.

For each of these exceptions the amendment provides additional protections to ensure the privacy of the child. For a one-time contact, the online contact information collected may be used only to respond to the child and then must not be maintained in retrievable form. In cases where the site has collected the parents' online contact information in order to obtain parental consent, it must not maintain that information in retrievable form if the parent does not respond in a reasonable period of time. Finally, if the child's online contact information will be used, at the child's request, to contact the child more than once, the site must use reasonable means to notify parents and give them the opportunity to opt out.

In addition, subsection (C)(ii) also allows the FTC the flexibility to permit the site to recontact the child without notice to the parents, but only after the FTC takes into consideration the benefits to the child of access to online information and services and the risks to the security and privacy of the child associated with such access.

Paragraph (D) clarifies that websites and online services offering interactive services directed to children, such as monitored chatrooms and bulletin boards, that require registration but do not allow the child to post personally identifiable information, may request and retain the names and online contact information of children participating in such activities to the extent necessary to protect the safety of the child. However, the company may not use such information except in circumstances where the company believes that the safety of a child participating on that site is threatened, and the company must provide direct parental notification with the opportunity for the parent to opt out of retention of the information. For example, there have been instances in which children have threatened suicide or discussed family abuse in such fora. Under these circumstances, an operator may use the name and online contact information of the child in order to be able to get help for the child.

Throughout this section, the amendment uses the term ''not maintained in retrievable form.'' It is my intent in using this language that information that is ''not maintained in retrievable form'' be deleted from the operator's database. This language simply recognizes the technical reality that some information that is ''deleted'' from a database may linger there in non-retrievable form.

Enforcement.—Subsection 203(c) provides that violations of the FTC's regulations issued under this amendment shall be treated as unfair or deceptive trade practices under the FTC Act. As discussed below, State Attorneys General may enforce violations of the FTC's rules. Under subsection 203(d), state and local governments may not, however, impose liability for activities or actions covered by the amendment if such requirements would be inconsistent with the requirements under this amendment or Commission regulations implementing this amendment.

Sec. 1304. Safe harbors

This section requires the FTC to provide incentives for industry self-regulation to implement the requirements of Section 203(b). Among these incentives is a safe harbor through which operators may satisfy the requirements of Section 203 by complying with self-regulatory guidelines that are approved by the Commission under this section.

This section requires the Commission to make a determination as to whether self-regulatory guidelines submitted to it for approval meet the requirements of Commission regulations issued under Section 203. The Commission will issue, through rulemaking, regulations setting forth procedures for the submission of self-regulatory guidelines for Commission approval. The regulations will require that such guidelines provide the privacy protections set forth in Section 203. The Commission will assess all elements of proposed self-regulatory guidelines, including enforcement mechanisms, in light of the circumstances attendant to the industry or sector that the guidelines are intended to govern.

The amendment provides that, once guidelines are approved by the Commission, compliance with such guidelines shall be deemed compliance with Section 203 and the regulations issued thereunder.

The amendment requires the Commission to act upon requests for approval of guidelines for safe harbor treatment within 180 days of the filing of such requests, including a period for public notice and comment, and to set forth its conclusions in writing. If the Commission denies a request for safe harbor treatment or fails to act on a request within 180 days, the amendment provides that the party that sought Commission approval may appeal to a United States district court as provided for in the Administrative Procedure Act, 5 U.S.C. §706.

Sec. 1305. Actions by States.

State Attorneys General may file suit on behalf of the citizens of their state in any U.S. district court of jurisdiction with regard to a practice that violates the FTC's regulations regarding online children's privacy practices. Relief may include enjoining the practice, enforcing compliance, obtaining compensation on behalf of residents of the state, and other relief that the court considers appropriate.

Before filing such an action, an attorney general must provide the FTC with written notice of the action and a copy of the complaint. However, if the attorney general determines that prior notice is not feasible, it shall provide notice and a copy of the complaint simultaneous to filing the action. In these actions, state attorneys general may exercise their power under state law to conduct investigations, take evidence, and compel the production of evidence or the appearance of witnesses.

After receiving notice, the FTC may intervene in the action, in which case it has the right to be heard and to file an appeal. Industry associations whose guidelines are relied upon as a defense by any defendant to the action may file as amicus curiae in proceedings under this section.

If the FTC has filed a pending action for violation of a regulation prescribed under Section 3, no state attorney general may file an action.

Sec. 1306. Administration and applicability

FTC Enforcement: Except as otherwise provided in the amendment, the FTC shall conduct enforcement proceedings. The FTC shall have the same jurisdiction and enforcement authority with respect to its rules under this amendment as in the case of a violation of the Federal Trade Commission Act, and the amendment shall not be construed to limit the authority of the Commission under any other provisions of law.

Enforcement by Other Agencies: In the case of certain categories of banks, enforcement shall be carried out by the Office of the Comptroller of the Currency; the Federal Reserve Board; the Board of Directors of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Farm Credit Administration. The Secretary of Transportation shall have enforcement authority with regard to any domestic or foreign air carrier, and the Secretary of Agriculture where certain aspects of the Packers and Stockyards Act apply.

Sec. 1307. Review.

Within 5 years of the effective date for this amendment, the Commission shall conduct a review of the implementation of this amendment, and shall report to Congress.

Sec. 1308. Effective date

The enforcement provisions of this amendment shall take effect 18 months after the date of enactment, or the date on which the FTC rules on the first safe harbor application under section 204 if the FTC does not rule on the first such application filed within one year after the date of enactment, whichever is later. However, in no case shall the effective date be later than 30 months after the date of enactment of this Act.

SECTION 110

Mr. D'AMATO. Mr. President, I am pleased that this Omnibus Appropriations Bill will include a delay of the implementation of Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

The 1996 immigration law mandated the implementation of an exit-entry system at all U.S. borders by September 30, 1998. If implemented, the impact of this provision would be devastating, causing insufferable delays at the U.S.-Canadian border, particularly in my own state of New York. Trade, tourism and international relations would all suffer.

Last year, I joined with Senator SPENCER ABRAHAM and other colleagues to introduce the Border Improvement and Immigration Act of 1997 (S. 1360) which would maintain current cross-border traffic along the northern border and I testified at a Senate Subcommittee hearing on the repercussions of implementing Section 110 on New York. On April 23, 1998, the Senate Judiciary Committee considered and marked up the bill. The bill approved by the Committee allows land border and seaports to be exempt from the new system. The full Senate passed S. 1360 in July 1998 and also voted in support of a full repeal of Section 110.

However, as the date of implementation grew closer, Congress enacted a two and a half year delay, which is included in the Omnibus Consolidated and Emergency Supplemental Appropriation Act for Fiscal Year 1999. While we have some ''breathing room'', rest assured that I will continue to press for a full repeal of Section 110. I thank my colleagues for working with Senator ABRAHAM and I on this important provision.

Mrs. BOXER. Mr. President, I have decided to vote for the omnibus appropriations bill because it contains many things which are very beneficial to the people and the economy of my state of California, and it includes two of my top priorities—afterschool programs and the Salton Sea Restoration Act.

I want to make it clear, however, that the process that brought us this bill is severely flawed. While the Senate Appropriations Committee, on which I sit, did its work and reported each appropriations bill to the full Senate, the leaders of this Congress failed to do the appropriations work. This omnibus bill is not the right way to legislate.

I also want to say that I strongly object to the environmental riders in the bill, including legislation that will double the timber cut in several national forests in California. I realize that some of the riders were dropped from the final legislation and others were negotiated to have less impact, but the presence of any riders that harm our environment is unacceptable to me.

First, let me say what I like about the omnibus legislation:

EDUCATION

The most significant achievement of the bill is its emphasis on funding for public education, including:

$129 million to recruit, hire and train 3,500 teachers for California schools in order to reduce class size in the primary grades.

$20 million to expand afterschool programs for 25,000 children in California. This is a $16 million increase for California. I am particularly gratified by the outcome here because I believe it reflects my bill, the ''Afterschool Education and Safety Act'', and the amendment I successfully attached to the Senate Budget Resolution calling for more afterschool funding.

$77 million, a $12 million increase, for technology in schools programs, to help train teachers, and ensure computer literacy and access to Internet for California students.

$875 million to California schools, a $35 million increase over last year, for disadvantaged students under the Title I program. Senator FEINSTEIN and I worked very hard for this increase.

$550 million for California Head Start programs, to serve 3,280 more California children than last year for a total of more than 80,000.

$58 million, an increase of $3.6 million, through the Goals 2000 program to promote higher academic standards, increase student achievement, and help 12000 California schools implement school reforms.

$26 million for California through the ''America Reads'' program, to help children in grades K–3 improving reading skills—all new funds.

The largest Pell Grant ever to California: $920 million, an increase of $43 million over last year, to increase the maximum grant to college students to $3,125, 36% higher than maximum award last year.

HEALTH

The bill provides funding for several federal programs that are very important in my state, and the omnibus funding levels will result in great benefits to California:

$2.3 billion, a $300 million increase, for medical research grants to California universities and research institutions through the National Institutes of Health (est.)

$238 million , a $43 million increase, for the Ryan White Care Act for health care services to Californians with HIV and AIDS.

At least $13 million for HIV/AIDS prevention and treatment for minority communities.

An increase of between $11 and 21 million in funding for Housing Opportunities for Persons With Aids (HOPWA) who have limited financial resources.

In addition, the bill accelerates the implementation of the health insurance premium tax deduction for the self-employed. By 2003, the deduction will be 100 percent.

The omnibus legislation also requires federal health plans to provide coverage for contraceptive drugs and devices.

Finally, the bill increases funding for the Centers for Disease Control by $226 million over last year—even more than the president's request—and specifies funds for important priorities such as childhood immunization ($421 million), breast and cervical cancer screening ($159 million), and chronic and environmental disease ($294 million).

ECONOMY

The legislation extends provisions of current law that help California's economy, including:

The Research and Experimentation Tax Credit, which is of great importance to California's high tech and bio tech companies.

The Work Opportunity Tax Credit, which encourages businesses to hire disadvantaged workers.

The Trade Adjustment Assistance program, which helps workers and businesses adversely affected by free trade agreements.

The Generalized System of Preferences authority of the President, which allows him to extend duty-free treatment on imports from certain development countries.

There are a number of other funding provisions that are beneficial to my state's businesses and industries, and our economy, including:

$204 million for the Advanced Technology Program, an increase of $11 million over last year, to develop cutting edge technologies. California receives more than any other state.

$100 million for ''Next Generation Internet'', a federal program to connect universities to the Internet and to one another. Many California universities are part of this program: UCLA, Stanford, Berkeley, UC-Davis, UC-Irvine, UC-San Diego, Calif. Tech, and Cal State, and others.

A 3-year moratorium on new taxes on Internet activities.

Full funding for the international Monetary Fund.

About double the number of visas available to foreign high tech, high skilled workers under the H–1B program. The bill raises the annual cap from 65,000 to 115,000 for next 2 years.

An increase in the Federal Housing Administration's loan limit from $86,000 to $109,000, which will give more housing ownership opportunities to Californians.

$283 million nationally for 50,000 Welfare to Work Housing Vouchers for families trying to make transition to jobs. This new program will help them get housing closer to jobs.

AGRICULTURE

The bill includes a number of important funding and legislative provisions for California farm interests:

Extension of time for California citrus growers to conduct scientific review of whether Argentine citrus should be permitted into the U.S.

Continued affordability for California farmers for crop insurance.

$500,000 for pest control research that affects citrus fruit trees.

$90 million for the Market Access Program, which benefits California companies that sell product overseas.

In addition, the bill provides an increase of $75 million—to $633 million—for the Food Safety Initiative, to help implement improvements in surveillance of food borne illnesses, education about proper food handling, research, and inspection of imported and domestic foods.

ENVIRONMENT

The omnibus bill includes some good things for California, including:

Salton Sea legislation to require a Department of Interior study on options for restoring the Sea. The bill also provides $14.4 million to fund research and restoration activities.

$10,000 for an appraisal of the Bolsa Chica mesa.

$2 million for land acquisition in the Santa Monica Mountains National Recreation Area.

$273,000 for operations at the Manzanar National Historic Site

Continuation for the moratorium on new Outer Continental Shelf oil/mineral leases and drilling.

$1 million for land acquisition in the San Bernardino National Forest.

More generally, the bill provides a substantial increase for global climate change programs to more than $1 billion, a 25.6 percent increase over 1998. It also funds the President's Clean Water Action Plan at $1.7 billion—a 16.1 percent increase over 1998. This 5-year program helps communities and farmers clean up waterways which are currently deemed unswimmable and unfishable.

INFRASTRUCTURE

The bill provides a total of $293 million for California transportation projects, including $70 million for Los Angeles Metropolitan Transportation Authority Red Line, $40 million for the BART-to-San Francisco Airport line, and $17 million for the Santa Monica Bus Transitway for a dedicated highway express lane for buses.

Other major California projects that are funded include $50 million for Los Angeles River flood control, $52 million for Port of Los Angeles expansion, $6 million for Port of Long Beach expansion, and $1.5 million for Marina Del Rey dredging (Boxer request)

COMMUNITY DEVELOPMENT AND SERVICES

Allows LA City and County to use up to 25 percent of Los Angeles Community Development Block Grant for public services, such as job training, child care, crime and drug abuse prevention—federal cap normally is 15 percent. This gives LA more flexibility in deciding how to spend the CDBG funds.

Funds the Low Income Home Energy Assistance program at $1.1 billion nationally. Last year, the program benefited 300,000 low income families in California.

Summer Youth Employment program is funded at $871 million, same as last year, nationwide. Last year, California received $140.1 million, creating 70,510 jobs for economically disadvantaged youth.

CRIME

The omnibus appropriations bill funds the COPS program with an additional $1.4 billion nationwide. This will allow the hiring of an additional 1,700 new police in California. The bill also includes $2 million for the ''Tools for Tolerance'' program, a new grant under the Byrne Grant program for the Simon Wiesenthal Center in Los Angeles. This program helps police officers learn how they can reduce prejudice in their communities.

IMMIGRATION ASSISTANCE TO STATES

The legislation includes about $585 million to states as reimbursement for the cost of incarcerating illegal immigrants. California receives about half the national total. The bill also includes roughly $150 million to reduce backlog at INS in processing requests by legal immigrants to become U.S. citizens. Forty percent of the current backlog is in California.

These are all good provisions that will be of benefit to my state. However, I am very disappointed that the omnibus bill contains a number of harmful provisions, as well, including:

Legislation to allow doubling the cut of timber in 2½ national forests in California.

An 8-month delay of implementation of new oil valuation royalty rules, which deprives California schools of funds they are entitled to.

Zero funding for the U.N. Fund for Population Activities—international family planning assistance.

Continuation of the prohibition, except in cases of life endangerment, rape or incest, on the use of any federal funds for abortion services.

Continuaiton of the ban on federal employee health benefit plans for covering abortion services except in cases of life endangerment, rape or incest.

The bill provides about $8 million in ''emergency'' fiscal year 1999 spending for defense and national security. The Joint Chiefs of Staff have said there are billions in the defense budget for items not requested by them. I believe they are right and that some of the unrequested items could have been cut to offset needed additional defense funds included in the omnibus bill.

Mr. President, for the good that is in the bill, I will vote for it. However, it is my strong feeling that this ''omnibus, consolidated, emergency, supplemental'' bill is not a good way to put together the budget of the United States. Too many decisions—important decisions that affect millions of Americans—were left to the end of the year and made by just a handful of people, rather than being considered carefully and thoroughly over a period of months, in open committee and floor debates. I hope that this process will not be repeated in future years.

Overall, I remain strongly and deeply committed to a budget and legislative agenda that puts top priority on education for all American children, health research that will make life better for all Americans, technology development to keep America's economy the strongest in the world, and infrastructure that promotes safety, economic activity, and higher quality of life for all our people.

INTERNET MORATORIUM ACT

Mr. BREAUX. Mr. President, I am pleased that the Internet Moratorium Act is included in the 1998 omnibus appropriations bill. Present federal law neither authorizes, nor imposes, nor ratifies any excise, sales, or domain registration tax on Internet use for electronic interstate commerce, and only one fee for the Intellectual Infrastructure Fund. This temporary moratorium will prevent federal and state governments from implementing or enforcing taxes imposed on Internet commerce over the next three years. We would also like to clarify that this Congress has not ratified or authorized any federal taxes on Internet domain name registrations. The U.S. Federal Court has stated that Section 8003 ratifies what was previously declared to be an unconstitutional tax. However, it was never intended to ratify a tax on the Internet; it only speaks to a fee for the Intellectual Infrastructure Fund. Because the fee constitutes an unconstitutional tax, it was not ratified by section 8003. I am confident that this moratorium will enable Congress to develop a coherent national strategy of appropriate taxation of business transactions conducted over the Internet without hindering business opportunities and would also like to reiterate that this Congress has never ratified an unconstitutional tax on the Internet.

INCLUSION OF NORTH DAKOTA IN THE MIDWEST HIDTA

Mr. CONRAD. Mr. President, I rise today to thank the conferees who worked on the fiscal year 1999 omnibus appropriations bill for retention of my amendment calling for inclusion of North Dakota in the Midwest High Intensity Drug Trafficking Area, or HIDTA.

As North Dakota Attorney General Heidi Heitkamp and US Attorney John Schneider have pointed out, North Dakota—like other Midwestern states—has been inundated by a relentlessly rising tide of methamphetamine trafficking, production, and abuse. Unless action is taken swiftly, the Attorney General and US Attorney warn that North Dakota is at high risk to attract a meth manufacturing industry.

This is because my state's sparse population, great size, and abandoned buildings offer excellent locations for meth laboratories. Counter-drug operations in the southwestern US are also forcing this easily-relocated industry to find alternative production locations.

The numbers speak for themselves. There were no meth purchases by undercover agents in North Dakota in 1993. By 1997, there were 181 meth-related cases reported by state and federal law enforcement. In 1993, meth-related cases represented only 6 percent of the drug-related workload of the Office of the US Attorney. In five short years this number has skyrocketed to 75 percent. It is undeniable that increased production of meth in North Dakota along with associated trafficking has contributed to a spike of violent crime.

This unacceptable increase in meth-driven crime in North Dakota is placing a growing burden on North Dakota law enforcement, and represents a growing danger to the people of my state. It demands an immediate—and coordinated—federal response. Similar problems in the states of South Dakota, Iowa, Nebraska, Missouri, and Kansas were countered with the formation of the Midwest HIDTA.

North Dakota meets all the statutory criteria for inclusion in the Midwest HIDTA. In the words of Heitkamp and Schneider, joining the HIDTA will allow federal, state, and local law enforcement to ''work together to disrupt, dismantle, and destroy street and mid-level elements of methamphetamine organizations and/or groups operating in North Dakota, the Midwest, and Canada.''

During floor consideration of the Treasury-Postal appropriations bill, I was pleased to work on this matter with the distinguished leadership of the Treasury-Postal Appropriations Subcommittee, Senators CAMPBELL and KOHL. I greatly appreciate their good work in conference to retain my amendment. I am also pleased that the conference report includes additional funding for the new HIDTAs designated in this legislation, and I urge the Administration to consider favorably North Dakota's request for $1.97 million in fiscal year 1999 funding for integration of my state into the Midwest HIDTA.

Mr. President, passage of the omnibus bill is an important step in getting tough on methamphetamine in my state. It is simply imperative that there be coordinated federal, state, and local law enforcement response to North Dakota's drug crisis, and I again thank Senators CAMPBELL and KOHL for their assistance in making this a reality.

DISTRICT OF COLUMBIA APPROPRIATIONS

Mr. ROBB. Mr. President, I rise to bring to the Senate's attention to a matter of concern to the government of the District of Columbia and to commuters in the capital area.

Each workday, about one thousand people a day use an informal carpool system to get in and out of the nation's capital. These commuters gather in ''slug lines'' at unofficial pick up points to catch rides with others driving into the District. At the end of the day, these ''slugs'' catch rides home.

Nearly everyone benefits from this system. The drivers get to work more quickly because they get to use the carpool lane. The ''slugs'' get a free ride. Other drivers benefit from reduce traffic. And all of us benefit from less pollution due to increased carpooling.

Not everyone is happy with the slugs however. The District of Columbia police have raised concerns that drivers picking up slugs will slow traffic or create a safety hazard. As reported in recent articles in the Washington Post, city police officers have ticketed these drivers and considered forcing the commuters to find a new pick up point. Fortunately, District Police Chief Ramsey has decided against his approach. Instead, he will study the traffic situation along 14th Street to see how we can improve the flow of traffic.

I welcome this approach. We may be able to address the District's concerns about safety and traffic congestion while preserving the slug lines. I've asked the managers of the legislation to consider this problem during conference, and if possible, to include language directing the Department of the Interior and the District of Columbia Department of Public Works to study the feasibility of providing commuter pick-up lanes to serve commuters in the busy 14th Street Corridor south of Constitution Avenue. The Interior Department and the District would report to the Appropriations Committees of the Senate and House of Representatives on their joint recommendations

to address this matter. Even if conference report language could not be included, I believe the idea of the study, with recommendations would be helpful.

I would like to emphasize that many of these commuters are Federal employees, and so I think it's appropriate to get the federal government involved. I am certainly willing to work with the District Government to seek federal funds or easements to create commuter pick up lanes, and I hope the District will look closely at this option. I think it could be a triple play—a win with respect to the District's safety concerns, a win for drivers on our congested highways, and of course, a win for the slugs.

Mr. President, I would appreciate hearing the comments of the joint managers on this issue, and I yield the floor.

Mr. FAIRCLOTH. I think the Senator has a workable plan to move this toward a solution, and I urge the Department of the Interior and the District Government to study the matter and report back to us early next year.

Mrs. BOXER. I thank the Senator from Virginia for raising this issue. The commuter lane proposal sounds like an excellent compromise, and I hope Interior and the District will begin looking at this option immediately.

As the ranking Democrat of the D.C. I would like to thank Senator FAIRCLOTH for his efforts as Chairman of the D.C. Appropriations Subcommittee. He has worked hard to address the District's financial ills, and I am pleased that we have begun to make some progress for the District to resolve its serious financial problems.

In fact, the fiscal well being of the District has improved dramatically. The District ended fiscal year 1997 with a budget surplus of almost $186 million. The June, 1998 projections suggest that the District may have a surplus of $302 million for fiscal year 1998.

The fiscal year 1999 D.C. Appropriations includes $494.59 million in Federal Funds. This amount represents an increase of $8.39 million above the President's Budget request for the District of Columbia. It is $38.4 million below the FY 1998 level.

With regard to the District of Columbia Funds, the legislation largely reflects the consensus budget formulated by the Mayor, the City Council, and the Control Board.

It is important to note that because of abuses of taxpayer funds, there is no appropriation to the Advisory Neighborhood Commissions (ANCs) as provided for in the consensus budget. However, this deletion of funds does not preclude the District from including funds for the commissions in future budgets so long as there are sufficient safeguards to protect taxpayers' interests.

Mr. President, with respect to specific provisions of this bill, there are some good things, but there are also some bad provisions.

On the plus side, this bill includes a $25 million federal payment for management reform. Within these funds, special attention will be given to fire and emergency medical services, the reopening of the Chief Medical Officer's laboratory, and implementation of a high-speed city-owned fiber network for voice and data services.

The bill provides funds for the repair and maintenance of public safety facilities in the District. The Federal highway funds made available to the District include $98 million for local streets.

The bill includes a $25 million federal contribution to the Washington Metropolitan Area Transit Authority for improvements to the Metrorail station at the site of the proposed Washington Convention Center project.

I am pleased that the bill sets aside $5 million to address the chronic need for additional community-based housing facilities for seriously and chronically mentally ill individuals in the District.

The bill also provides an appropriation to the Children's National Medical Center for the Community Pediatric Health Initiative. This reestablishes an important public-private partnership to provide pediatric services to high risk children in medically under-served areas.

The bill requires the Control Board to report to Congress on the status of any agreements between the District and all non-profit organizations that provide medical and social services to the District's residents. This will ensure that the District re-evaluates the decisions to terminate support and where possible renew support for these critical programs, including those of Children's Hospital.

I am especially pleased that funding for homeless programs in the District will remain level for fiscal year 1999. In previous years, these programs were threatened with funding cuts and I am happy that these cuts are no longer being proposed.

Finally, I am pleased that this legislation does not divert any funds from the District of Columbia Public School system for private school vouchers as was included in the D.C. Appropriations bill passed by the House of Representatives.

Mr. President, unfortunately this legislation includes a number of objectionable provision which violate the principle of home rule and infringe on the rights of District residents.

Again this year, the bill includes a ban on the use of local funds for abortions, and a ban on the use of local funds to expand health care benefits to unmarried couples. I continue in my strong opposition to these provisions.

I also have serious concerns about the provision to cap the funds available to reimburse attorneys who represent children who obtain special education placements in hearing sunder the Individuals with Disabilities Education Act. This provision will seriously inhibit the ability of children with special needs to obtain their legal right to an education.

I am disappointed by the inclusion of a provision that prohibits the District from using funds to provide assistance to any civil action to require Congress to provide the District of Columbia with voting representation.

The bill also includes a repeal of a recently enacted residency requirement, a matter of some controversy.

I know that the Administration strongly objects to several provisions in the bill, including a ban on funds to organizations that participate in needle exchange programs.

All of these provisions are unnecessary and inappropriate intrusions into the District's own priorities and the rights of its citizens.

Overall, I support the proposed allocation of funds for the District of Columbia, but I am disappointed by the many inappropriate riders in this legislation. Without these provisions, this would have been a much better bill.

Again, I would like to recognize Chairman FAIRCLOTH, and to acknowledge the hard work of the staff for this bill: Mary Beth Nethercutt of the Majority Staff, Minority Deputy Staff Director, Terry Sauvain; Liz Blevins and Neyla Arnas of the Committee staff; and Danielle Drissel of my legislative staff.

I would especially like to express my appreciation to Senator BYRD, the Ranking Democrat of the Committee on Appropriations, for assigning his Deputy Staff Director, Terry Sauvain, to serve as Minority Clerk of the D.C. Appropriations Subcommittee. Terry is a long time appropriations staff member who is a consummate professional and a pleasure to work with, and I have really enjoyed and counted on his advice and council.

GLACIER BAY NATIONAL PARK AND PRESERVE COMMERCIAL FISHING

Mr. STEVENS. Mr. President, the omnibus package, H.R. 4328, includes a measure involving commercial fishing in Glacier Bay and Upper Dundas Bay within Glacier Bay National Park and Preserve. While working on this in the past weeks, a fisherman commented to my office that the choices presented are like choosing whether to cut off your finger, hand, or arm. In short, because the Department of the Interior has taken the position that commercial fishing in Glacier Bay and Dundas Bay should end, there simply has been no solution that Alaskans can fully support. In the omnibus bill we have chosen the lesser of evils.

Without Congressional action, the National Park Service would have gone forward with regulations to phase out fishing in the Bay over 15 years and eventually ban it altogether. The National Park Service would also have blocked Dungeness crab fishermen who fish in Upper Dundas Bay and the Beardslee Islands, the so-called wilderness waters, from continuing a fishery that has existed for nearly 20 years

with no evidence of environmental damage. Whether the Service would have ever agreed to a fair plan to compensate these crabbers is doubtful. Discussions have been ongoing for three years without the Park Service putting a compensation plan on the table.

Without Congressional action, the Service might have proceeded with plans to shut down the scallop fishery, stop flounder fishing, close out crabbing, and block fisheries outside Glacier Bay itself, again relying on what it believes are its inherent powers to stop commercial activities in parks, the spirit and letter of the Alaska National Lands Conservation Act to the contrary. In my opinion and the opinion of the State of Alaska, the Service has no such authority because regulation of fisheries is a state prerogative in Alaska as well as the rest of the nation. Furthermore, the Alaska Department of Law maintains that the submerged land within Glacier Bay and, as a result, the water column above it, both fall under the jurisdiction of the State of Alaska under the Submerged Lands Act and the Alaska Statehood Act.

When this issue was brought before this Congress, I supported Senator MURKOWSKI's amendment to the Interior Appropriations bill to block the Park Service's planned regulations to give us more time to work out a solution. I also cosponsored Senator MURKOWSKI's bill to resolve this problem once and for all. Unfortunately, because of Administration opposition, the bill did not pass Congress, leaving us with the provision for a moratorium on regulations in the Interior bill.

As we approached the end of the fiscal year, the Administration became more vocally opposed to allowing traditional fisheries in Glacier Bay to continue even though there is no scientific evidence that either the fisheries or other resources which depend on them are in trouble. For example, whale counts are actually up in Glacier Bay, an indication that there is an abundance of fish upon which to feed. Secretary Babbitt threatened to recommend a veto of the bill if the provision blocking the Park Service's fishing ban was included in the spending bills.

At the same time, the Congressional leadership stepped up efforts to develop an omnibus spending package the President would sign. As much as they supported the Delegation's efforts in Glacier Bay, the Congressional leadership were not willing to give the President any excuse to veto bills and shut down the government to divert attention from other matters. I was asked to try to work out a solution that the President would accept. We worked for nearly a week to develop a plan; and after consultation with fishermen, crabbers, and the other members of the Delegation, I reluctantly concluded that this proposal was better than taking no action at all.

The plan we developed allows the fishermen who have historically operated in Glacier Bay to continue to fish for the rest of their lives. We had sought the right to allow fishermen to pass on their permits to their children or assignees, but that was rejected by the Interior Department. Had the regulations gone forward in their current form, all fishermen would have been banned from the Bay in 15 years.

The proposal also offers a compensation package to the five or six crabbers who will be forced out of designated wilderness areas in Glacier Bay and Upper Dundas Bay. It will compensate them for their permit and lost income for six years or $400,000, which ever is greater. In addition, if a fisherman chooses to be compensated for his or her permit and lost income, he or she may also sell to the Secretary his or her boat and gear for additional compensation. Each crabber will obviously have the option of keeping their boat and gear and fishing elsewhere. Lost income is net after expenses which should be calculated by taking gross receipts and subtracting the cost of insurance, crew, fuel, and bait. Paper losses such as depreciation used for Internal Revenue purposes only, should not be subtracted in calculating net income.

The crabbers will have until February 1st to file a claim and the Interior Department will then have six months to act on those claims. There will be an appeals process with a right to go to court if no agreement is reached on an acceptable compensation plan. The office of the Assistant Secretary for Parks and Wildlife has pledged to me to expedite this process so the Dungeness crabbers will be compensated as quickly as possible.

The compromise that was reached also maintains the State of Alaska's prerogatives with respect to state management of the state's fisheries. There will be a cooperative management plan developed jointly by the Interior Department and the State of Alaska. As that plan is developed, I have been assured by the Secretary's office that the Glacier Bay Working Group representing the fishing industry will be consulted. There will be a full public process including hearings, testimony, and an opportunity to comment on any proposed plan.

In addition, the legislation includes a savings clause to clarify that nothing in the Act undermines the power and authority of the State of Alaska to manage fisheries in the State. Finally, I want to make clear that unless explicitly provided in the Act, the legislation is not intended to amend the Alaska National Interest Lands Conservation Act which generally and specifically governs management of Glacier Bay National Park and Preserve as well as subsistence and commercial fishing.

With respect to subsistence fishing, while the Interior Department would not agree to explicitly allow subsistence activities, I was assured by the Secretary's office that personal use fisheries could continue, most notably for the people of Hoonah who have had a long running dispute with the Park Service on this issue. I was advised that the Park Service is authorized under National Park Service Organic Act to recognize a state-run personal use fishery.

Of critical importance is the status of the outer waters of Glacier Bay. The original proposal made by the Interior Department offered no assurance that commercial fishing could continue outside the Bay itself. Language was specifically included to address this shortcoming, making it clear that commercial fishing is authorized under law and will continue to be permitted in the outer waters. Although the Secretary, acting jointly in consort with the State of Alaska, through the cooperative management plan, may retain the right to protect park resources, that goal must be achieved through reasonable regulation. For example, an area around a seal rookery may be closed to salmon fishing to protect that specific location, but the rest of the outside waters must remain open to salmon fishing.

I view this compromise as an insurance policy, a safety net that offers better protection to Glacier Bay's fishermen than was offered by the draft Park Service regulations. But I do not view it as the end of the story. There are provisions I do not like.

Senator MURKOWSKI has already indicated his intention to introduce legislation on this issue and hold hearings in the Senate Energy Committee which he chairs. I also have indications that Congressman YOUNG, the Chairman of the House Resources Committee, has similar plans. The Secretary of the Interior agreed to extend the comment period on the pending agency regulations until January 15, 1999.

One issue that has not been addressed in this legislative compromise are the losses of local communities and fish processing companies. The Interior Department acknowledges that this is a shortcoming and has pledged to work with me and the rest of the Delegation to address this issue. I pledge to work with local communities and processors in the months ahead.

INTERNET SPEECH REGULATION

Mr. LEAHY. Mr. President, last week's Washington Post proclaimed in one headline, ''High Tech is King of the Hill,'' citing the passage of several bills which I actively supported, including restricting Internet taxes, enhancing protection for copyrighted works online, and encouraging companies to share information to avoid Year 2000 computer failures. Yet, anyone familiar with the Internet proposals buried in the Omnibus Appropriations measure would be writing a different headline this week.

Certain provisions in this huge spending bill repeat the mistakes about regulating speech on the Internet that the last Congress made when it passed the Communications Decency Act, the

''CDA-I.'' I opposed the CDA from the start as fatally flawed and flagrantly unconstitutional. I predicted that the CDA would not pass constitutional muster and, along with Senator FEINGOLD, sought to repeal the CDA so that we would not have to wait for the Supreme Court to fix our mistake.

We did not fix the mistake and so, as I predicted, the Supreme Court eventually did our work for us. All nine Justices agreed that the CDA was, at least in part, unconstitutional. Justice STEVENS, writing for seven members of the Court, called the CDA ''patently invalid'' and warned that it cast a ''dark shadow over free speech'' and ''threaten[ed] to torch a large segment of the Internet community.'' *Reno* v. *ACLU*, 117 S.Ct. 2329, 2350 (1997). The Court's decision came as no surprise to me, and should have come as no surprise to the 84 members of the Senate who supported the legislation.

We had been warned by constitutional scholars and Internet experts that the approach we were taking in the CDA would not stand up in court and did not make sense for the Internet. In the end, three district court panels and the Supreme Court all ultimately agreed in striking down the CDA-I as an unconstitutional restriction on free expression.

Congress is about to make the same mistake again by including in the Omnibus Appropriations bill the ''Child Online Protection Act,'' or ''CDA-II.'' I have spoken before, on July 21, 1998, about my opposition to a version of this legislation that was included, without debate, on the annual funding bill for the Commerce, State and Justice Departments.

My opposition to these efforts to regulate Internet speech should not be misunderstood. I join with the sponsors of these measures in wanting to protect children from harm. I prosecuted child abusers as State's Attorney in Vermont, and have worked my entire professional life to protect children from those who would prey on them. In fact, earlier this month, the Congress passed the Hatch-Leahy-DeWine version of the ''Protection of Children from Sexual Predator Act,'' H.R. 3494, to enhance our Federal laws outlawing child pornography. We should act whenever possible to protect our children, but we have a duty to ensure that the means we use to protect our children do not do more harm than good. As the Supreme Court made clear when it struck down CDA-I, laws that prohibit protected speech do not become constitutional merely because they were enacted for the important purpose of protecting children.

CDA-II makes a valiant effort to address many of the Supreme Court's technical objections to the CDA. Nevertheless, while narrower than its CDA-I predecessor, this legislation continues to suffer from substantial constitutional and practical defects. The core holding of the CDA-I case was that ''the vast democratic fora of the Internet'' deserves the highest level of protection from government intrusion—the highest level of First Amendment scrutiny. Courts will assess the constitutionality of laws that regulate speech over the Internet by the same demanding standards that have traditionally applied to laws affecting the press.

The CDA-II provisions included in the Omnibus Appropriations bill do not meet those standards.

CDA-II would penalize the posting ''for commercial purposes'' on the World Wide Web of any material that is ''harmful to minors.'' Penalties include fines of up to $50,000 per day of violation, up to 6 months' imprisonment and, under a separate section of the bill, forfeiture of eligibility for the Internet tax moratorium. Like the old CDA-I, this new provision creates an affirmative defense for those who restrict access by requiring use of a credit card, debit account, adult access code, adult personal identification number, a digital certificate verifying age, or other reasonable measures. This new criminal prohibition raises a number of constitutional and practical issues that have been entirely ignored by this Congress.

First, the scope of CDA-II is unclear. The prohibition applies to anyone ''engaged in the business'' of making any communication for commercial purposes by means of the World Wide Web. Vendors selling pornographic material from Web sites are clearly covered, but also many other unsuspecting persons and businesses operating Web sites will likely fall under this prohibition. Under new section 231(e)(2)(B) of title 47, U.S.C., ''it is not necessary that the person make a profit'' or that the Web site ''be the person's sole or principal business or source of income.'' Does CDA-II cover companies that offer free Web sites, but charge for their off-line services? If CDA-II does not apply in that circumstance, would the measure have the unintended effect of encouraging the posting of ''harmful'' materials on the Web for free? Does CDA-II apply to a business that merely advertises on the Web? Does CDA-II apply to public service postings sponsored by businesses on the Web?

In the face of this uncertainty, entrepreneurs, small businesses and other companies who maintain a Web site as a way to enhance their business may face criminal liability if they post material—for free, for advertising, or for a fee—which some community in this country may perceive to be ''harmful to minors.''

Second, CDA-II adopts a ''harmful to minors'' standard that will likely be found unconstitutional. CDA-II defines ''material that is harmful to minors'' as what the ''average person, applying contemporary community standards,'' would find, taken as a whole and with respect to minors, is designed to appeal to the prurient interest, depicts in a manner patently offensive to minors actual or simulated sexual acts or contact, and lacks serious literary, artistic, political or scientific value. The provision further defines a ''minor'' to be ''any person under 17 years of age.''

The ''17 year old'' age cutoff in CDA-II makes this measure significantly more restrictive than the ''harmful to minors'' statutes adopted in most states, including in my home state of Vermont. Most state ''harmful to minors'' statutes restrict materials that would be harmful to minors under the age of 18. These statutes are interpreted to prohibit only that material which would be harmful for the oldest minor. Thus, by setting the age at ''under 17,'' CDA-II would prohibit material on the Web that is inappropriate or harmful for 16 year olds. Consequently, CDA-II would impose more restrictions on the material that can be freely accessible on the World Wide Web than most states impose on materials available for sale in bookstores, news stands, and movie theaters within their borders.

Yet, unlike books, magazines, movies or even broadcasts, where the vendor can control the physical places to which the material is distributed, a person posting material on a Web site cannot restrict access to only Internet users from certain geographic regions. Indeed, Web site operators often cannot determine the region of the country, or the world, from which users are initiating their access.

As a consequence, Web site operators will have to tailor the material accessible on their sites to content that would pass muster in the most conservative community in the country for children 16 years old and younger. The standards of every other community would be discounted. Thus, the bill's core effect will be to set—for the first time—a single, national harmful to minors standard for material on the World Wide Web. Moreover, this standard will be more restrictive than those already in place in most states.

This result runs counter to existing ''harmful to minors'' law as articulated by the Supreme Court. The Supreme Court has never approved of a single, national obscenity standard, nor has it approved a ''harmful to minors'' statute based on a national, as opposed to local, standard. On the contrary, the Supreme Court in *Miller* v. *California*, 413 U.S. 15, 30–32 (1973), stated that:

> our Nation is simply too big and too diverse . . . to reasonably expect that such standards could be articulated for all 50 States in a single formulation. . . . It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City.

Reducing the material available on the Web to that which only the most conservative community in the country deems to be appropriate for 16-year-olds, could very well remove material that is both constitutionally protected and socially valuable. The online publication of the Starr report, in whole or in part, Robert Mappelthorpe's pictures, or PG, PG–13, and certainly R-

rated movies or TV shows would be suspect.

CDA-II provides an affirmative defense for online publishers of such material that demand credit card numbers or other adult identification. A similar defense did not save CDA-I, however, and remains insufficient to reduce the significant burden on protected speech that the new prohibition imposes. The Supreme Court noted in analyzing this defense in CDA-I, that such a requirement would '''completely bar adults who do not have a credit card and lack the resources to obtain one from accessing any blocked material.''' 117 S.Ct at 2337.

In addition to burdening the speech rights of adults, the Supreme Court questioned the effectiveness of this defense in CDA-I to protect children, stating:

. . . it is not economically feasible for most noncommercial speakers to employ such verification . . . Even with respect to commercial pornographers that would be protected by the defense, the Government failed to adduce any evidence that these verification techniques actually preclude minors from posing as adults. Given that the risk of criminal sanctions 'hovers over each content provider, like the proverbial sword of Damocles,' the District Court correctly refused to rely on unproven future technology to save the statute.'' 117 S.Ct. at 2349–50.

The technology required to exercise the affirmative defense remains practically difficult and prohibitively expensive for many Web sites. As a result, just as the Supreme Court found with CDA-I, CDA-II would effectively chill the publication of a large amount of valuable, constitutionally-protected speech on popular commercial web sites such as CNN.com, amazon.com, or the New York Times online. As the Court restated in its decision on CDA-I, '''[t]he level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox.''' 117 S.Ct. at 2346.

Third, CDA–II will be ineffective at protecting children. In evaluating whether the burdens that CDA–II will place on Web publishers are justified, we must take a realistic look at how well these new restrictions will work to protect children from harmful online materials. As the Supreme Court noted, adult identification or verification techniques can be falsely used by children to gain access to forbidden material.

In addition, CDA–II is limited to activity on the Web, presumably to capture the material that the Supreme Court believed was susceptible to use of verified credit cards. Those of us who use the Internet recognize that the Web is merely one of several Internet protocols, although the one most amenable to pictorial or graphic displays. Limiting the reach of this measure to the Web excludes newsgroups, FTP sites, e-mail, chat rooms, private electronic bulletin board systems (BBS), and gopher sites, where children may continue to access harmful materials. Indeed, I am concerned that the unintended consequence of applying CDA–II's ill-considered speech restrictions on the Web will simply force Internet content providers and users to use or develop other protocols with which they would be able to exercise their First Amendment rights unfettered by the threat of criminal prosecution.

Those of us who use the Internet and the World Wide Web also recognize that this is a global medium, not just a network under United States control. Indeed, a large percentage of content on the Internet originates outside the United States, and is as accessible over the Web as material posted next door. Objectionable material is likely to come from outside the United States and be unreachable by American laws.

The Justice Department, in a letter dated October 5, 1998, on CDA–II that I would ask to be included in the record, stated, ''the practical or legal difficulty in addressing these considerable alternative sources from which children can obtain pornography raises questions about the efficacy of the [CDA–II] and the advisability of expending scarce resources on its enforcement.''

The warning by the Justice Department that this measure will detract from current efforts to stop the distribution of illegal child pornography has apparently gone unheeded by Congress. The Justice Department has made clear that CDA–II would ''divert the resources that are used for important initiatives such as Innocent Images,'' a successful online undercover program to stop child predators and pornographers. The work that the Justice Department has done in going after the worst offenders, highlighted by the recent international crack down on child-pornography, should not be diluted by broadening their enforcement load to embrace an unconstitutional standard.

Fourth, Congress simply has not done its homework to consider alternative effective means to protect children from harmful online materials. The Senate is considering CDA–II, including its creation of a new Federal crime, as part of an omnibus spending measure. Until recently the Senate had rules and precedent against this kind of legislating on an appropriations bill. Under Republican leadership, that discipline has been lost and we are left to consider significant legislative proposals as part of annual appropriations. These matters are far-reaching. They deserve full debate and Senate consideration before good intentions lead the Senate to take another misstep in haste.

The Congress has not held hearings on the CDA–II provisions before us. The Senate Commerce Committee hearing in February, 1998, elicited only the testimony of this measure's primary sponsor about a prior version of the bill, and no other testimony about its constitutionality. The Congress has made only the most minimal efforts to determine whether technical tools or this measure would be the least restrictive means of protecting children. There has been no study, no discussion, and no comparison of the effectiveness of various approaches, their likely impact on speech, and their appropriateness for the Internet.

Ironically, CDA–II puts the proverbial cart-before-the-horse by enacting new speech restrictions at the same time the bill establishes a ''Commission on Online Child Protection'' to study the technical means available to protect children from harmful material. While the selection of the members of this Commission is left solely to Republican congressional leadership, we should at least hear from the Commission before legislating. As the letter from the Department of Justice advises, ''Congress should wait until the Commission has completed its study and made its legislative recommendations before determining whether a criminal enactment would be necessary, and if so, how such a statute should be crafted.'' This approach would allow Congress to create a record on the most effective means to solve the problem instead of passing an ineffective law.

In striking the CDA–I as unconstitutional, the Supreme Court specifically cited ''the absence of any detailed findings by the Congress, or even hearings addressing the special problems of the CDA'' as grounds for its finding ''that the CDA is not narrowly tailored if that requirement has any meaning at all.'' 117 S.Ct. at 2348. The Congress is repeating this mistake here, since it has again not established a record showing that the extraordinary restrictions on Internet expression proposed in the CDA–II are the least restrictive way to achieve our goal of protecting children online. Congress is required to establish such a record if it seeks to impose these sorts of burdens of the speech of our citizens.

Experts have told us that there are better ways to protect children that have less of an impact on constitutionally protected speech, including the use of blocking and filtering tools that give parents the ability to control access to harmful content both within and outside of the United States. Harvard Law School Professor Larry Lessig, who is an expert on both constitutional law and Internet law, has described at least one less restrictive alternative—the use of voluntary ''kid certificates'' online—that would have the same effect Congress is trying to achieve while placing far less of a burden on free speech. I ask that his letter be made part of the RECORD.

It is precisely because these less restrictive means exist, and because Congress has not shown otherwise, that the CDA–II is most likely to fail in the courts.

Finally, there are constructive steps that Congress can and should take. Although CDA–II would not solve the problems facing parents and educators on how to protect their children from

harmful and inappropriate online material, there are several steps that Congress could take which would prove more effective.

We should hear from the Commission on Online Child Protection that is authorized in this bill to study the technical means available to protect children from harmful material.

We should do more to protect children's privacy. The Omnibus appropriations bill contains a provision authorizing the FTC to require parental consent from children to give out personal information to Web sites aimed at children or where the age of child has been collected. These privacy provisions have broad support and could be a way for Congress effectively and constitutionally to protect children online without detracting from the current mission of law enforcement.

We should not rush to legislate when non-legislative solutions may be more effective and consistent with our constitutional principles. Instead of trying to create a national harmful to minors standard, Congress should encourage companies and non-profit organizations who have responded to this problem with wide-ranging efforts to create child-friendly content collections, teach children about appropriate online behavior, and develop voluntary, user-controlled, technology tools that offer parents the ability to protect their own children from inappropriate material. Unlike legislative approaches, these bottom-up solutions are voluntary. They protect children and assist parents and care-takers regardless of whether the material to be avoided is on an American or foreign Web site. They respond to local and family concerns, and they avoid government decisions about content.

We can and must do better than CDA–II. This measure will do almost nothing to protect children from harmful material online, but will divert Federal enforcement resources, restrict constitutionally-protected free speech online and set a dangerous precedent for Federal regulation of the Internet. Perhaps worst of all, it will create the illusion of a solution. This Congress should not be in the business of lulling parents into a false sense of security while in fact doing nothing to protect children online.

Many members who have supported CDA–II are no doubt motivated by the same thing that motivates me in this area: a desire to protect children online. I am afraid, however, that we have not taken the time to craft a legislative solution that will actually help solve this problem. The Congress has been put on notice that our approach will not work, and will probably end up in court for yet another battle. We should not run another ambiguous speech regulation up the flagpole and expect the courts to salute. We owe it to the millions of Americans who use the Web not to make the same mistake a second time.

Now, Mr. President, I ask unanimous consent that a letter from Acting Attorney General Anthony Sutin from the Department of Justice and a letter from Harvard University Professor Lawrence Lessig in opposition to the Child Online Protection Act be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, October 5, 1998.

Hon. THOMAS BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

This letter sets forth the views of the Department of Justice on H.R. 3783, the ''Child Online Protection Act'' (''the COPA''), as ordered reported. We share the Committee's goal of empowering parents and teachers to protect minors from harmful material that is distributed commercially over the World Wide Web. However, we would like to bring to your attention certain serious concerns we have about the bill.

The principal provision of the COPA would establish a new federal crime under section 231 of Title 47 of the United States Code. Subsection 231(a)(1) would provide that:

''Whoever, in interstate or foreign commerce, by means of the World Wide Web, knowingly makes any communication for commercial purposes that includes any material that is harmful to minors without restricting access to such material by minors pursuant to subsection (c) shall be fined not more than $50,000, imprisoned not more than 6 months, or both.''

Subsection 231(a)(2), in turn, would provide for additional criminal fines of $50,000 for ''each day'' that someone ''intentionally violates'' §231(a)(1); and §231(a)(3) would provide for additional civil fines of $50,000 for ''each day'' that a person violated §231(a)(1). Subsection 231(b) would exempt certain telecommunications carriers and other service providers from the operation of §231(a)(1). Subsection 231(c)(1) would establish what is denominated an ''affirmative defense'':

''(1) DEFENSE.—It is an affirmative defense to prosecution under this section that the defendant, in good faith, has restricted access by minors to material that is harmful to minors—

''(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number; or

''(B) by any other reasonable measures that are feasible under available technology.''

Subsection 231(e) would define, *inter alia*, the following terms in the criminal prohibition: (i) ''by means of the World Wide Web''; (ii) ''commercial purposes''; (iii) ''material that is harmful to minors,'' and ''minor.'' *See* proposed §231(e) (1), (2), (6) & (7). In particular, ''material that is harmful to minors'' would be defined as:

''. . . any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that—

''(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, that such material is designed to appeal to or panders to the prurient interest;

''(B) depicts, describes, or represents, in a patently offensive way with respect to minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals or female breast; and

''(C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.''

The Department's enforcement of a new criminal prohibition such as that proposed in the COPA could require an undesirable diversion of critical investigative and prosecutorial resources that the Department currently invests in combating traffickers in hard-core child pornography, in thwarting child predators, and in prosecuting large-scale and multidistrict commercial distributors of obscene materials. For example, presently the Department devotes a significant percentage of our resources in this area to the highly successful Innocent Images online undercover operations, begun in 1995 by the FBI. Through this initiative, FBI agents and task force officers go on-line, in an undercover capacity, to identify and investigate those individuals who are victimizing children through the Internet and on-line service providers. Fifty-five FBI field offices and a number of legal attaches are assisting and conducting investigations in direct support of the Innocent Images initiative. To ensure that the initiative remains viable and productive, the Bureau's efforts include the use of new technology and sophisticated investigative techniques, and the coordination of this national investigative effort with other federal agencies that have statutory investigative authority. We also have allocated significant resources for the training of state and local law enforcement agents who must become involved in our effort. To date, the Innocent Images national initiative has resulted in 196 indictments, 75 informations, 207 convictions, and 202 arrests. In addition, 456 evidentiary searches have been conducted.

We do not believe that it would be wise to divert the resources that are used for important initiatives such as Innocent Images to prosecutions of the kind contemplated under the COPA. Such a diversion would be particularly ill-advised in light of the uncertainty concerning whether the COPA would have a material effect in limiting minors' access to harmful materials. There are thousands of newsgroups and Internet relay chat channels on which anyone can access pornography; and children would still be able to obtain ready access to pornography from a myriad of overseas web sites. The COPA apparently would not attempt to address those sources of Internet pornography, and admittedly it would be difficult to do so because restrictions on newsgroups and chat channels could pose constitutional questions, and because any attempt to regulate overseas web sites would raise difficult questions regarding extraterritorial enforcement. The practical or legal difficulty in addressing these considerable alternative sources from which children can obtain pornography raises questions about the efficacy of the COPA and the advisability of expending scarce resources on its enforcement.

Second, such a provision would likely be challenged on constitutional grounds, since it would be a content-based restriction applicable to ''the vast democratic fora of the Internet,'' a ''new marketplace of ideas'' that has enjoyed a ''dramatic expansion'' in the absence of significant content-based regulation. *Reno* v. *ACLU*, 117 S. Ct. 2329, 2343, 2351 (1997). As the Court in ACLU suggested, *id*. at 2341 (discussing *Ginsberg* v. *New York*, 390 U.S. 629 (1968)), it may be that Congress could, consistent with the First Amendment, enact an Internet version of a ''variable obscenity,'' harmful-to-minors prohibition, analogous to state-law statutes prohibiting bookstores from displaying to minors certain materials that are obscene as to such minors. *See, e.g., American Booksellers* v. *Webb*, 919 F.2d 1493 (11th Cir. 1990), *cert denied*, 500 U.S. 942 (1991); *American Booksellers Ass'n* v. *Virginia*, 882 F.2d 125 (4th Cir. 1989), *cert denied*, 494 U.S. 1056 (1990), *Davis-Kidd Booksellers, Inc.* v. *McWherter*, 866 S.W.2d 520

(Tenn. 1993). However, it is not certain how the constitutional analysis might be affected by adaptation of such a scheme from the bookstore context in which it previously has been employed to the unique media of the Internet. Because it may be more difficult for Internet content providers to segregate minors from adults than it is for bookstore operators to do the same, and because the Internet is, in the Court's words, a ''dynamic, multifaceted category of communication'' that permits ''any person with a phone line'' to become ''a town crier with a voice that resonates farther than it could from any soapbox,'' *ACLU*, 117 S. Ct. at 2344, the Court is likely to examine very carefully any content-based restrictions on the Internet.

The decision in ACLU suggests that the constitutionality of an Internet-based ''harmful-to-minors'' statute likely would depend, principally, on how difficult and expensive it would be for persons to comply with the statute without sacrificing their ability to convey protected expression to adults and to minors. And the answer to that question might depend largely on the ever-changing state of technology, the continuing progress that the private sector makes in empowering parents and teachers to protect minors from harmful material, and the scope and detail of the record before Congress. In this regard, it is notable that the COPA also would establish a Commission (see §6) to study the ways in which the problem could most effectively be addressed in a time of rapidly evolving technologies. In light of the difficult constitutional issues, we believe that Congress should wait until the Commission has completed its study and made its legislative recommendations before determining whether a criminal enactment would be necessary, and if so, how such a statute should be crafted.

Finally, the COPA as drafted contains numerous ambiguities concerning the scope of its coverage. Such ambiguities not only might complicate and hinder effective prosecution; they also might ''render [the legislation] problematic for purposes of the First Amendment,'' by ''undermin[ing] the likelihood that the [bill] has been carefully tailored to the congressional goal of protecting minors from potentially harmful materials.'' *ACLU*, 117 S. Ct. 2344. Among the more confusing or troubling ambiguities are the following:

''(a) While the COPA mentions that minors' access to materials on the Internet 'can frustrate parental supervision or control' over their children, §2(1), the only 'compelling interest' that the COPA would invoke as a justification for its prohibition is 'the protection of the physical and psychological well-being of minors by shielding them from materials that are harmful to them,' id. §2(2). The constitutionality of the bill would be enhanced if Congress were to identify as the principal compelling interest the facilitation of parents' control over their children's upbringing, in addition to the government's independent interest in keeping certain materials from minors regardless of their parents' views. *See, e.g., ACLU*, 117 S. Ct. at 2341 (noting that the statute in *Ginsberg* presented fewer constitutional problems than the Communications Decency Act because in the former, but not the latter, parents' consent to, or participation in, the communication would avoid application of the statute).

''(b) While the bill would not appear to apply to material posted to the Web from outside the United States, that question is not clear; and the extraterritoriality of the prohibition might affect the efficacy and constitutionality of the statute. *See ACLU*, 117 S. Ct. at 2347 n. 45.

''(c) It is unclear what difference is intended in separately prohibiting 'knowing' violations (proposed §231(a)(1)) and 'intentional' violations (proposed ''§231(a)(2)); and there is no indication why the two distinct penalty provisions are necessary or desirable. Moreover, it is not clear, in subsection (a)(1), which elements are modified by the ''knowingly'' requirement. For example, must the government prove that the defendant knew that the communication contained the harmful-to-minors material? That the defendant knew the materials were, in fact, harmful to minors? Nor is it clear what it would mean, in the context of distribution of the targeted materials over the World Wide Web, to violate subsection (a)(1) ''intentionally.''

''(d) Proposed §231(a)(3) would provide for civil penalties; but that section does not indicate how such penalties are to be imposed and enforced—e.g., who would be responsible for bringing civil actions. In this regard, we should note that if Congress were to eliminate criminal penalties altogether, in favor of civil penalties, that would improve the likelihood that the statute eventually would be found constitutional. *See, e.g., ACLU*, 117 S. Ct. at 2342 (distinguishing the civil penalties upheld in the ''indecency'' statute at issue in *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), from the criminal penalties in the CDA).

''(e) The titles of §3 of the bill, and of proposed §231 of Title 47, refer to materials ''sold by means of the World Wide Web''; and yet the prohibition itself does not appear to prohibit merely the ''sale'' of harmful material, although it is limited to communications ''for commercial purposes.''

''(f) One of the elements of the basic prohibition in proposed §231(a)(1) would be that the defendant made the communication ''without restricting access to such material by minors pursuant to subsection (c).'' Yet subsection (c) itself would provide that such a restriction of access is an affirmative defense. This dual status of the ''restricting access' factor appears to create a redundancy; at the very least, it leaves unclear important questions regarding burdens of proof with respect to whether a defendant adequately restricted access.

''(g) The COPA definition of ''materials that is harmful to minors'' would be similar to the ''variable obscenity'' state-law definitions that courts have upheld in cases (cited above) involving restrictions on the display of certain material to minors in bookstores. Those state statutes have, in effect, adopted the ''obscenity as to minors'' criteria approved in *Ginsberg* as modified in accordance with the Supreme court's more recent obscenity standards announced in *Miller* v. *California*, 413 U.S. 15, 14 (19873). But the COPA's definition would, in several respects, be different from the definitions typically used in those state statutes, and the reasons for such divergence are not clear. Is the definition intended to be coterminous with, broader, or narrower than, the standards approved in the cases involving state-law display statutes? The breadth and clarity of the coverage of the COPA's ''harmful to minors'' standards could have a significant impact on the statute's constitutionality.

''(h) Particular ambiguity infects the first of the three criteria for ''material that is harmful to minors,'' proposed §231(e)(6)(A). (i) The words ''that such material'' appear extraneous. (ii) It is unclear whether ''is designed to'' is supposed to modify ''panders to,'' and, if not, whether the ''panders to'' standard is supposed to reflect the intended or the actual effect of the expression ''with respect to minors.'' (iii) Which ''contemporary community standards'' would be dispositive? Those of the judicial district (or some other geographical ''community'') in which the expression is ''posted''? Of the district or local community in which the jury sits? Of some ''community'' in cyberspace? Some other ''community''? Resolution of this question might well affect the statute's constitutionality. *See ACLU*, 117 S. Ct. at 2345 n.39.

''(i) Must the material, taken as a whole, ''lack serious literary, artistic, political, or scientific value'' for all minors, for some minors, or for the ''average'' or ''reasonable'' 16-year-old minor? *See, e.g., American booksellers*, 919 F2d at 1504–05 (under a variable obscenity statute, ''if any reasonable minor, including a seventeen-year-old, would find serious value, the material is not 'harmful to minors' ''); *Davis-Kidd Booksellers*, 866 S.W. 2d at 528 (same); *American Booksellers Ass'n*, 882 F.2d at 127 (sustaining constitutionality of a state variable obscenity statute after state court had concluded that a book does not satisfy the third prong of the statute if it is ''found to have a serious literary, artistic, political or scientific value for a legitimate minority of normal, older adolescents'').

''(j) In the definition of ''engaged in the business'' (proposed §231(e)(2)(B)), it is not clear what is intended by the reference to ''offering to make such communications.'' Also unclear is the effect of the modifier ''knowingly'' in that same definition's clarification that a person may be considered to be ''engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.'' Must the person know that the material is posted on the Web? That the material is harmful to minors? That he or she ''cause[d]'' the material to be posted?''

In addition, we have concerns with certain facets of the proposed Commission on Online Child Protection, which would be established under §6 of the bill. The Commission would be composed of fourteen private persons engaged in business, appointed in equal measures by the Speaker of the House and the Majority Leader of the Senate, as well as three ''ex officio'' federal officials (or their designees): the Assistant Secretary of Commerce, the Attorney General and the Chairman of the Federal Trade Commission. The principal duty of the Commission, see §6(c)(1), would be:

''. . . to conduct a study . . . to identify the technological or other methods to help reduce success by minors to material that is harmful to minors on the Internet, [and] which methods, if any—

''(A) that the Commission determines meet the requirements for use as affirmative defenses for purposes of section 231(a) . . . ; or

''(B) may be used in any other manner to help reduce such access.''

If subsection (A) of this provision were construed to permit or to require the Commission to ''determine,'' as a matter of law, which methods would satisfy the affirmative defense established in §23(c), it would violate the constitutional separation of powers because most of the Commission members would be appointed by congressional officials and would not be appointed in conformity with the Appointments Clause of the Constitution, article II, section 2, clause 2. Accordingly, we would urge deletion of the portion of §6(c)(1) that follows the word ''Internet.'' For similar reasons, we urge deletion of §6(d)(4), which would require the Commission, as part of the report it submits to Congress, to describe ''the technologies or methods identified by the study that may be used as affirmative defenses for purposes of section 231(c) . . .'' (Even if such a delegation of responsibility to the proposed Commission

were otherwise permissible, it would be unwise, in our view, as a matter of policy to permit the Commission—in essence—to make such determination about a criminal offense.)

Thank you for the opportunity to present our views on this matter. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

L. ANTHONY SUTIN,
Acting Assistant Attorney General.

HARVARD LAW SCHOOL,
Cambridge, MA, October 10, 1998.

Re H.R. 3783.

Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I note that the Senate passed a version of Congressman Oxley's H.R. 3783 earlier this year. On September 11, I testified before the Subcommittee on Telecommunications, Trade, and Consumer Protection, of the House Committee on Commerce, at a hearing devoted to various proposals for regulating access to material deemed ''harmful to minors.'' Subsequent developments have convinced me that the approach presently being considered is unconstitutional.

My view at that time, with respect to H.R. 3783, was that while the idea of require adult IDs could in principle be constitutional, the existing ID technologies would be constitutionally too burdensome. Given other adult ID technologies, the requirement (predominate in the statute) that adult turn credit numbers over to pornographers in order to get access to constitutionally protected speech struck me as too great a burden.

Since my testimony, an argument by Professor Mark Lemley of The University of Texas Law School, has strengthened my view that there are serious constitutional problems with this approach. Lemley proposes that rather than requiring adult IDs, a less restrictive alternative would be a statute that facilitated the development of kid IDs—digital certificates that would be bound to a user's browser, but that would simply identify the user as a minor. A law could then require that servers with material deemed ''harmful to minors'' block access by users with such certificates. Such certificates, again, would reveal no information except that a user was a minor.

Such a proposal, in my view, would be seen by a court to be a clearly less restrictive alternative under First Amendment jurisprudence. If so, the proposal would then render the means proposed in H.R. 3783 unconstitutional.

While there are important details to be worked out in the ''kid IDs'' alternative, I will note one other feature that might be of interest. If kid IDs were generally available, then Congress could more easily require commercial sites not to gather data from kids. As it is, any rule that commercial sites not gather data from kids would be hard to enforce. But if such IDs became common, these other regulatory purposes would be more easily achieved.

If there is more information that I can provide, please let me know.

With kind regards,

LAWRENCE LESSIG.

Mr. HATCH. Mr. President, I suppose that it is appropriate that we are passing this bill just a week before Halloween. It seems as though we have spent the better part of five days trying to unmask its provisions. And, some of the sections have been like ghosts—first you see them, now you don't.

I confess that I share the frustration voiced by many of my colleagues yesterday from both sides of the aisle about this extremely unorthodox process. I suppose it is somewhat reassuring that Senators on both sides of the aisle are similarly put off by the process because perhaps then we will not inflict it on ourselves or the American people next year.

Let me start with the fact that, at least technically, it is out of order to authorize on an appropriations bill. We have from time to time bent that rule—sometimes quite liberally. But, today, we not only bent it, we smashed it to smithereens. I admit to having tried to amend appropriations bills with authorizations during my tenure in the Senate, but I am quickly coming around to the notion that we must get back to a stricter adherence to that particular rule of the Senate.

One of the reasons for this rule, in addition to being able to control the appropriations process, is to ensure that the authorizing committees are not circumvented. The authorizing committees of the Senate have developed expertise on the various policy issues we must consider and act upon, and I believe that we do not fully carry out our duty to citizens and taxpayers when we fail to vet thoroughly these proposed changes in law.

I am not talking only about the Judiciary Committee, although I do feel strongly that we could have provided constructive input. The authorizing committees play an important role in policy development.

And, I think it is essential that we assert right here and now that national policy is not just about money. While the appropriations aspects of Congress' job is certainly of utmost importance, the authorizing process shapes the programs and establishes the rules for the expenditure of federal funds. One function is as important as the other. I do hope that this major bypass of the authorizing committees will not become habit-forming.

Second, we should all be concerned about the perception that this backwards procedure—one in which we are considering conference reports on bills that have not even passed the Senate yet—will set a precedent for the future.

Mr. President, I hope my colleagues on both sides of the aisle will join me in a sweeping denunciation of this as anything other than a one-time event. We cannot consider this omnibus, catch-all, 11th hour approach to be a model for how to extract ourselves from the dangerous prospect of an imminent government shutdown.

And, by the term ''we,'' I also include the President of the United States. I would like to send a message to President Clinton right now. Don't try playing this game of legislative chicken again. I may resolve much differently.

Third, while I appreciate the effort of Senators LOTT and STEVENS and others to ensure that this bill does not make permanent changes in the budget rules or lift the budget caps we so painstakingly negotiated in the Balanced Budget Act, the bill before us takes the unheard of step of designating tax breaks as ''emergencies.''

While I strongly support the idea of tax relief—indeed, I have strongly supported each one of the items in this tax package for farmers—I am not so sure that we should be starting down the steep and slippery slope of using the emergency designation in this way. I hope that we will all look at this as one-of-a-kind occurrence and not as a new procedural loophole that we continue to use in the future.

Fourth, Mr. President, I am also disappointed by the fact that we are using a portion of the surplus to pay for additional spending. I supported the pledge of saving the surplus for Social Security and thought that we should move toward that goal. This bill, however, breaks that promise.

Last January, one of the President's most memorable lines from his State of the Union speech was ''Save Social Security first.'' In reality, however, he has supported, practically insisted, on using that same surplus for more government spending. I applaud Senator LOTT and Speaker GINGRICH for keeping this encroachment on the surplus and Social Security to a minimum.

I hope that during the next Congress, we can resurrect that bipartisan spirit of fiscal integrity and responsibility we shared to get the budget balanced in order to keep the budget balanced. If we continue to feed the voracious appetite of big government at the trough of the so-called surplus, we will not have that surplus for long.

If there is one thing that we should all be united in, it is maintaining a balanced budget. This is perhaps the most important thing that any Congress can do. It is critical for the future growth of the U.S. economy, increases in the standard of living for our workers, and, indeed, the very future of the country.

Mr. President, the unorthodox process is certainly one issue, but it is not the only or even the principal issue. There are substantive problems with this bill as well.

Let me begin with a provision that is under the jurisdiction of the Judiciary Committee. I must speak out against inclusion of Title One of the euphemistically entitled ''Citizens Protection Act.'' This ill-advised provision passed the House as an amendment to the House Commerce, State, Justice Appropriations bill but it never passed the Senate. Indeed, it has been opposed by a bipartisan majority of the Senate Judiciary Committee. Under the guise of setting ethical standards for federal prosecutors and other attorneys for the government, it will severely hamper the ability of the Department of Justice to enforce federal law and cede authority to regulate the practice of law by federal prosecutors in our federal courts to more than fifty state bar associations. Indeed, this provision alone

caused me to consider voting against this conference report.

The sponsor of this measure is Representative JOE MCDADE, a man who, by all accounts, was wrongly prosecuted by zealous federal prosecutors and who has been vindicated. I have great respect for Representative MCDADE and sympathy for the objectives he seeks to protect.

Many in Congress and citizens around the country have been, at one time or another, the subject of unfounded ethical or legal charges. No one wants more than I to ensure that all federal prosecutors are held to the highest ethical standards. That is why the Judiciary Committee staff met with Congressman MCDADE and his staff. That is why we proposed a more narrow, workable version of his ethics amendment. That is why I proposed that we establish a Commission to investigate alleged cases of wrongdoing by federal prosecutors and to make recommendations to Congress.

Unfortunately, the House Leadership and others did not accept my proposal. Instead, I fear that, in a understandable desire to redeem those who have been wronged by zealous prosecutors, we have included a provision which is far too broad.

In its most relevant part, the so-called McDade provision states that an ''attorney for the government shall be subject to State laws and rules . . . governing attorneys in each state where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that state.'' This may sound innocuous, until one realizes why state laws and rules governing the conduct of attorneys exist in the first place—to protect the integrity of the civil and criminal legal systems in the state and govern the practice of law in the courts of that state. It is this very purpose which makes inappropriate the blanket application to federal attorneys in federal court of all state bar rules.

The federal government has a responsibility and the legitimate lead role in the investigation and prosecution of complex multistate terrorism, drug, fraud or organized crime conspiracies, or in rooting out and punishing fraud against federally funded programs such as Medicare, Medicaid, and Social Security. It is in these very cases that the McDade provision will have its most pernicious effect.

Federal attorneys investigating and prosecuting these cases, which frequently encompass three, four, or five states, will be subject to the differing state and local rules of each of those states, plus the District of Columbia, if they are based here. Their decisions will be subject to review by the bar and ethics review boards in each of these states at the whim of defense counsel, even if the federal attorney is not licensed in that state. Practices concerning contact with unrepresented persons or the conduct of matters before a grand jury, perfectly legal and acceptable in federal courts, will be subject to state bar review and, as a result, could put an end to some undercover, federal investigations. And the very integrity and success of sensitive investigations could be compromised by the release of information during the course of these reviews. This provision is also an open invitation to clever defense attorneys to stymie federal criminal or civil investigations by bringing frivolous state bar claims.

Mr. President, the McDade provision is opposed by Attorney General Reno and by the Administration. It is opposed by a bipartisan group of six former Attorneys General of the United States from the Nixon, Carter, Reagan and Bush administrations. It is opposed by the Director of the FBI, the Administrator of the Drug Enforcement Administration, and the Director of the Office of National Drug Control Policy. It is opposed by law enforcement organizations such as the Fraternal Order of Police, the National Sheriffs Association, the National District Attorneys Association and the Federal Criminal Investigators Association. The National Victims Center opposes it on behalf of the victims of crime. And this provision is vigorously opposed by an overwhelming bipartisan majority of the Senate Judiciary Committee, the committee with jurisdiction over this matter. The Committee's Ranking Member Senator LEAHY has opposed this provision. Former Committee Chairmen Senators KENNEDY and THURMOND, and Committee members Senators SESSIONS, KOHL, DEWINE, DURBIN, ABRAHAM, FEINGOLD, THOMPSON, and FEINSTEIN have also written in opposition.

I would note, however, that in response to our concerns, the Leadership has inserted a provision which will delay the implementation of this provision for six months. At the very least, this will give the Department of Justice and others the opportunity to educate the Congress as to the serious effect this blanket provision will have on law enforcement. It is my hope and expectation that, during the next six months, we will be able to develop a more workable and effective solution.

In addition, the so-called 100,000 Teachers program so trumpeted by President Clinton will do virtually nothing for Utah. As if the concept of this teacher hiring program would be any more effective than the 100,000 cops program, we are appropriating $1.2 billion at the insistence of President Clinton and under threat of government shutdown.

Well, Mr. President, Utah is continually disadvantaged by the use of the Title I funding formula, which is how this money will be predominantly allocated among the states. Under this formula, we are year after year punished for our demographics. We will be lucky to eke enough out of this grant to hire a handful of teachers per district. And, the irony is that Utah ranks among those states with the highest average class sizes. This program claims reduction of class size to be its raison d'etre. I think not.

Furthermore, Mr. President, the President had an opportunity to reward states that were taxing themselves heavily for education and that were addressing the needs of poorer and rural school districts with state funds. Did he support an appropriation for the effort and equity component of the Title I formula? No, he did not.

And, what happened to ed-flex, one of the more innovative, albeit common sense, educational reforms we have seen in recent years? We are told the President would have vetoed the bill with the ed-flex provisions in it. I find myself resentful that I am in the position of being grateful for the limited flexibility that has been incorporated into the Teacher program.

I do not mean to cast any aspersions on my colleagues, who I know worked very hard to keep some local control in this program and who support educational flexibility as much as I do.

But, I ask President Clinton: What is your problem with giving states and local school districts some authority to make decisions about resource allocation? Are you afraid that the state or the locally elected boards of education may have a different priority than you do?

I am most annoyed at this lost opportunity to give states and local school districts some unrestricted federal assistance. There is no question in my mind that Utah could stretch the impact of federal help much further if given the freedom to make these determinations and to pool resources more effectively.

In view of all of this, some have suggested that I vote against this bill. I will say that on the basis of a few of these provisions, I was tempted to do so.

But, there are also some very worthy provisions in the bill which mitigate its poorer aspects.

For example, I am pleased that the tax extenders package is included in this bill. Despite my dislike for the idea of inserting a tax bill in an appropriations bill, I am glad we are getting this done. These tax provisions should not be allowed to expire; in fact, we ought to be making them permanent so we would not have to face this annual expiration crisis.

I am particularly pleased that the bill accelerates the deduction for health insurance premiums for self-employed people. It is about time we gave entrepreneurs a break on this.

I support the funding of the empowerment zones. This program is a powerful tool for revitalizing our urban areas; and I appreciate the fact that much of it is private sector driven.

Of course, the Interior Department appropriation, which is contained in the Omnibus bill, is critical to Utah. It contains funds for Washington County's desert tortoise habitat conservation program; the Bonneville Shoreline

Trail; program development and facility construction at the Grand Staircase-Escalante National Monument; and a prohibition on funds to study draining Lake Powell or decommissioning the Glen Canyon dam.

While I am critical of the Administration's educational priorities, I support the additional funds for IDEA and Impact Aid. Utah, because of our heavy concentration of federal installations, will benefit from this sizable boost in Impact Aid.

I am sincerely grateful to my colleagues on the Appropriations Committee and in the leadership for their attention to the pressing transportation needs in Utah as well as to the planning that is underway for security at the 2002 Winter Olympic Games.

Staging this event is going to require a state-of-the-art transportation system, including intermodel centers, light rail, an adequate fleet of buses, and intelligent transportation systems. This appropriation will give Utah the ability to move ahead in these areas.

Additonally, I am extremely worried about our defense. We have alarming reports that entire air squadrons are grounded for lack of spare parts to keep planes in the air. We are told that junior officers and experienced noncommissioned officers are packing up and leaving the service, creating manpower and staffing problems in every branch of the military.

Military readiness backs up diplomacy. The latter cannot succeed without the former. We simply must stop using the defense budget like a bank we can go to for spending offsets when we want them. We are risking our nation's strength and ability to influence outcomes throughout the world. And, what is more, if we do not properly maintain equipment, if we do not invest in new technologies, if we do not provide adequate housing and medical care, we do not honor our men and women in uniform.

This bill begins the process of recognizing the importance of reinvesting in defense. I support the supplemental spending in this bill for defense, particularly the emphasis on readiness and personnel.

Some defense funds are also directed toward drug interdiction efforts. This is one of several positive actions taken in this bill to fight the war on drugs. Drugs are poisoning our society, particularly our children. Drugs contribute to a variety of other crimes, including murders and robberies. We must not give up trying to eradicate this cancer from our communities, and I applaud the addition of these anti-drug measures to this bill.

I remember when, more than a year ago, Speaker GINGRICH, Congressman HASTERT, and I met to discuss how we might force this Administration to focus on the worsening drug problem. We decided that we needed to undertake a comprehensive, bicameral effort. And so we did. We met with the Administration, held numerous hearings, and worked in a cooperative manner, extending our hands across the Capitol in a united effort to do what's best for our children.

I am pleased to say that our efforts have led to some success. A number of these important provisions were produced and considered by the Senate Judiciary Committee. I want to express my pleasure with the decision to include my proposal to reauthorize the Office of National Drug Control Policy. As well, I am pleased that we were able to include the Drug Demand Reduction Act, a measure sponsored by Congressman PORTMAN in the House. I was pleased to work with Congressman PORTMAN on getting this measure considered and put in a form which would pass the Senate. In fact, I recently introduced the Senate companion measure. For all of those involved in the effort to include this important, comprehensive anti-drug package in the bill—Speaker GINGRICH; Senators COVERDELL, GRASSLEY, and DEWINE; and Congressmen HASTERT, MCCOLLUM, PORTMAN and others—I want to express my congratulations and thanks.

Mr. President, let me conclude by saying that although there are some very ligitimate things to complain about regarding the bill—and process is one of them—we must recognize as well as the bill is a compromise. And, a compromise by definition means that neither side gets everything it wants.

If I were king, would I have put forward this bill? Certainly not. But, I am not king, and neither is Senator LOTT nor Senator STEVENS. Neither is President Clinton nor Representative GEPHARDT.

The stakes in this negotiation were particularly high. We were in a situation in which we were faced with an imminent shutdown of the federal government and all of the confusion, disruption, and dislocation that entails. So, when asked by pundits why the Republicans did not hold firm on a key issue like redirecting $1.2 billion in educational assistance to states and local schools with fewer strings attached, the answer is not difficult. Because in our system of checks and balances, the President has the veto pen.

Had we engaged in a war of wills, we could have held out for a perfect version of this educational component—a more perfect version of the entire appropriation—but the result would not necessarily be good for the country. Maybe some day, the American people will reward Republicans for being better statesmen than they are politicians.

Instead we negotiated a bill that is, indeed, a compromise. There are beneficial elements to it. It is not all bad. I would like to commend the Majority Leader, Senator LOTT, and Speaker GINGRICH for their efforts on this bill. Faced with a situation in which we could not act on the regular appropriations bills individually, as we would all have preferred, he steered us through this negotiation in the best manner he could. He deserves great credit, and he deserves our support.

How we ended up in this situation has already been addressed by several members on this side of aisle. Suffice it to say that it should not be necessary to file cloture petitions on appropriations bill; it should not be necessary to debate nongermane amendments ad infinitem. But, regardless of how we ended up here, we have made the best of it, and, I believe, have finally delivered a reasonable appropriations package.

It is always easier to criticize a compromise than it is to carve one out of disparate views and agendas. I have had some experience in this. I have often been criticized for a result that was not viewed as perfect or politically advantageous, even if it was fair or worthwhile.

This omnibus appropriation is not perfect. I dare say the Majority Leader would not say it is perfect. But, it is fair, and it is worthwhile. It is worthwhile because of the components I believe merit support, some of which I have advocated for years. It is also worthwhile because it will relieve the American taxpayers of the dread and uncertainty that the government will shutdown and of their anger and frustration that their government still doesn't get it.

It is worthwhile, I believe, because it is time to put the country first—ahead of the ''wag the dog'' diversionary strategy and ahead of seeking partisan advantage on election day.

Therefore, I will vote for this omnibus appropriations bill.

WASHINGTON STATE'S USE OF THE WORD ''OLYMPIC''

Mr. GORTON. Mr. President, a small but important element of the Omnibus appropriations measure is the Olympic and Amateur Sports Act Amendments of 1998, and more specifically, a provision within this Act that recognizes that Washington state's claim to the name ''Olympic'' is both first in time, and first in right over the claim of the United States Olympic Committee.

Vital geographic features that dominate and define the State of Washington, Mount Olympus in the Olympic Mountain range, within the Olympic National Forest on the massive Olympic Peninsula, were named long before Congress chartered the USOC and permitted it to use the word ''Olympic'' to raise money to support the Olympic games and encourage the USOC's activities. In an opinion interpreting the current statute, the United States Supreme Court noted that it was fair for Congress to allow the USOC to receive the benefit of its efforts to promote and distinguish the word ''Olympic.'' In the same vein, however, where the use of the word ''Olympic'' has geographical significance that pre-dates and is independent of the USOC, it is only fair that the USOC not be able to interfere with this use.

Although there are relatively few instances in which the USOC, crying

''mine, mine, mine,'' has gone after any of the thousands of businesses in Washington state that use the word ''Olympic,'' the attitude that the USOC has displayed in these few instances demands correction. I would like to thank State Representative Jim Buck for bringing them to my attention. I am as much a sports enthusiast as the next person, and it has never been my intent to undermine the USOC's ability to raise money through licensing. The USOC remains a creature of Congress, however, and it is incumbent on us to prescribe reasonable limits—to remind the Committee that its privilege to the use of the word ''Olympic'' is not absolute, and is secondary, for example, to the rights of geographic reference on the part of Washington state businesses. The provision that I have included in the Amateur Sports Act serves as a statutory admonition that the USOC must share the word ''Olympic''.

The need for a reasonable restriction on the USOC, which I believe this bill contains, is widely recognized in Washington state. On September 25, The News Tribune wrote that we have ''produced a reasonable and narrow compromise that will protect Washington businesses and protect the USOC's legitimate concerns.'' The Seattle Times concurred when it urged the Olympic Committee members to ''get over their Olympic-sized egos and support this modest and sensible tweaking of the law.''

Having just chastised the USOC for its past abuses, let me say that I am heartened by the assurances and commitments the Committee made during discussion of my amendment, assurances that the past abuses were anomalous and inconsistent with USOC policy, and commitments that the USOC will not abuse its privileges with respect to the use of the word ''Olympic.'' I trust the Committee will live up to its promise to rein in its organizing committees and other affiliated entities' overzealous pursuit of businesses using the name ''Olympic,'' even when there is no likelihood that such use will be confused with the Olympic games or activities of the USOC.

The language in the omnibus bill is narrower than what I had included in the bill that passed the Commerce Committee. The ''safe harbor'' created for Washington as a subterfuge to obtain immunity from USOC action, then quickly extend their business, goods, or services to other locations, such as Salt Lake City, the site of the next Winter Olympics, with the intent of capitalizing on the games.

To allay the USOC's concerns, the final language creates a clear safe harbor for businesses using the word ''Olympic'' when they operate and conduct most of their sales and marketing west of the Cascades. This safe harbor will remove the threat that hangs over the thousands of businesses in Western Washington—the threat that the USOC will deprive them of the ability to continue to use the word ''Olympic.''

Henceforth, Olympic Cleaners in Kirkland, Olympic Auto Sales in Kent, Olympic Golf Repair in Port Angeles, Olympic Ambulance in Sequim, as well as thousands of other businesses in Washington, can rest assured that a creature of the Federal government, the USOC, won't come knocking to collect, not only their taxes, but their name.

Finally, I point out that the language is silent about what happens if the business using the word ''Olympic'' substantially extends its operations, sales, and marketing beyond Western Washington. It certainly is not the intent of Congress to place Washington businesses using the word ''Olympic,'' in a geographical cage that constrains their growth so long as the operations of these Washington businesses do not wrongfully capitalize on the work of the USOC by confusing people into making an association with the Olympic games, and not the Olympic Mountain range, Olympic Peninsula, or other geographic features. No court should infer that, in creating the safe harbor for businesses in Western Washington, Congress intended in any way to affect the current law with respect to businesses operating outside of this area. We did not.

THE NORTH PACIFIC POLLOCK FISHERY

Mr. GORTON. Mr. President, after threatening to filibuster an appropriations measure over provisions relating to S. 1221, the American Fisheries Act, I now want to emphasize my support of the substitute version of the American Fisheries Act that has been included in this mammoth bill.

It has been an unexpected privilege and a pleasure to work with, as opposed to against, the Senior Senator from Alaska and his staff on legislation affecting the allocation and management of pollock in the North Pacific. Together, we have crafted a substitute measure designed to achieve the goals of his original legislation, which aimed to Americanize and decapitalize the North Pacific pollock fishery. Not only is this substitute, in my view, fundamentally more fair than the original S. 1221, it is considerably better in that it allows for new methods of managing the largest fishery in the United States, methods that promise to end the race for fish and to ensure that the decapitalization is permanent.

Americanization, decapitalization, and rationalization. These were the three things most participants in the pollock fishery said that they wanted from legislation when I convened an industry meeting in Seattle during the August recess. To these goals, I added my own: no summary elimination of foreign-controlled vessels without compensation, and the protection of independent pollock harvesters and processors.

Due largely to the perseverance of Senator STEVENS, the consensus that eluded the pollock industry in August was reached a month later. The basic elements of the September accord called for increasing the U.S. ownership and control requirements for all fishing vessels; arranging for the buy out by the onshore sector of a significant portion of the pollock catch and of nine Norwegian-controlled vessels; limiting the amount of fish that any one company can harvest and process; and laying the groundwork for a new management scheme to eliminate the race for fish by limiting participants in the pollock fishery and permitting these participants to decide in advance how to divide the resource.

Translating the agreement-in-concept into legislation in the few weeks that remained in this Congress was a tremendous challenge. A myriad of questions arose, and we attempted to answer them as best we could with input from the participants in the pollock and other fisheries, state officials, North Pacific Fishery Management Council members, the National Marine Fisheries Service, the U.S. Coast Guard, the Maritime Administration, Community Development Quota representatives, and others.

As we progressed through various drafts of the legislation, we tried to anticipate and address issues like how to require and enforce greater U.S. ownership and control of fishing vessels without disrupting existing and future financing arrangements; the effects of the transfer of fish from the offshore sector on the product mix; ensuring that catcher vessels have sufficient input into the formation and conduct of fishery cooperatives; preventing the vessels being removed from the U.S. Exclusive Economic Zone from contributing to overcapacity in other fisheries; and many, many others.

One of the most difficult issues is how to protect participants in other fisheries from possible adverse effects of ending the race for pollock. Crabbers and other groundfish fishers are concerned that pollock fishers who participate in cooperatives will spend more time and effort in other, already overcapitalized, fisheries. After considering various legislative proposals to limit effort in other fisheries, I believe we made the right choice to leave this task to the regional councils. Because the measures to end the race for fish in the onshore and mothership sectors will not go into effect until 2000, we delegated to the North Pacific and the Pacific Fishery Management Councils the responsibility of ensuring that the new cooperative management regime provided for in this legislation does not decapitalize and rationalize the pollock fishery at the cost of further overcapitalizing other fisheries. For the offshore sector, which we anticipate will form cooperatives and stop racing for fish in 1999, before the regional management councils have an opportunity to impose restrictions on these vessels, we prescribed limits on participation in other fisheries.

One of the questions for which we could not get a definitive answer is whether we have appropriated enough

money to cover the cost of the loan that will be used for the vessel buy out. A critical element of this bill is the purchase of nine pollock catcher processor vessels and their pollock fishing history. In exchange for being allocated significantly more fish, and permanently eliminating these nine vessels from all U.S. fisheries, the onshore pollock sector has agreed to pay $75 million to the vessel owners. This $75 million will be advanced as a loan by the federal government, and repaid to the federal government by the onshore sector over a long period of time. This $75 million payment from the onshore sector to the offshore sector is supplemented in this bill by a $20 million federal appropriation, so that the total payment to the offshore catcher processors is $95 million. Of this amount, $90 million is to be paid to the owners of the nine catcher processors being excluded. The additional $5 million is to be paid to the catcher processors whose allocation is reduced even though their vessels are not removed.

Because the nine vessels are to be excluded and the allocation to catcher processors to be reduced on January 1, 1999, we have provided that the buy out payments to the owners and the catcher processors be made before the end of 1998. To do this, we have appropriated the $20 million federal share of the buy out, and an additional $750,000 for the cost of the direct loan of $75 million. The $750,000 is one percent of the loan amount, and is the amount that both NMFS and the Office of Management and Budget believe is enough to cover the cost of the $75 million loan. Because this type loan is unprecedented, however, OMB has been unable to say with absolute certainty that $750,000 is the correct amount.

If OMB determines that $750,000 is insufficient to cover the cost of the $75 million loan, we expect OMB and NMFS to inform us of this immediately, and to immediately secure sufficient funds to cover the cost of a direct loan of $75 million so that $90 million can be paid to the owners of the nine excluded vessels before the end of this year. These funds can be secured by reprogramming part of the $6 million provided to NMFS to carry out the provisions of this Act.

Another question that has arisen recently involves the interpertation of the section that allows offshore catcher vessels to catch 8.5 percent of the pollock allocation reserved for these catcher boats and specified catcher processors. We included this section to ensure that the catcher boats delivering to catcher processors were not squeezed out of the sector. We anticipated that the fish caught by these catcher vessels would be delivered for processing only to the twenty catcher processors named in the bill as eligible to participate in the offshore pollock fishery and eligible to participate in a cooperative, and we did not intend for these catcher vessels to be able to increase the pollock processing capacity by delivering their catch to catcher processors other than the 20 listed vessels.

But just as we did not have a definitive answer to the question of the cost of the loan guarantee, we did not have answers to many of the questions that arose from this proposal that so dramatically changes the operation of the largest fishery in the United States: we will rely heavily on the expertise of the North Pacific Fishery Management Council and of NMFS, to flesh out many of the details of this truly revolutionary legislation. Even without all of the answers, however, I believe that we made the right decision to seize a unique opportunity to Americanize, decapitalize, and rationalize this fishery, and, at long last, bring peace to an industry whose internecine battles over the years have led to the inefficient operation of the pollock fishery and caused a rift between Washington and Alaska.

THE MONTANA FISH AND WILDLIFE CONSERVATION ACT OF 1998

Mr. BAUCUS. Mr. President, I rise to speak in support of Title X of the FY 1999 Omnibus Appropriations bill. I drafted this provision as a substitute amendment to S.1913, the Montana Fish and Wildlife Conservation Act of 1998, a bill that I sponsored and Senator BURNS from Montana co-sponsored. I am pleased that this provision has been included in the Omnibus Appropriations bill.

As amended, the Montana Fish and Wildlife Conservation Act of 1998 (now Title X) creates an exciting opportunity to exchange lands at Canyon Ferry Reservoir for other lands in Montana to conserve fish and wildlife, enhance public hunting, fishing, and recreational opportunities, and improve public access to public lands.

Mr. President, I would like to take a moment to thank my good friends and colleagues from Montana—Senator BURNS and Congressman HILL. Together, we have worked long hours on this project. We certainly would not be where we are today if not for this team effort. I would also like to take a moment to thank their staffs as well—especially Leo Giacometto, Ric Molen and Ryan THOMAS from Senator BURNS' office and Mark Baker and Kiel Weaver from Congressman HILL's office. These staff members have logged long hours on this project and this accomplishment belongs as much to them as to anyone.

LEGISLATIVE HISTORY

So that there will be no question as to the origins of this provision, let me provide a brief history of this legislation. On April 2, 1998, I introduced S.1913, the Montana Fish and Wildlife Conservation Act of 1998. Senator BURNS joined me as a co-sponsor of this legislation. This bill, like Title X of the Omnibus Appropriations bill, proposed to exchange 265 cabin sites at Canyon Ferry Reservoir for public lands elsewhere in the state. Like the adopted provision, S.1913 proposed to accomplish this exchange through the use of a permanent trust that would hold the proceeds of the cabin site sale pending acquisition of other lands.

While S.1913 actually created two trust funds (one for local land acquisitions and one for land acquisitions elsewhere in Montana), Title X to the Omnibus bill simplifies this arrangement by creating one land acquisition trust, but then specifying that no more than 50% of the proceeds from this trust can be used outside of the local area in any given year. This trust arrangement is set forth in Section 1007 of Title X.

On May 3, 1998, I held an Environment and Public Works Committee field hearing on S.1913 in Helena, Montana. That hearing was attended by over 200 cabin owners and sportsmen—all of whom overwhelmingly supported the Montana Fish and Wildlife Conservation Act of 1998.

On May 22, 1998, Congressman HILL from Montana introduced a related piece of legislation in the House. Like S.1913, H.R.3963 established a mechanism for the sale of the 265 cabin sites. Unlike S.1913, H.R.3963 made no provision for the use of the proceeds from this sale.

Between May and August of 1998, these two bills received substantial attention in Montana. In early August, the Montana delegation sat down to craft a consensus bill. By mid-August, we had reached agreement in principle on a substitute amendment for S.1913.

Under our agreement, we would use the land trust idea encompassed in S.1913, but would add two provisions to provide additional benefits to Broadwater County, Montana. These provisions (sections 1005 and 1008 of Title X) are designed to improve recreational opportunities in Broadwater County, without diverting any of the cabin site revenues away from the land acquisition trust.

After drafting legislative language to encompass this agreement in principle, I then sat down with Administration officials to gain their support for this legislation. In response to concerns voiced by Department of Interior officials and others in the Administration, I made a number of substantive changes to this bill. One of these changes was to add section 1009 of Title X to clarify the Bureau of Reclamation's authority to improve public recreation and to conserve wildlife at Canyon Ferry Reservoir.

On October 10, 1998 after I revised the legislation to respond to the concerns of the Administration, Jack Lew, Director of the White House Office of Management and Budget, wrote to express the Administration's support for this new bill. Mr. Lew wrote: ''as amended, S.1913 creates a unique opportunity to exchange lands at Canyon Ferry Reservoir for other lands in the state to conserve fish and wildlife, enhance public hunting, fishing, and recreational opportunities, and improve public access to public lands.'' Mr. President, I ask that the entire text of

the OMB letter of support be printed in the CONGRESSIONAL RECORD following this statement.

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

(See Exhibit 1.)

Mr. BAUCUS. Soon after reaching an agreement with the Administration on final bill language for a substitute to S. 1913, the House and Senate Appropriations Committees agreed to include this Act as Title X of the FY1999 Omnibus Appropriations bill.

PROVISIONS OF TITLE X

Title X grew out of a decision made by the Bureau of Reclamation in the late 1950s, soon after Canyon Ferry dam was completed near Helena, Montana. It was at that time that the Bureau decided to lease 265 cabin sites on the north end of Canyon Ferry Reservoir to local families. As conditions of their leases, the Bureau required the families to build and maintain cabins on these sites. In the intervening forty years, many of these cabins have been expanded into full fledged houses, with yards, driveways and carports.

Mr. President, there are many things that the federal government does well. I'm not sure that being a landlord is one of them. This intensive concentration of cabin sites has led to on-going conflicts between the Bureau and the cabin owners. Most recently, these conflicts escalated when the Bureau moved to raise rental rates for these cabin sites by as much as 300 percent. From the cabin owner's perspectives, this is an inequitable situation. They have invested time and money in these sites and yet live with the constant worry that their leases will be terminated and their cabin sites taken away.

To resolve these conflicts, Title X directs the Secretary of Interior to sell the 265 cabin sites at Canyon Ferry Reservoir in Montana in one transaction to the highest bidder. The minimum bid for this transaction is set at the fair market value of all 265 sites, appraised individually using standard federal appraisal procedures.

I would like to note that, while the appraisal process for rental rates has been a point of contention between the cabin owners and the Bureau of Reclamation in the past, recently these two parties reached an accord for completing a joint appraisal for the purposes of setting rental rates. I applaud this cooperation and expect that the Bureau will continue this agreement and this cooperation in appraising these sites for the purposes of this bill.

Title X contains protections to ensure that each cabin owner has an option to purchase their site from the highest bidder and to protect the existing lease rights of each cabin owner. At the same time, Title X contains ample protections to ensure that the public gets a fair deal too.

Mr. President, the Bureau of Reclamation, the U.S. Forest Service, and other federal agencies lease cabin sites across the West. I would not want to suggest that the solution contained in Title X is appropriate in each case where cabin owners have conflicts with the federal government. To the contrary, I believe that the Canyon Ferry situation is unique in a number of respects.

First, these are not isolated cabin sites around which the public and wildlife can move freely. At Canyon Ferry Reservoir, there are 265 cabin sites arranged in tight clusters. This is one of the largest concentrations of residences on public lands in the West. This tight pattern of development dramatically lowers the value of these sites to the general public and largely precludes the use of the area by wildlife.

Second, in this case, the lessees were required to make improvements to their property and, in many cases, have gone so far as to build houses on these sites. Many of these houses have now become primary residences for local families. Though the federal government leases cabin sites across the West, few are occupied by families living year-round in their homes.

Even under circumstances such as these, however, I do not believe that the federal government should support the sale of cabin sites. Mr. President, as a matter of principle, I am opposed to the sale of public lands. I believe that the sale of public lands threatens to establish a dangerous precedent that, over time, could erode our public lands heritage.

Let me be clear though—I am not opposed to trading lands with low value to the general public for lands that are important for fish and wildlife conservation or that are more accessible to the public.

Across the West, the federal government has recognized that land exchanges can be useful tools to allow the government to trade out of lands that have low values for the general public in order to acquire lands that are more accessible to the public or that are more important for fish and wildlife. Just this year, Congress approved S.1719 to complete the Gallatin Land Exchange near Bozeman. I was the primary sponsor of that bill in the Senate and can say first hand that legislation produced enormous benefits for the public.

I modeled the Montana Fish and Wildlife Conservation Act after this and other land exchanges to ensure that our public land heritage is not eroded and to try to improve our public lands holdings.

Because public lands are important to Montanans and, indeed, to all Americans. We take our children fishing on these lands. They're where we hunt, hike, and recreate. We take our families out for picnics at the local Forest Service campground and we ride our horses in the high alpine meadows. These lands serve as the backdrop for our homes and our communities. Mr. President, you might say that I'm a big fan of public lands, and that's why this bill is so important to me.

Title X directs the Secretary of Interior to sell 265 cabin sites at Canyon Ferry Reservoir in Montana. The proceeds from this sale are then placed into a new trust called ''The Montana Fish and Wildlife Conservation Trust.''

Title X very explicitly specifies the appropriate uses of the proceeds from this trust. The Act states that the trust is to ''provide a permanent source of funding to acquire publicly accessible land and interests in land, including easements and conservation easements, in the State from willing sellers at fair market value to: a) restore and conserve fisheries habitat, including riparian habitat; b) restore and conserve wildlife habitat; c) enhance public hunting, fishing, and recreational opportunities; and d) improve public access to public lands.''

Mr. President, these provisions are very important. First, this trust is dedicated to acquisition of land and interests in land in Montana. The land-for-land concept is a critical component of this Act. To reiterate, this bill has been modeled after other land exchanges. By using the intermediary step of a trust, however, we have created a new breed of land exchange known as a ''bifurcated'' or ''land-trust'' exchange. It is my belief that this tool, by functioning as a permanent source of funding, and by allowing for more targeted acquisitions over time, may have benefits not found in the traditional land exchange process.

In commenting on an early debate over this provision, the Helena Independent Record noted on July 9, 1998:

> The problem here is the ideological question of public land, of which they aren't making any more. While some feel that almost any public land would be more productive in private hands, backers of Baucus' bill believe that a public land value should be sold off only in return for an equal land value—not marinas or roads or other things that can, after all, be funded in other ways. Just as it is perfectly all right for the Forest Service to trade off checkerboard landholdings, as long as the public receives equal value, so selling the Canyon Ferry lease sites is acceptable—so long as equal value land values are received in return. . . . That's why it is the Senate version that should be enacted into law.

Mr. President, I agree with this statement and endorse very strongly the land-for-land concept embodied in this bill.

Second, it is important to note that the bill language makes clear that this land trust is dedicated to the conservation and public enjoyment of Montana's fish and wildlife resources. The title of S.1913 and the purposes of Title X emphasize that this trust is established to promote fish and wildlife conservation. Similarly, the title of the trust itself and the requirement in section 1007(c)(3)(B) that the members of the citizen advisory board have a dedicated commitment to fish and wildlife conservation should leave no question of the goals that we are trying to achieve with this legislation.

While the trust may be used to acquire land and interests in land to improve recreation and access to public lands, it is the intent of this bill that the recreation and access provisions should be complimentary to, not contradictory with, the purposes of fish and wildlife conservation. Toward that end, it is my expectation that the members of the citizen advisory board will recommend, and members of the federal-state agency board will request, expenditures from this trust that meet both the letter and spirit of this important bill. It is also the intent of this legislation that, under section 1007(e), lands acquired under this substitute amendment will be managed in a manner that promotes fish and wildlife conservation.

Because the land-for-land and conservation principles are so critical, this bill establishes a management framework for this trust designed to ensure that the trust is as effective as possible. The permanent trust is to be managed by a trust manager who is responsible for investing the corpus of the trust and for ensuring that the proceeds from the trust are dispersed only in accordance with the terms of the bill.

Requests for dispersal must be submitted by a five-member board consisting of representatives of the U.S. Forest Service, Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service, and the Montana Department of Fish, Wildlife, and Parks. The federal-state agency board is directed to ensure that any requests for dispersal will meet the purposes of the trust. The bill intends that the federal-state agency board will base its decisions regarding expenditures from this trust on the trust plan compiled by a four-member citizen advisory board.

The citizen advisory board contains a representative from a Montana organization representing agricultural landowners, a Montana organization representing hunters, a Montana organization representing fishermen, and a Montana nonprofit land trust or environmental organization. Each of these members is to have a demonstrated commitment to improving public access to public lands and to fish and wildlife conservation.

Mr. President, this citizen advisory board is integral to the proper functioning of this legislation. It is my intent that this group of citizens should play a very active role in identifying critical properties for acquisition and in setting the priorities of this trust.

Because this trust is intended to supplement, not supplant, regular Land and Water Conservation Fund expenditures, I do not expect that the federal agencies' priority list for LWCF expenditures will govern the expenditures from this trust.

Rather, it is the intent of this legislation that the citizen advisory board will take an independent look at land acquisition needs in Montana as they craft and update the trust plan. The legislation intends that the federal-state agency board will rely heavily on direction set by the citizen group and the trust plan and contemplates that the two boards will work hand-in-hand together. The legislation also requires the trust manager to consult with the citizen advisory board to ensure that expenditures from the trust are strictly limited to those authorized by this legislation.

Mr. President, I would also like to take a moment to comment on a number of additional provisions in this substitute amendment. First, section 1004(b)(3)(C) provides that restrictive covenants will be placed on deeds to the cabin sites at the time of transfer to ensure the maintenance of both existing and adequate public access to and along the shoreline of Canyon Ferry Reservoir and to restrict future uses of these properties to the ''type and intensity of uses in existence on the date of enactment of this Act, as limited by the prohibitions contained in the annual operating plan of the Bureau of Reclamation for the Reservoir in effect on October 1, 1998.''

These provisions were very important to the Administration to ensure that the privatization of these sites does not diminish the values of adjacent public lands. It is important that lands acquired in an exchange have public values at least equal to those traded away. It is equally important to ensure that the lands that are traded out of the federal estate do not compromise the values of adjacent public or private lands. I would also like to note the distinction between protecting ''existing'' and ensuring ''adequate'' access. These provisions were added to ensure that the public continues to have access to and along the shore of Canyon Ferry Reservoir and, where access is not currently adequate, to ensure that such access is improved.

I want to note, however, that the historical use restriction is not intended to require cabin owners to remove or modify structures that were in existence on the date of this Act. As noted in the letter from OMB that I mentioned earlier, this provision ensures that subsequent owners of these properties will ''preserve the existing character of this area.'' Quite simply, it is the intent of this bill that this area should not be turned into another Lake Tahoe Resort. However, it is also the intent of this bill that the historical use provision should not unduly burden the cabin owners by requiring new limitations on the type and intensity of uses that are allowed on these sites.

Second, section 1004(d)(2)(A) specifies that, if the Canyon Ferry Recreation Association (''CFRA'') submits the highest bid for these cabin sites, the Secretary will sell a cabin site to a lessee, if he receives a purchase request from that lessee. Section 1004(d)(2)(D) provides that CFRA and the lessees must purchase at least 75 percent of the properties by August 1 of the year following the first sale of a cabin site. Section 1004(d)(2)(E) provides that the Secretary shall continue to lease the cabin sites to those lessees who have not purchased their sites by that time.

While this is a complex arrangement, the intent should be clear. It is the intent of this bill that every cabin owner have an opportunity to purchase their lot so long as they are leasing from the Bureau of Reclamation. This bill requires that, if CFRA submits the highest bid for these sites, CFRA will purchase at least 75% of the lots by August 1 of the year following the first sale of a cabin site. CFRA's obligation to purchase 75% of the lots is, of course, offset by sites that have been purchased by individual cabin owners by that time.

It is further the intent of this bill that the Bureau should continue to lease to remaining cabin owners who have not purchased by that time, and that the Bureau should continue to provide each lessee with the option of purchasing their site so long as they continue to lease their site from the Bureau. It is important to note that, once CFRA submits the highest bid, section 1004(d)(2)(g) requires that all rental revenue from the cabin sites will be distributed to the Fish and Wildlife Conservation Trust and to reduce the Pick-Sloan debt as set forth in section 1006 of the bill.

CONCLUSION

Mr. President, this bill is the result of exhaustive negotiations between local citizens, wildlife groups, county commissioners, the cabin owners, the Montana delegation and, most recently, the Administration. I am pleased that we have been able to reach a broad consensus on this matter and I support its inclusion as Title X of the Omnibus Appropriations bill.

Again, in closing, I would like to thank Senator BURNS and Congressman HILL for their work on this important effort—I look forward to working together on many more such collaborative efforts.

EXHIBIT 1

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

Washington, DC, October 10, 1998.

Hon. MAX BAUCUS,
U.S. Senate, Washington, DC.

DEAR SENATOR BAUCUS: I am writing to express the Administration's support for your substitute amendment to S. 1913, the Montana Fish and Wildlife Conservation Act. As amended, S. 1913 creates a unique opportunity to exchange lands at Canyon Ferry Reservoir for other lands in the state to conserve fish and wildlife, enhance public hunting, fishing, and recreational opportunities, and improve public access to public lands.

We would like to commend you for your leadership in vigorously pursuing legislation that promotes conservation and for the cooperation shown by you and your staff in working with us to address our concerns.

As you know, S. 1913 directs the Secretary of the Interior to sell the affected Federal properties around Canyon Ferry Reservoir as a single block. Although, as a general rule, we believe the Secretary of the Interior

should have administrative discretion as to how such a transaction should occur, we believe that the procedures contained in the Baucus substitute amendment are acceptable given the unique situation of this property.

The substitute also includes a number of provisions that we feel are necessary for the Administration's support of this bill. First, it is our understanding that you have made the changes that we have requested to the bill's land appraisal procedures to ensure a fair and accurate appraisal of market value of the properties to be sold and to avoid creating opportunities for needless litigation. Second, the bill ensures that subsequent owners of these properties will maintain public access to Canyon Ferry Reservoir and preserve the existing character of this area. And, third, this substitute amendment preserves the ability of the Secretary to manage Canyon Ferry Reservoir for its Congressionally authorized purposes.

We believe that this legislation, with the changes noted above, will enhance public recreation and fish and wildlife opportunities for this area while protecting Federal interests in the operation and management of the Canyon Ferry Project.

Sincerely,

JACOB J. LEW,
Director.

Mr. FEINGOLD. Mr. President, I want to state my opposition to the omnibus appropriations bill, and outline some of my concerns with both the content of that measure, and with the process in which it was crafted.

First and foremost, Mr. President, this omnibus appropriations bill shreds the tough spending limits established by last year's bipartisan budget agreement. It does so through the expedient of declaring nearly 21 billion dollars in spending as a budget emergency, thus exempting that spending from the spending caps and budget discipline that was so central to last year's budget agreement.

Mr. President, as I have noted on the floor previously, the emergency exception to our budget rules was intended to allow Congress to act quickly to provide funding to assist victims of natural disasters or to help ensure an adequate and timely response to an international crisis. Sadly, that exception has now become the rule, and we now see emergency declarations attached to appropriations provisions not because those provisions were unexpected or urgent, but because doing so permitted Congress to duck its budget responsibilities.

That is a gross abuse of the emergency provisions incorporated in our budget rules, and it must stop.

Mr. President, of particular concern is the use of the emergency exception to add funds to an already bloated defense budget.

Mr. President, the only emergency in our defense readiness is the sorry state of posturing by Congress for more defense spending. Some Members insist Congress must throw more money into the Department of Defense, even when our military leaders say they don't need it.

But, Mr. President, the Pentagon does not need more money. The money going to the Pentagon needs to be spent more wisely. Unfortunately, too often Congress does everything in its power to make sure that does not happen.

Congress continues to spend billions of dollars on pork-barrel projects that the Pentagon does not need and does not want. Congress bars the closing of unnecessary bases, and refuses to address accounting fraud so destructive that Senator GRASSLEY recently stated that, ''If we put adequate controls on the money we have, there should be no need for more defense spending.''

Last week, Mr. President, the Washington Post reported there were at least 30 items that appeared for the first time in the fine print of the $250 billion defense spending bill. These included: $250,000 to study the potential uses of a caffeinated gum, reportedly slipped into the defense spending bill by a Member of the other body on behalf of the firm in his Illinois district that makes this gum; $2.4 million for a device called the American Underpressure System, reportedly another late addition to the defense spending bill pushed by the San Diego businessman who holds the patent on the device; and, $5 million to fund the purchase of electronic locks manufactured by a Kentucky firm, reportedly added by a member of that State's delegation to the defense spending bill during conference deliberations. The Washington Post story reported the Kentucky lockmaker was able to obtain still another earmark in the Energy Department spending bill for $2 million.

Mr. President, this practice is an outrage, but one many in both chambers choose to ignore, or, worse, perpetuate. If we cut the pork and allowed the Pentagon to close inefficient bases, we would not even need to discuss so-called emergency spending for defense.

Among the most abusive uses of the emergency exception in the defense budget is the proposed $1.9 billion in funding for U.S. troops in Bosnia.

Mr. President, I have always had serious questions about U.S. involvement in this mission. I was the only Democrat to vote against the deployment of U.S. troops back in 1995, in large part because I did not believe that the United States would be able to complete the mission in the time projected and for the price tag that was originally estimated. Unfortunately, I have been proven right, and I take no pleasure in it.

U.S. forces have now been in Bosnia for almost three years, much longer than the original one-year mandate, and I do not think anyone has a good idea how many more years we will be there. More significantly, the cost of our involvement in Bosnia has increased dramatically—easily more than quadrupling the original $2 billion estimate to more than $8 billion, not including the $1.9 billion now proposed to be added by the omnibus appropriations measure.

But beyond the strict policy concerns of our mission in Bosnia, Mr. President, is the troubling budget maneuvering that has been done to add still more funding to this questionable mission.

Mr. President, the funding for the Bosnia mission will not be forced to comply with our budget caps. The additional $1.9 billion provided in this bill is designated as emergency funding.

Mr. President, our Bosnia mission can hardly be characterized as an unexpected event, something deserving of emergency funding. Far from it. Our mission in Bosnia is a substantial, long-term commitment. It is something the United States has, for better or worse, decided to do for the long-term.

Webster's New Collegiate Dictionary defines the word ''emergency'' as follows: ''an unforeseen combination of circumstances or the resulting state that calls for immediate action.''

This definition clearly does not apply to the Bosnia mission. The Bosnia mission is an emergency only in the strange language of appropriations bills. The Bosnia ''emergency'' is a legislative fiction.

U.S. troops have been on the ground in Bosnia for nearly three years. In December of 1997 the President announced that he would forego imposing a deadline altogether, and opt instead for a policy of benchmarks whose definitions remain open to interpretation.

Given that policy, Mr. President, how can Congress and the President possibly argue to the American people that the additional costs for the Bosnia mission constitute an emergency? On the contrary, it has been clear for quite a while now that the cost of this mission would again rise substantially. Some would say it has been clear from the start.

Ironically, Congressional appropriators and our military leaders have planned for many months on obtaining these so-called emergency funds.

Mr. President, the mission in Bosnia does not represent an emergency that legitimately calls for us to depart from our established, vital budget rules.

Mr. President, as I noted, the Bosnia funding is only one example. What compounds this dangerous trend away from budget discipline is the reported evolution of much of the emergency spending. In particular, it has been reported that the negotiations surrounding the omnibus appropriations bill at one point centered on the insistence of some that for every emergency dollar added for one group of programs, another had to be added for a different set of programs. Essentially, the budget negotiation became a bidding contest in which deficit-financed spending was the currency.

This brings me to my second serious objection to the measure before us, namely the process by which it was crafted.

Mr. President, continuing resolutions and omnibus appropriations are fast becoming the standard process in Congress. Deliberate, careful, and open

consideration of agency budgets, with the full participation of everyone's elected representatives in a public forum has been shunted aside, and instead we have a process of back room deals by a powerful few.

Mr. President, that is not democracy in action, and it rewards those well-funded, well-connected special interests that already distort the policy agenda of the Federal government.

We should not be surprised, then, when dozens of special interest earmarks and policy riders find their way into the omnibus measure with little or no public debate.

The normal appropriations process is already tainted to a great extent with this kind of influence. The closed door dealings in which this legislation was developed only make that problem worse.

A telling example of the policy that can result from this flawed process is the language delaying implementation of the most modest of reforms in our nation's dairy policy.

Language included in this omnibus measure extends USDA's rulemaking period on Federal Milk Marketing Order reform for six months. This extension will delay implementation of the new federal milk pricing system to October of 1999, instead of the original date of April, 1999 set in the Farm Bill. Mr. President, officials at USDA have assured me that they did not request this extension nor do they need it.

Mr. President, this dairy provision was included solely to intimidate and bully USDA and Secretary Glickman into an anti-Wisconsin dairy pricing reform. Instead of allowing USDA to do its job, some Members of Congress want to do it for them, and do it to benefit their own producers at the expense of dairy farmers in the Upper Midwest.

It is ridiculous that today, in times of advanced technologies, Wisconsin producers receive a Class I differential of $1.20 per hundredweight, while producers in Kansas City, Missouri receive $1.92, and our friends in Miami get $4.18. Dairy farmers in Miami make nearly $3.00 more per hundredweight than farmers in the Upper Midwest for the same product. The current system just does not make sense in today's world.

The extension of USDA's rulemaking had another intent as well. Extending the rulemaking period automatically extends the life of the Northeast Interstate Dairy Compact. The 1996 Farm Bill requires a sunset of the Compact when the new federal pricing system is implemented. At the rate Congress is going, tacking this issue onto appropriations bills, there is no telling when implementation will now occur.

The effects of the Compact on consumers within the region and producers outside of it are indisputable. Dairy compacts are harmful, unnecessary and a burden to this country's taxpayers.

The worst part of this entire sixty-five-year dairy fiasco is its effect on the producers in the Upper Midwest. The six-month extension puts an additional 900 Wisconsin producers at risk. Wisconsin loses approximately three dairy farmers a day. Producers cannot stand six more days of the current program, let alone six more months.

Mr. President, not only is legislating dairy policy on this bill inappropriate, it is bad precedent, it circumvents the appropriate committees, the Agriculture and Judiciary Committees, and circumvents USDA's authority. We ought to give USDA the opportunity to do the right thing for today's national dairy industry and put an end to the unfair Eau Claire system now, not six months from now.

Mr. President, once again I urge my colleagues to take a second look at this antiquated and harmful policy. Stand up for equity, fairness, and for what is best for America's dairy industry, our consumers and our taxpayers.

Mr. President, the omnibus measure is also the vehicle for a number of anti-environment riders. Here again, by burying these provisions in this mammoth appropriations bill, those promoting these anti-environmental provisions are able to avoid full and open debate of their proposals. They succeed in avoiding a separate vote on matters that are quite controversial.

That is the nature of this kind of bill and this kind of process, Mr. President. An unamendable, ''must pass'' bill inevitably will be a magnet for proposals that cannot stand up to the scrutiny of open debate.

Mr. President, some may blame the nature of the annual budget process for putting Congress in the position of having to pass an omnibus appropriations bill. Some might suggest the inability to pass all the appropriations bills in a timely manner is inherent in the annual budget process, and in this regard I am certainly willing to give the biennial budget process a try. I was pleased to cosponsor the measure offered by the Senator from New Mexico (Mr. DOMENICI) to move to a biennial process.

But the annual budget process is not the central problem. The central problem is the corrupting influences that permeate the entire policymaking environment, from our system of campaign finance, to the problems of revolving door hiring practices, to the inadequate lobbying and gift restrictions on Members.

And the incentives in such a corrupting environment all encourage just this kind of process—back room negotiations, among only a few powerful people, with little or no outside input or public scrutiny.

Mr. President, as this bill so graphically demonstrates, until the Senate and the other body do something to address that underlying problem, Congress cannot be trusted even to abide by the spending limits to which it agreed only a year ago.

Mr. KENNEDY. Mr. President, I support this legislation because it will help millions of families across the country. One of the most important provisions offers urgently needed aid to communities to improve their public schools. Democrats worked effectively to provide funds for more teachers and smaller classes, and these efforts were successful. The result is that assistance is on the way for this important aspect of school reform.

The bill provides $1.2 billion on the current fiscal year for this vital initiative to reduce class sizes in the nation's public schools. This is the first installment in an ongoing effort to help schools throughout the nation hire 100,000 more teachers, so that all students will get the attention they need in school to succeed in life.

The bill also contains a major literacy initiative that will provide $260 million to help children learn to read well by the end of the third grade. It's a strong response to President Clinton's America Reads Challenge, and it makes a significant additional victory for education reform.

In addition, the legislation includes $871 million for summer jobs for disadvantaged youth. For many of these youth, summer jobs are their first opportunity to work and their first step in learning the work ethic.

This legislation also fully funds the Youth Opportunity grants established by the Workforce Investment Act signed into law in August. This innovative new program will offer education and career opportunities for teenagers most at risk and living in the poorest communities.

The bill also contains the level of funding recommended by President Clinton for Head Start and after-school programs. These programs are vital to children across the country, and these funds are urgently needed.

Another key part of this bill provides much needed assistance for home health care for senior citizens and persons with disabilities under Medicare. In 1997 in Massachusetts, approximately 150 home health agencies cared for 125,000 Medicare beneficiaries. But the Balanced Budget Act of 1997 contained provisions that led to an unintended 15 percent reduction in reimbursement for the state's home health providers. That reduction translated into a $110 million cut this year for providers across the state. Ten home health agencies in Massachusetts have closed their doors since January 1—in part due to the unanticipated consequences of the 1997 Act.

Last February, Congressman JIM MCGOVERN of Massachusetts and I introduced legislation to remedy this problem, and I am pleased that this bill achieves our goal. No senior citizens or persons with disabilities who depend on Medicare for home health services should have to worry that health care won't be available when they need it most.

By delaying a forthcoming reduction in payments and by improving the formula for reimbursements, this bill enables home health agencies to provide

the medical care needed for patients to stay in their own homes and communities, and out of hospitals and nursing homes. All of us who are concerned about this issue welcome the progress we have made, and we will continue to do all we can to see that home health care is widely available to those who need it in our states.

The legislation also makes important changes in the immigration laws. It temporarily increases the number of visas available to skilled foreign workers to meet the demands of colleges, and the high-tech industry. It also contains a substantial investment to improve job training and educational opportunities for U.S. workers and students.

In addition, the bill ensures that the 49,000 Haitians who came to this country fleeing persecution will have the opportunity to apply for asylum to remain in the United States permanently. The bill also provides $171 million for naturalization activities. Without this support, the processing of naturalization applications would fall even farther behind.

The legislation also takes a major step toward more effective enforcement of the civil rights laws. For the first time in many years, the Equal Employment Opportunity Commission will receive the level of funds needed to fulfill its important mission.

In many other respects, this legislation also deserves support. I commend the bipartisan support it has received, and I urge the Senate to approve it.

However, in passing this important bill, this Congress leaves behind a number of key initiatives of great importance to working families. I know that my Democratic colleagues join me in pledging to renew our efforts early next year on behalf of the unfinished business of the current Congress.

First, we must act on the Patient's Bill of Rights, which will end the abuses of HMOs and guarantee the 161 million Americans who use HMOs that medical decisions affecting their families will be made by doctors and patients, not insurance company accountants.

Democrats will also give high priority to campaign finance reform next year. The greatest gift that Congress can give the American people is clean elections. This reform is important for our democracy, and it deserves to be enacted at the beginning of 1999, so that it will clearly apply to elections in the year 2000.

Our nations school buildings are crumbling, and many areas of the country do not have enough classrooms. The 105th Congress did not act on our proposal to give localities tax breaks for bond initiatives to pay for school construction. And we will pursue this proposal again next year.

We must also act in 1999 to reduce youth smoking and save millions of children from a lifetime of addiction and early death. Three thousand more children a day start smoking, and a thousand of them will die prematurely from tobacco-induced disease.

We need strong legislation to prevent tobacco companies from targeting young Americans. It is the only effective way to stop this tragedy.

Another top priority should be action on the minimum wage. At this time of extraordinary national prosperity, millions of minimum wage earners are working full time but still living in poverty. We proposed a modest increase of $1.00 an hour over two years to give a much-needed raise to 12 million Americans. The fight for this proposal—so important to working families across America—must be and will be renewed next year.

We had landmark, bi-partisan legislation to assist Americans with disabilities to obtain skills and go to work, rather than sit a home on public assistance. Disabled Americans want the dignity of work. But this bill, too, was not considered by this Congress.

The tragic deaths of James Byrd, an African American killed because of his race, and Matthew Shepard, a gay University of Wyoming student killed because of his sexual orientation, brought the issue of hate crimes to the forefront this year. Their deaths and other senseless acts of hate resulting in death or serious injury should be a catalyst for passage of the Hate Crimes Prevention Act. This bill ranks high among the unfinished business of the 105th Congress, and we will pursue it again next year.

All of us regret that this massive legislation is being considered under end-of-session restrictions that make sensible debate impossible. But overall, I believe the bill deserves to pass, and I look forward to renewing the debate next year about the nation's basic priorities.

MEDICARE HOME HEALTH CARE PROVISION

Mr. GRASSLEY. Mr. President, I wish to comment on the Medicare home health care provisions in the omnibus bill the Senate passed today over my dissenting vote. Along with a bipartisan group of my colleagues, I've worked since early this year to persuade the Senate to revisit home care. Now that we've done so, I have mixed feelings about the product. First, let me tell you what is good about it.

It is good that we listened to our constituents and took action on this issue. The Aging Committee held a hearing on this issue in March, and it was clear then that we had a major problem on our hands. From then to now, believe me, every step has been a struggle. As late as last Thursday, this issue was declared dead here in the Senate. But last minute calls from a number of us to the leadership led to the issue being taken up, and that's a good thing.

It is good that the bill delays the 15-percent across-the-board cut in home health payments that was slated to occur in October 1999 if HCFA missed the deadline for the new Prospective Payment System (PPS). It's HCFA's fault, not that of home health providers, that PPS won't be ready in time, so the cut would have been unfair. The bill delays the cut until October 2000, and PPS should be ready by then, meaning that the across-the-board cut will never occur. We will all need to monitor the development of PPS closely, but this delay buys us some important time.

The final good thing I can say about the bill is that it does provide modest relief to low-cost agencies, such as most Iowa providers. It moves them about one-third of the way up to the national median. That's all.

So what's wrong with it? In short, its increase in payment to low-cost agencies is far too small. The negotiators accepted the House view that all high-cost agencies should be held harmless. This tied up money which should have been used to provide more equity to low-cost agencies, the ''good guys'' who provide home care without unnecessarily burdening Medicare.

Because the bill provides so little relief to low-cost agencies, those agencies are still at risk of closure. If an agency can't stay in business for at least another year, the delay of the 15-percent cut scheduled for October 1999 will not help it. For me, saving those agencies—in order to preserve access to home care for those they serve—was the foremost reason to act this year. We did not do what we needed to do.

In a sense, the new law makes that bad situation even worse. If existing agencies must close their doors, especially in lightly populated rural areas, we could hope that new agencies would open to take on their patients. But the Senate receded to a House provision putting such new agencies at a marked payment disadvantage, making it unlikely that any will open. This should be a matter of grave concern to all of us.

The bill that I drafted with Senators BREAUX, BAUCUS, and ROCKEFELLER, S. 2323, was a hard-fought compromise among differently situated States. As evidence that it was a good compromise, it garnered a majority of Finance Committee members as cosponsors, including those from States with relatively high- and low-cost agencies. It also greatly simplified the Interim Payment System, providing for more uniform payment for agencies, and eliminating the distinction between old and new agencies. If anything, the provision in the omnibus bill makes our earlier bill look even more attractive, because today's bill further complicates home health payment, and makes payment even less uniform.

Finally, Mr. President, I cannot resist pointing out the flaws in the process by which this provision was developed. The process was profoundly undemocratic. After many months' discussion, a strong majority of the Finance Committee agreed on an approach to this issue. We were then told that, out of the whole Senate, only a single Senator from a State with a tremendous number of agencies, many

with very high costs, would object to this consensus approach. Unlike other Senators from similar States, who recognized the need for some high-cost agencies to accept some reductions as part of a compromise, this Senator had not cosponsored any of the reasonable reform bills or otherwise contributed to the discussions during the course of the year. While that Senator cited fiscal responsibility as the reason for his objection, it was no secret that his constituents included so many of the highest-cost home health agencies—the defense of which would seem to be the antithesis of fiscal responsibility.

Precious days passed while no action was taken, and no explanation was offered. We Finance Committee members were essentially strung along, learning to our dismay each day that the bill had not been brought to the floor, where the objecting Senator would have to defend his position, if he dared. In the end, a deal was cut in a rushed, secret negotiation at the eleventh hour. Members who had labored for months to find a workable compromise were not invited to participate, while the alleged objector was. That Senator's State's high-cost agencies were thus given virtual veto power. It should be no wonder that we ended up with what we did.

Here in Congress, a good process does not guarantee a good result, but a bad process almost certainly guarantees a bad result. It pains me that the seniors and disabled who rely on the Medicare home health benefit will have to bear the consequences of the Senate's bad process.

While noting the errors of the Senate on this issue, I would be remiss not to note the responsibility of the home health industry and the Clinton Administration. The industry spent months pursuing unrealistic approaches and failing to unite behind reasonable reform. We'll never know how differently this debate might have turned out if they had been willing to make some hard choices earlier in the process, rather than do the impossible by attempting to please all their constituents. Similarly, we will never know how the issue would have played out if the Administration had participated as full partners. Throughout the year, they were willing only to provide technical assistance, never offering reform ideas of their own, no matter how much Members of Congress from both parties pleaded. I will never understand why they decided that home health care was Congress' problem and not theirs. I hope that the industry, the Administration, and Congress will all approach this issue differently next year.

The prospect of dealing with this issue again in 1999 is not one that many of us relish. But I'm afraid that we will have to do it. In fact, what I really fear is that our best, most efficient home health providers will not be around when we return to this issue. We simply did not do enough for them this year. Let's not kid ourselves that we did.

Mr. MOYNIHAN. Mr. President, the budget agreement reached on Thursday evening was celebrated by both parties in competing press conferences, and there may well be much to commend in the Omnibus Consolidated and Emergency Supplemental Appropriations Act. The trouble is, how would anyone know?

According to a wire service report on Friday, the bill was ''expected to be more than one foot thick.'' In fact, it is closer to two feet thick, and contains some 4,000 pages. Will any Senator or Representative know what's in that monster bill when it is passed shortly—as is now inevitable?

Of course not. Yet in recent years we are given to feel that even to ask such a question is to reveal an embarrassing naivete.

Last year, as Ranking Member of the Committee on Finance, I was Floor Manager during Senate consideration of an 820-page bill somewhat unconvincingly entitled the ''Taxpayer Relief Act of 1997.'' While it was pending before the Senate, the only copy of the bill present on the Senate floor was on the Democratic Manager's desk, having been obtained by our resourceful and learned Minority Chief Tax Counsel, Mr. Nick Giordano. A second copy provided to the majority Manager, Chairman ROTH, had been lent to the Budget Committee so that it could be inspected for violations of assorted rules.

During that debate, many Senators, having no other way to find out, came round to ask if I could ascertain whether this or that provision was in the bill. Sensing my opportunity, I would reply, ''I could, but what will you pay me?''

This year's legislation is no different; we continue to discover items that mysteriously found their way into—or out of—the text long after the agreement was announced. And so as we reflect on the successes and failures of the 105th Congress now ending, I rise simply to sound a note of caution, if not alarm. Having served here for 22 years now—I looked up at the beginning of this Congress to find myself 9th in seniority among Senate Democrats, and 14th in the Senate overall—I am troubled that of late we are getting ominously careless with our procedures. This growing neglect of our rules is becoming increasingly hurtful to the institution of the United States Congress. Surely it is not how business ought to be conducted in the national legislature of the United States of America.

In an article yesterday headlined ''Spending Deal Represents Failure, Not Success,'' the distinguished Vice President and columnist for the Associated Press, Walter Mears, recalls that

> A decade ago, President Reagan confronted Congress with the ''43 pounds of paper'' it passed in 1987 to finance the government in one catchall bill after failing to enact separate appropriations. Reagan told the Democratic Congress not to pass any more ''behemoths'' like that, and said he wouldn't sign one again.
>
> ''The budget process has broken down,'' said Reagan, ''It needs a drastic overhaul.''

I do not assert that in some earlier, happier time, every Member of Congress read every word of every bill. That has never been possible. But only quite recently have the negotiations over, and contents of, our mammoth annual budget measures been kept secret from nearly everyone save the two Republican Leaders and the White House Chief of Staff. We are beginning to resemble a kind of bastard parliamentary system. Members loudly debate issues on the floor, but the real decisions are made in a closed room by three or four people.

This deterioration in the process has taken place over about the last half decade, or so I would reason. Such things would never have been attempted, or tolerated, when I arrived here. That was a time when the rules and prerogatives of this institution were still revered. One shudders to think how the current state of affairs would be viewed by men of the House such as Thomas P. O'Neill or Dan Rostenkowski, or by giants of the Senate like Howard H. Baker or Russell B. Long.

But the reality is that in recent years, a growing lack of respect for the institution of the Congress has begun to manifest itself in any number of damaging ways. To cite just a few other examples:

The budget process has broken down. This year, for the first time in 24 years, Congress failed to pass a budget resolution. And we have had great difficulty passing reconciliation bills. In fact, the last proper, complete reconciliation bill we were able to enact was the Omnibus Budget Reconciliation Act of 1993. Since Thursday night we have been busily congratulating ourselves over completion of the latest budget—as if the simple act of keeping the government open is a unique achievement.

Committees of Conference have been reduced to formalities. Meetings of conference committees are now rarely convened, and when they are, it is frequently done only to announce an outcome that has been predetermined—generally without participation by the minority. The appointment of conferees has sometimes been corrupted, with conference membership or party ratios within conferences subject to manipulation for partisan advantage.

Even the ''scope of the conference'' requirement of Rule 28 of the Standing Rules of the Senate, which prohibited consideration by conference committees of provisions not in the bill passed by either house, has been overturned. On October 3, 1996, the Senate casually did away with that rule by a vote of 56–39.

Likewise we no longer prohibit legislating on appropriations bills. This was a most useful rule that had existed since the adoption of the Standing

Rules of the Senate in 1884; it helped prevent all manner of mischief in the annual appropriations process.

Yet on March 16, 1995, during consideration of a bill to provide emergency supplemental appropriations for the Department of Defense, we voted, in effect, to repeal the rule. An amendment was offered to impose a moratorium on listing of new endangered species by the Fish and Wildlife Service. The Chair promptly sustained a point of order that the amendment violated the rule against legislation on appropriations bills.

Without any thought given to the consequences, the ruling of the Chair was immediately appealed and then overturned, by a vote of 57–42. A new precedent had been set, and the rule was wiped out. Not one word was said on the floor, before or after the vote, about the terrible precedent we were creating.

I voted against both of those changes to our rules. I found it astonishing on both occasions that the Senate would so blithely disregard its own procedures.

The gigantic new Omnibus Appropriations Act, filled with hundreds of non-appropriations provisions never considered separately in either house, is the latest example of why those two little-noticed votes were big mistakes. Indeed, the distinction between appropriations measures and legislative changes is now so blurred that on Sunday, the House Appropriations Committee posted a press release on its website announcing ''Significant Legislative Provisions in Appropriations Bills.''

Parliamentary irregularities are creeping their way into acceptance. For instance, in several cases the Senate has, by unanimous consent, ''deemed'' bills passed before they are received from the House of Representatives. In 1997, a provision giving a $50 billion tax credit to the tobacco industry was slipped into a conference report after the conference committee had completed its work. (That provision was repealed soon after its existence was discovered.)

In another case in 1998, the routine right to modify a floor amendment was used for a different purpose altogether: to undo a compromise agreement on assistance to tobacco farmers, and to defeat without a vote a bipartisan measure reported by the Committee on Finance. Also of concern is the now common practice of filing ''motions to bring to a close debate'' under Rule 22—cloture motions—on bills before a single word of debate has been uttered on the floor.

This nonchalance about our procedures reached an extreme in 1995 and 1996 when we took up the Balanced Budget Amendment to the Constitution and the Line Item Veto Act. These measures, which were part of Item One in the ''Contract with America,'' proposed to dramatically alter the procedures by which Congress, under Article I, Sections 7 and 8, of the Constitution, exercises the power of the purse.

We had the good sense to defeat the Balanced Budget Amendment, albeit narrowly. However, the Line Item Veto Act passed the Senate by a vote of 69–31 on March 27, 1996—notwithstanding the pleas of this Senator and others that the bill was unconstitutional. Ultimately, of course, that Act was declared unconstitutional by the Supreme Court on June 25, 1998 in the case of Clinton v. City of New York. But not before the Senator from New York, along with our revered leader Senator BYRD and Senators LEVIN and Hatfield, had to take the extraordinary step of becoming plaintiffs in one lawsuit, which was vacated due to lack of standing, and amici curiae in a second suit. Happily, as I say, we finally prevailed.

In his powerful concurring opinion concluding that the Line Item Veto Act violated the separation of powers, Justice Anthony M. Kennedy wrote that ''Liberty is always at stake when one or more of the branches seek to transgress the separation of powers.'' Justice Kennedy went on to say this: ''The citizen has a vital interest in the regularity of the exercise of governmental power.''

I repeat: ''The citizen has a vital interest in the regularity of the exercise of governmental power.''

Surely this admonition applies to the regularity of the exercise of power in the United States Senate. We are not talking about mere technicalities or niceties to be observed or ignored at whim. The rules and procedures of the United States Congress matter. Just as the finely-wrought proscriptions in our Constitution matter. Article I, Section 5 of the Constitution provides that ''Each House may determine the Rules of its Proceedings. . .'' Those rules are meant to be, and must be, obeyed.

The Supreme Court held that the Line Item Veto Act threatened liberty by distorting the carefully designed constitutional procedure for passage and enactment of laws. In quite the same way, our failure to observe the rules and procedures of this institution threaten, ultimately, democratic representation of the American people in the Congress. Disregarding our rules erodes the power conferred by citizens on each elected Member of the Congress, undermining the integrity of our legislative process. And it therefore weakens the Congress as an institution and contributes to cynicism and a loss of confidence among the citizenry about our competence to govern. If we do not take better care, I fear we will find this institution in decline.

I know that my friend Senator ROBERT C. BYRD, whose knowledge of the Senate rules is unsurpassed, shares these concerns. Yesterday on the floor, he said this of the pending Omnibus Appropriations Act:

I will never vote for another such monstrosity for as long as I am privileged to hold this office. I hope that I never see another such monstrosity. I will never again support such a convolution of the legislative process as the one we have seen this year, and I hope that others will agree that this process is just as silly and as sad and as ridiculous and as disgraceful as I think it is. I hope they will join me in an effort to prevent it in the future.

That is not the kind of statement that ROBERT C. BYRD, the Ranking Member of the Committee on Appropriations and our sometime President pro tempore, would make lightly. I hope Senators were listening.

Perhaps the Committee on Rules and Administration, on which Senator BYRD and I serve together, will see fit to take up this issue. And I do hope all Senators will recognize the importance of regular order and take greater care with the rules of this institution when the 106th Congress convenes in January of 1999.

In the meantime, on this measure, my vote is No.

Mr. LOTT. I believe the yeas and nays have been ordered, Mr. President. We are ready to proceed to the vote.

The PRESIDING OFFICER (Mr. INHOFE). The question is on agreeing to the conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

Mr. FORD. I announce that the Senator from Arkansas (Mr. BUMPERS), the Senator from Ohio (Mr. GLENN), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Hawaii (Mr. INOUYE) are necessarily absent.

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

The result was announced, yeas 65, nays 29, as follows:

[Rollcall Vote No. 314 Leg.]

YEAS—65

Abraham	Domenici	Lieberman
Akaka	Dorgan	Lott
Bennett	Durbin	Mack
Biden	Faircloth	McConnell
Bingaman	Feinstein	Mikulski
Bond	Ford	Moseley-Braun
Boxer	Frist	Murray
Breaux	Gorton	Reed
Brownback	Graham	Robb
Bryan	Gregg	Roberts
Burns	Harkin	Rockefeller
Campbell	Hatch	Roth
Chafee	Hutchinson	Sarbanes
Cleland	Hutchison	Shelby
Cochran	Jeffords	Smith (OR)
Conrad	Johnson	Stevens
Coverdell	Kempthorne	Thompson
Craig	Kennedy	Thurmond
D'Amato	Kerry	Torricelli
Daschle	Landrieu	Warner
DeWine	Lautenberg	Wyden
Dodd	Leahy	

NAYS—29

Allard	Feingold	Kohl
Ashcroft	Gramm	Kyl
Baucus	Grams	Levin
Byrd	Grassley	Lugar
Coats	Hagel	McCain
Collins	Inhofe	Moynihan
Enzi	Kerrey	Nickles

Reid	Smith (NH)	Thomas
Santorum	Snowe	Wellstone
Sessions	Specter	

NOT VOTING—6

Bumpers	Helms	Inouye
Glenn	Hollings	Murkowski

The conference report was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

HOUSE CONCURRENT RESOLUTION 353—ADJOURNMENT OF THE TWO HOUSES OF CONGRESS

Mr. LOTT. Mr. President, I ask the Chair to lay before the Senate House Concurrent Resolution 353, the adjournment resolution.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 353) providing for the sine die adjournment of the Second Session of the One Hundred Fifth Congress.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution, which is nondebatable.

The concurrent resolution (H. Con. Res. 353) was agreed to as follows:

H. CON. RES. 353

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Wednesday, October 21, 1998, or Thursday, October 22, 1998, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, or until a time designated pursuant to section 3 of this resolution; and that when the Senate adjourns on Wednesday, October 21, 1998, or Thursday, October 22, 1998, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

SEC. 3. During any adjournment of the House pursuant to this concurrent resolution, the Speaker, acting after consultation with the Minority Leader, may notify the Members of the House to reassemble whenever, in his opinion, the public interest shall warrant it. After reassembling pursuant to this section, when the House adjourns on any day on a motion offered pursuant to this section by its Majority Leader or his designee, the House shall again stand adjourned pursuant to the first section of this concurrent resolution.

Several Senators addressed the Chair.

Mr. LOTT. Mr. President, will the Senator withhold one second, for one more unanimous consent request?

HOUSE JOINT RESOLUTION 138—PROVIDING FOR THE CONVENING OF THE FIRST SESSION OF THE 106TH CONGRESS

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to House Joint Resolution 138 received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 138) appointing the day for the convening of the First Session of the One Hundred Sixth Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. LOTT. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 138) was considered read the third time and passed, as follows:

H.J. RES. 138

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the One Hundred Sixth Congress shall begin at noon on Wednesday, January 6, 1999.

Mr. LOTT. Mr. President, I can announce now that there will be no further votes in the 105th Congress. This resolution just adopted provides for the convening of the 106th Congress at 12 noon on January 6, 1999.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

COMMENDATION OF THE MAJORITY LEADER

Mr. THURMOND. Mr. President, we have accomplished a lot this year. I am very proud of what has been done here in the Senate. No one is due more credit for this than our able leader, Senator LOTT. I just want to commend him for his outstanding accomplishments and the fine cooperation he has given to all of us and for everything he has done for this country.

THANKING SENATOR THURMOND

Mr. LOTT. Mr. President, just briefly, I thank the distinguished President pro tempore for the job he has done and for his friendship and help. Truly, one of the most important accomplishments of this Congress was our armed services authorization bill, the Strom Thurmond authorization bill. It was a tough process, a long process, but we got it done largely because of his tenacity and the respect and reverence we all have for Senator Thurmond. And that led, of course, to the appropriations bill and its defense and military construction portions, and it contributed to the additional funds that were added in this omnibus appropriations bill for defense and intelligence for the future of our country.

Thank you, Senator THURMOND, for all you did.

Mr. THURMOND. I thank the able leader.

MORNING BUSINESS

The PRESIDING OFFICER. There will now be a period for the transaction of morning business.

Mr. SPECTER. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Pennsylvania is recognized for 15 minutes.

Mr. SPECTER. I thank the Chair.

OMNIBUS APPROPRIATIONS CONFERENCE REPORT

Mr. SPECTER. Mr. President, I had hoped to make this floor statement in advance of the vote, but I could not be here yesterday. So, I have asked for time this morning to state my reasons for voting against the omnibus appropriations bill. And I do so with a conflict of my own views because I think this bill provides very substantial funding for very many important projects. However, I decided to vote against the bill because of the change from regular order and existing procedures in the appropriations process. The Constitution gives the authority to 100 Members of the Senate and 435 Members of the House, but as the appropriations process went forward the final decisions were made by only four Members.

Mr. ASHCROFT. Mr. President, the Senate is not in order. I would like to hear the Senator, if we could have order in the Senate.

The PRESIDING OFFICER. The Senate will come to order.

Mr. SPECTER. I thank my colleague, Senator ASHCROFT, for asking for order. I would like to hear myself and am having some difficulty.

As I was saying, Mr. President, notwithstanding the fact that this bill contains funding for many, many vital programs for America, I decided on balance to vote against it because it made such drastic changes in existing procedure where the Constitution gives to the Congress the authority to appropriate, 435 Members in the House and 100 Members in the Senate, and as the arrangements were finally worked out, critical decisions were made excluding the chairman of the Appropriations Committee, excluding the chairmen of the relevant subcommittees such as myself, with only the Speaker, the leader of the Democrats in the House, our distinguished majority leader, and the minority leader in the Senate. I think that is very, very problemsome.

During the time allotted to me this morning I intend to summarize my views.

Starting first with the accomplishments, it does provide for $83.3 billion